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

+ **ARB.P. 841/2023**

WIKREATE WORLDWIDE PVT LTD Petitioner

Through: Ms. Mehak Gupta and Mr. V. Gupta,
Advocates.

versus

VENKATESHWAR HOSPITAL Respondent

Through: Ms. Petal Chandhok, Ms. Rupali
Gupta and Ms. Yashita Rastogi,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

21.05.2024

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By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from Consulting & Service Agreement dated 24.10.2018 ('Agreement')

2. Notice on this petition was issued on 17.08.2023; consequent upon which *vide* order dated 19.03.2024, it was recorded that the respondent did not wish to file a reply in the matter.
3. Ms. Mehak Gupta, learned counsel for the petitioner has drawn the attention of this court to clause 14 of the Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act.
4. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 14.3 of the



Agreement which subjects the contract between the parties to the jurisdiction of competent courts at New Delhi.

5. As per the record, the petitioner invoked arbitration *vide* Notice dated 15.05.2023, to which the respondent has not sent any reply.
6. Ms. Petal Chandhok, learned counsel appearing for the respondent points-out that the copy of the agreement placed on record is an unsigned copy. Counsel also submits that the petitioner has failed to adhere to the dispute resolution mechanism contained in clause 14 of the agreement, inasmuch as they have not attempted an amicable settlement of the disputes by mutual consultation.
7. That being said, counsel submits, that without admitting the claims or allegations made by the petitioner, the respondent does not oppose the appointment of an Arbitrator to adjudicate upon the disputes between the parties.
8. Needless to record that Ms. Gupta appearing for the petitioner disputes the submissions made on behalf of the respondent.
9. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 15.05.2023, do not appear *ex-facie* to be non-arbitrable.
10. In view of the above, at this stage, learned counsel for the parties jointly request that this court may appoint an arbitrator; refer the



matter for arbitration under the aegis of the Delhi International Arbitration Centre, New Delhi ('DIAC'); and to then hold the appointment in abeyance for 02 (two) months, affording to the parties sufficient time to attempt an amicable resolution of their *inter-se* disputes through mediation.

11. Accordingly, the present petition is allowed and **Ms. Esha Mazumdar, Advocate (Cellphone No.: +91 9873968037)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.
12. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event, there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
13. The learned Arbitrator shall then proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.
14. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
15. In view of the request made by the parties, and to afford to them an opportunity for a negotiated settlement, the order appointing the arbitrator shall be held in abeyance for a period of 02 (two) months from today, during which time the parties are at liberty to attempt a



negotiated settlement of their disputes; failing which, the order of appointment shall take effect.

16. Accordingly, at request, the parties are referred to mediation under the aegis of Delhi High Court Mediation & Conciliation Centre, with a request to the learned Organizing Secretary to appoint an appropriate mediator in the matter.
17. Let the parties approach the Mediation Centre on Monday, *i.e.* 27th May 2024 at 02:30 p.m. for the above purpose.
18. A copy of this order be sent to the learned Organizing Secretary of the Mediation Centre, for information and compliance.
19. Parties are directed to sincerely attempt to settle their *inter-se* disputes through mediation within 02 months; and in the event settlement does not fructify within the said period, to approach the learned Arbitrator hereby appointed, within 10 days after the aforesaid two-month period.
20. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
21. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
22. The petition stands disposed-of in the above terms.
23. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

MAY 21, 2024/ak