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Arb.O.P(Com.Div.) No.95 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.) No.95 of 2024

M/s.Humain Sri Sai Labs
C/o.Nobel Diagnostics Private Ltd
Represented by its Director Mr.Ramsh, I.S.
KRM Centre, 9th Floor, No.2, Harrington Road,
Chetpet, Chennai -31.

... Petitioner

Vs.

Rathin and Rathika Hospitals Private Ltd,
Bo.67/27 Burkit Road,
T.Nagar, Chennai – 17.

... Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation 1996 r/w.Rule 2 of the Appointment of Arbitrator of the Madras High Court Scheme, 1996.

For Petitioner	: Mr.Durga Bhatt
For Respondent	: No appearance

ORDER

The dispute between the petitioner and the respondents is arbitrable in terms of the Laboratory Services Agreement dated 16.02.2022.



2. The Court record indicates that notice was served on the respondent on

14.03.2024. Private Notice was also served on the respondent on 08.03.2024.

As per the affidavit of service filed in SR.No.9823/2024. The name of the respondent is also printed in the cause list.

3. Despite notice being taken out on the respondent, the respondent failed to enter appearance either in person or through a counsel.

4. This petition has been filed for appointment of an Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996 in respect of the dispute under the Laboratory Services Agreement dated 16.02.2022. The said agreement contemplates resolution of dispute through the Arbitration. The relevant clause reads under :-

“13.Arbitration : It is mutually agreed between the parties that any dispute or difference between the parties, if remains unresolved for a periof of more than 15days from the date of a written communication received by the one of the Party from the aggrieved party, then the same shall be referred to arbitration proceedings conducted as per The Arbitration and Conciliation Act, 1996. There will be a sole arbitrator, who shall be appointed by the Humain Sri Sai Labs, and the venue of arbitration shall be Chennai.”



5. The petitioner has issued noticed under Section 21 of the Arbitration and Conciliation Act as early as 15.12.2023 which was acknowledged by the respondent, but he not been replied to. The respondent has also not responded to the Court notice and the private notice that was taken out pursuant to order of this Court dated 06.03.2024.

6. Considering the same, it is to be deemed that the respondent has forfeited the rights to participate in the constitution of the Arbitral Tribunal in terms of Clause 13 of the Laboratory Services Agreement dated 16.02.2022. The said clause contemplates the resolution of dispute by a sole arbitrator to be appointed by the petitioner. As the appointment of the Arbitrator by the petitioner would be an unilateral appointment and is contrary to the decision of the Hon'ble Supreme Court in **Perkins Eastman Architects DPC vs. HSCC (India) Ltd** reported in **AIR 2020 SC 59**, Court is of the view that this is a fit case for appointment of an Arbitrator.

7. Therefore, **Mr.V.V.Shivakumar, Advocate (Mobile No.9841006968)** residing at **Palani Centre, No.32, Venkatanarayana Road, T.Nagar, Chennai – 600 017**, is appointed as the sole Arbitrator to enter upon reference to and adjudicate/resolve the *inter se* dispute between the parties.



8. The learned Arbitrator appointed herein, shall after issuing notice to the parties and upon hearing them, endeavour to complete the arbitral proceedings and pass an award strictly in accordance with the provisions of the Arbitration and Conciliation Act, 1996, as expeditiously as possible, preferably within a period of twelve months after the date of completion of pleadings under Sub-Section 4 to Section 23 as is contemplated in Section 29A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

9. The learned Arbitrator appointed herein shall be paid fees and other incidental charges as may be fixed with the consent of parties or in accordance with the provisions of the Arbitration and Conciliation Act, 1996, and the same shall be borne by the parties equally. In case, the respondents remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondents.

10. Since this Court has appointed the Arbitrator, it is open to the petitioner as well as the respondents to seek other reliefs under Section 17 of the Arbitration and Conciliation Act, 1996, before the learned Arbitrator.



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WEB COPY 11. This Original Petition is allowed accordingly, leaving the parties to bear their own costs.

20.03.2024

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.

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