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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ARB.P. 822/2023**

SAVELIFE INSTITUTE OF MEDICAL SCIENCES PVT. LTD.

..... Petitioner

Through: Mr.Parveen Kumar Aggarwal and
Mr.Abhishek Grover, Advts.

versus

ANH TECHNOLOGIES PVT. LTD.

..... Respondent

Through: Mr.Naman Joshi and Mr.Rahul,
Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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08.02.2024

Present petition has been filed under Section 11 (5) and (6) of the Arbitration and Conciliation Act for appointment sole arbitrator for adjudication of the disputes *inter se* the parties. The parties entered into a Memorandum of Understanding (MOU) dated 03.12.2021. Clause 15 of the MOU contains the arbitration clause with the seat and place of arbitration at Delhi. Learned counsel submits that subsequent to the dispute, the arbitration was duly invoked.

Learned counsel for the respondent submits that though the respondent had also invoked the arbitration but since now the petition has been filed by the petitioner, the arbitrator may be appointed.

However, perusal of the record indicates that on 04.10.2023 in view



of the law at that time as laid down in ***NN Global Mercantile Pvt. Ltd. vs Indo Unique Flame Ltd & Anr***, 2023(7) SCC 1, the MOU was impounded with a direction to the Joint Registrar (Judicial) to cure the defect of stamp duty. Learned counsel submits in pursuance of the order dated 04.10.2023, the MOU was submitted before the Joint Registrar (Judicial) and deficient stamp duty was paid.

It is pertinent to mention here that subsequently, in a seven judges bench in ***In re: Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899***, 2023 SCC OnLine SC 1666 it was *inter alia* held that the issue as to the stamping of a document is required to be examined by learned arbitrator. However, since the document has been impounded and deficient stamp duty has been paid, learned Joint Registrar (Judicial) is directed to cure the defect and send the MOU to the learned arbitrator on steps being taken by the petitioner.

Considering that both the parties have consented to the reference to the arbitral tribunal, the present petition is disposed of with the following directions:

- i) The disputes between the parties under the said agreement are referred to the sole arbitral tribunal.
- ii) Justice Ajit Bharihoke, Former Judge of this Court (Mobile No.9650110057) is appointed as an Arbitrator to adjudicate the disputes between the parties.
- iii) The remuneration of the learned Arbitrator shall be in terms of Schedule IV of the A&C Act or as the parties may agree.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.



v) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.

vi) The parties shall approach the learned arbitrator within two weeks from today.

The petition is disposed of in the above terms.

DINESH KUMAR SHARMA, J

FEBRUARY 8, 2024

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