



WEB COPY



Arb.O.P.(Com.Div.)No.561 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Arb.O.P.(Com.Div.)No.561 of 2023

CIPACA Healthcare Services Private Limited,
Represented by its Managing Director,
Dr.Raja Amarnath,
D.No.2/2102/A, Madhakoil Street,
Mugalivakkam – Manapakkam Road,
Mugalivakkam, Chennai – 600 125.

.. Petitioner

Vs.

Dr.Pradip Ashokrao Khairnar

.. Respondent

Prayer: Original Petition is filed under Section 11(6) of the Arbitration and Conciliation Act, 1996, praying to constitute an Arbitral Tribunal to decide the dispute between the parties in accordance with the Clause 9 of the Agreement to provide Comprehensive Medical Services dated 29.11.2021, Clause 5 of the Deed of Indemnity dated 29.11.2021 and Clause 4 of the Agreement for Business Development and Referrals dated 29.11.2021.

For Petitioner : M/s.M.Meenatchi

For Respondent : No appearance



ORDER

Notice taken out on the respondent has been served on 04.12.2023

WEB COPY

as is evident from the extract from the tracking consignment note downloaded by the petitioner from the website of the postal department filed along with Affidavit of Service. Notice on the respondent is thus complete. Registry was therefore directed to print the name of the respondent in the cause list also today. Despite the same, the respondent has not come forward to either enter appearance in person or through Counsel.

2. This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of a arbitrator to resolve the dispute between the petitioner and the respondent.

3. The dispute between the petitioner and the respondent is arbitrable in terms of Clause 9 of Comprehensive Medical Services agreement between the petitioner and the respondent dated 29.11.2021.

The said Clause reads as under:

“9.Arbitration:-

This Agreement, and all disputes or claims arising out of or in connection with it or its subject matter of formation (including non-contractual disputes or



WEB COPY



Arb.O.P. (Com.Div.) No.561 of 2023

claims), shall be governed by and construed in accordance with the laws of the India and any dispute will be settled only within Chennai Jurisdiction.

Any dispute or difference arising out of this Agreement shall be finally settled by arbitration. The provisions of the Indian Arbitration Act, 1940 shall apply in such proceedings.

Such dispute or difference shall be referred to the Award of two arbitrators, one Arbitrator to be nominated by First Party and the other to be nominated by the Second Party or in case of the said Arbitrators not agreeing, then to the award of an Umpire to be appointed by the Arbitrators in writing before proceeding with the reference, and in case the Arbitrators cannot agree to the Umpire, he may be nominated by the Arbitration Council of India. The award of the Arbitrators, and in the event of them not agreeing, or the Umpire appointed by them, the Arbitration Council of India shall be final and binding on the parties.”

4. The above Arbitration Clause as extracted above contemplates an Arbitral Tribunal presided over by three Arbitrators namely two Arbitrators to be nominated by each of the parties and a Presiding Arbitrator to be nominated by the two nominee Arbitrators.

5. The petitioner has issued a notice under Section 21 of the Arbitration and Conciliation Act on 10.05.2023 to the respondent. The petitioner has nominated Mr.P.Anbarasan, Advocate, Chennai as its nominee Arbitrator. Despite notice being served on the respondent as



early as 13.05.2023, the respondent failed to respond to the aforesaid notice dated 10.05.2023 issued under Section 21 of the Arbitration and Conciliation Act, 1996. Thus, it is clear that the respondent has forfeited the rights to nominate an arbitrator on his behalf.

6. Considering the above, **Hon'ble Mr.Justice T.Raja, (Retired) Former Acting Chief Justice of this Court**, is appointed as a sole Arbitrator to resolve the dispute between the parties.

7. The parties are at liberty to workout the venue for Arbitration at Chennai.

8. The Court is inclined to pass the following order:-

(i) **Hon'ble Mr.Justice T.Raja, (Retired) Former Acting Chief Justice of this Court, (Mobile No.9498022277) residing at Villa No.B8, Amara Ananta, Palavakkam, Chennai – 600 041**, is appointed as an Arbitrator to enter upon reference and adjudicate / resolve the *inter se* dispute between the parties.



(ii) 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 29-A of the Arbitration and Conciliation Act, 1996, without getting influenced by any of the observations made by this Court in this order.

(iii) 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 respondent remain *ex parte*, the petitioner shall pay the entire fee and other incidental charges to the Arbitrator and later recover the same from the respondent.

9. The Original Petition is allowed with the above observations,



Arb.O.P. (Com.Div.) No.561 of 2023

leaving the parties to bear their own costs.

WEB COPY

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

03.01.2024

jas

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

C.SARAVANAN, J.



WEB COPY



Arb.O.P. (Com.Div.) No.561 of 2023

jas

Arb.O.P.(Com.Div.)No.561 of 2023

03.01.2024