



2024:DHC:8371



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 23.10.2024

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ARB.P. 1133/2024**M/S ONCQUEST LABORATORIES LTD.**

....Petitioner

Through: Mr. Sonal Anand & Ms. Surbhi
Singh, Advocates (through VC).

versus

M/S SDACC HEALTHCARE PVT LTD

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****SACHIN DATTA, J. (Oral)**

1. The present petition has been filed by the petitioner seeking appointment of a Sole Arbitrator to adjudicate the disputes that have arisen between the petitioner and the respondent. These disputes stem from a "Diagnostic Services Agreement" dated 12.10.2022 (hereinafter '*the Agreement*'), executed between the parties. Under the terms of this Agreement, the petitioner agreed to provide the respondent with various diagnostic services, including pathological services.

2. The arbitration clause in the Agreement between the parties, is in the following terms : -

"19. APPLICABLE LAW AND DISPUTE RESOLUTION

This Agreement shall be subject to, governed by and construed, and enforced by the Laws of India. For all disputes arising between the Parties as to the interpretation, operation, or effect of any clause in this Agreement including the performance or non-performance of the rights and obligations of the Parties or any other difference arising between the Parties including the question as to whether the termination or earlier determination of the



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Agreement by the other Party hereto is legitimate, the Parties shall endeavor to settle such dispute amicably. However, in the event the same cannot be mutually resolved amicably within 30 days of receipt of any written communication by either Party, the same shall be referred for arbitration in terms of the Arbitration and Conciliation Act, 1996, (as amended) which Arbitration shall be conducted by a Sole Arbitrator to be appointed by the Parties as per the Arbitration and Conciliation Act, 1996. The Venue and seat of Arbitration shall be New Delhi and the Proceedings shall be conducted in English Language. The decision and the award of the arbitrator shall be final and conclusive and binding on the Parties hereto. That pending the submission to arbitration and thereafter, till the arbitrator renders its award, the Parties shall, except in the event of termination of this Agreement shall continue to perform their obligation under this Agreement.”

3. Disputes between the parties emerged when the respondent failed to make payments on the invoices issued by the petitioner. In response to this default, the petitioner sent several reminder emails on 15.12.2023, 18.12.2023, 19.12.2023, and 20.12.2023, urging the respondent to fulfil its payment obligations.
4. Subsequently, on 24.02.2024, the petitioner issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the ‘A&C Act’) invoking the arbitration clause of the Agreement. However, the respondent failed to respond to the said notice.
5. Consequently, the petitioner has approached this Court, through the present petition, seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
6. It is noticed that the aforesaid communication dated 24.02.2024, whereby arbitration was invoked, was delivered to the respondent, as is evident from the postal receipt and tracking report filed by the petitioner as Document- 5. Yet, no reply thereto was given by the respondent.
7. In the present proceedings, notice was issued on 30.07.2024. The



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petitioner has taken the requisite steps to serve the respondent at its registered address as reflected on the Ministry of Corporate Affairs website, which is also the address mentioned in the Agreement between the parties. The communication sent to the said address *via* speed post was returned with the notation, “addressee left without instructions” whereas the communication sent *via* Courier was returned with the notation “return to branch”. In addition, the respondent has also been served *via* email at reports@sdacc.in and fintaxmca@gmail.com. The petitioner has thereby discharged its onus to effect service on the respondent. It is noticed that Section 3 of the Arbitration and Conciliation Act, 1996 contemplates that a written communication is deemed to have been received if it is sent to the addressee’s last known place of business or mailing address by any means which provides a record of the attempt to deliver it.

8. In the aforesaid circumstances, the matter has been taken up for hearing and disposal.

9. The scope of the present proceedings is confined to ascertaining whether there exists an arbitration agreement between the parties. As held in the decision of the Supreme Court in ***In Re: Interplay between Arbitration Agreement under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1899***, bearing the Curative Petition (C) No. 44/2023 decided on 14.12.2023, the scope of enquiry of the Court at the stage of appointing an arbitrator is restricted to only examining the existence of the agreement. The relevant portion of the decision is reproduced as under -

“208. The Statement of Objects and Reasons of the 2015 Amendment Act are as follows:

“(iii) an application for appointment of an arbitrator



shall be disposed of by the High Court or Supreme Court, as the case may be, as expeditiously as possible and an endeavour should be made to dispose of the matter within a period of sixty days.

(iv) to provide that while considering any application for appointment of arbitrator, the High Court or the Supreme Court shall examine the existence of a prima facie arbitration agreement and not other issues.”

209. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.

.....”

(emphasis supplied)

10. In *SBI General Insurance Co. Ltd. v. Krish Spinning*, 2024 INSC 532, the Supreme Court has further clarified that at the stage of appointing an arbitrator, the Court’s role is limited to determining the prima facie existence of an arbitration agreement, and “nothing else”. It was observed therein as follows:

“113. Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in *In Re: Interplay* (supra) that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow:

“209. The above extract indicates that the **Supreme Court or High Court at the stage of the appointment of an arbitrator shall “examine the existence of a prima facie arbitration agreement and not other issues”. These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings.** Accordingly, the “other issues” also include examination and impounding of an unstamped instrument by the referral court at the Section 8 or Section 11 stage. The process of examination, impounding, and



dealing with an unstamped instrument under the Stamp Act is not a timebound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. [...]"

(Emphasis supplied)

114. In view of the observations made by this Court in In Re: Interplay (supra), it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia (supra) and adopted in NTPC v. SPML (supra) that the jurisdiction of the referral court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex-facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in In Re: Interplay (supra).

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123. The power available to the referral courts has to be construed in the light of the fact that no right to appeal is available against any order passed by the referral court under Section 11 for either appointing or refusing to appoint an arbitrator. Thus, by delving into the domain of the arbitral tribunal at the nascent stage of Section 11, the referral courts also run the risk of leaving the claimant in a situation wherein it does not have any forum to approach for the adjudication of its claims, if its Section 11 application is rejected."

11. In the present case, the existence of the arbitration agreement is apparent from a perusal of a copy of the Agreement which has been placed on record.

12. In the circumstances, there is no impediment to this Court appointing an independent Sole Arbitrator to adjudicate the disputes between the parties, as prayed for.

13. Accordingly, Mr. Abhishek Grover, Advocate (Mob. No.: 9871804549) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.



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14. The respondent shall be at liberty to raise preliminary objections as regards arbitrability/jurisdiction, if any, which shall be decided by the arbitrator, in accordance with law.

15. The learned Sole Arbitrator may proceed with the arbitration proceedings subject to furnishing to the parties requisite disclosure as required under Section 12 of the A&C Act.

16. The petitioner requests that the arbitration shall take place under the aegis of and under the rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

17. It is clarified that this Court has not expressed any opinion as regards merits of the respective contentions of the parties, on the merits of the matter

18. The present petition stands disposed of in the above terms.

OCTOBER 23, 2024/sv

SACHIN DATTA, J