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

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*Date of decision: 19.09.2024*

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**FAO (COMM) 176/2024****GOVT OF NCT OF DELHI & ORS.****.....Appellants**

Through: Mr Naved Ahmed, Advocate with Dr  
Arvind Gautam MOIC, Gen. Branch,  
Mr Pushp Raj Yadav, Legal Assistant  
and Mr Shubham Verma, ASO.

versus

**M/S RAVI KANT JOSHI  
SECURITY AGENCY & ANR.**

**.....Respondents**

Through: Mr Satya Saharawat, Advocate for  
respondent No. 1.

**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)****CM APPL. 52923/2024**

1. Allowed, subject to the appellants filing legible copies of the annexures, at least three (03) days before the next date of hearing.

**CM 52924/2024 [Application filed on behalf of the appellants seeking  
condonation of delay of 30 days in re-filing the appeal]**

2. This application has been filed on behalf of the appellants seeking

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condonation of delay in re-filing the appeal.

2.1 According to the appellants, there is a delay of 30 days.

3. Having regard to the period involved, we are inclined to condone the delay.

3.1. It is ordered accordingly.

4. The application is disposed of.

**FAO (COMM) 176/2024 and CM 52922/2024 [Application filed on behalf of the appellants seeking interim relief]**

5. This appeal is directed against the judgement and order dated 10.05.2024 passed by Sh Brijesh Kumar Garg, learned District Judge, Commercial Court-01, Shahdara, Karkardooma Courts, Delhi.

6. Mr Naved Ahmed, learned counsel, who appears on behalf of the appellants, has pivoted his arguments solely on one aspect. It is the submission of Mr Ahmed that the award dated 01.09.2023, which was sustained *via* the impugned judgement and order, was patently illegal and hence, ought to have been set aside by the learned District Judge.

6.1 In this context, our attention has been drawn to Clause 9.1 of the agreement dated 25.05.2016. This agreement was executed between respondent no. 1 and the concerned hospital, i.e. appellant No. 3/ Guru Teg Bahadur Hospital [hereinafter referred to as the 'GTB Hospital'].

6.2 We may indicate that the appellants have not placed the said agreement on record. However, on being queried, a soft copy of the relevant clause has been placed before us. For convenience, Clause 9.1 is set forth hereafter:-

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*“9.1 The Service Provider shall maintain biometric attendance system for better checks and controls. The Service Provider shall agree to introduce this system within ten days of signing the agreement. If the Service provider is found to be reluctant and not introducing the biometric attendance system within the aforesaid one month, the Service Provider shall pay Rs. 1000/- per day for period of delay in starting the biometric attendance system. The data of biometric attendance will be submitted to the Hospital as may be required by the Hospital.”*

7. As would be evident, the obligation cast on respondent no. 1 was to produce for perusal of the GTB Hospital the data concerning biometric attendance as and when required by it.

8. The arbitrator, in the course of adjudication, examined the issue on two counts:

(i) Firstly, whether or not biometric attendance machine had been deployed by respondent no. 1

(ii) Secondly, whether relevant data was furnished with regard to deployment of security guards, which was the principal purpose and object of the agreement arrived at between appellant No. 3/ GTB Hospital and respondent no. 1.

9. On the first count, the arbitrator came to the conclusion that biometric attendance machine had been deployed by respondent no. 1. In this regard, the learned arbitrator took note of the fact that respondent no. 1 had, in fact, asked for the return of the biometric machine, to which no reply or rebuttal was put forth by the GTB Hospital.

10 The second aspect was rejected on the ground that up until December, 2016, the GTB Hospital had not raised any objection with regard to the alleged failure of respondent no. 1 to maintain biometric attendance.

10.1 This observation was made in the context that the period for which the

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security personnel were deployed by respondent no. 1 spanned between 16.04.2016 and 18.04.2017. The penalty which was imposed, amounting to Rs 3,11,000/- as per the record, qua which there is no dispute, spanned between January, 2017 & April, 2017.

11. Concededly, respondent no. 1's bills for deployment of security personnel were cleared for the period spanning between April, 2016 and December, 2016.

12. The arbitrator, after examining the evidence, came to the conclusion, and in our view, correctly, that the document, which is Ex. CW-1/17, clearly indicated that respondent no. 1's name was not referred to amongst those who, according to the GTB Hospital, had not been recording data *via* the biometric machine. Therefore, clearly, not only the machine was available but relevant material was furnished by respondent no. 1 as and when sought for by the GTB Hospital.

13. The argument advanced on behalf of the appellants, including the GTB Hospital, is that as per Clause 9.1 the agreement dated 25.05.2016, respondent no. 1 was obliged to furnish evidence with regard to the data, as recorded by the biometric machine. As observed above, there is nothing on record to show when data was sought for, it was not supplied by respondent no. 1.

14. As a matter of fact, our attention has been drawn by the counsel for respondent no. 1 to communications dated 03.03.2017, 09.03.2017 & 11.04.2017, which are suggestive of the fact that respondent no. 1 had furnished the data which was downloaded from the biometric machine, in support of its stand that the security personnel, as per the aforementioned agreement, were deployed.





14.1 Curiously, the said communications had not been placed on record by the appellants.

15. Since the amount awarded to respondent no. 1 is small, we do not wish to delay the disposal of the appeal.

16. We have examined the record handed over to us by the counsel for respondent no. 1. For convenience, the relevant extracts of the three (03) letters referred to above, are put forth hereafter:-

**“Letter dated 03.03.2017**

*Assistance Medical Superintendent,  
GTB Hospital, Dilshad Garden,  
Delhi-110095.*

**Sub: Submission of Biometric Attendance of January 2017**

*Sir,*

1. Please refer verbal conversation between Mr. SK Seth (E-4 Medical Branch) of your Office and Mr. Ranjit Singh (Manager) of this Agency dated 27 February 2017. Biometric Attendance of January 2017 is submitted herewith for your further necessary action.

2. You are requested to release the due payment of January 2017 Bill at the earliest please.

*Enclosure: as mentioned above.*

*Date: 03 Mar, 2017*

*With warm regards*

*Place: New Delhi*

*For Ravi Kant Joshi Security Agency*

*Copy To*

*Medical Director,  
GTB Hospital, Dilshad Garden  
Delhi-110095”*

*Authorised Signatory*

**“Letter dated 09.03.2017**

*Medical Superintendent,  
GTB Hospital, Dilshad Garden,  
Delhi-110095.*

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**Sub: Submission of Biometric Attendance of February 2017**

Sir,

1. Biometric Attendance of February 2017 is submitted herewith for your further necessary action.
  2. You are requested to acknowledge the same please.
- Enclosure: as mentioned above.

Date: 09 Mar, 2017

With warm regards

Place: New Delhi

For Ravi Kant Joshi Security Agency

Copy To

Assistance Medical Director,  
GTB Hospital, Dilshad Garden  
Delhi-110095"

Authorised Signatory

**"Letter dated 11.04.2017**

Medical Director,  
GTB Hospital, Dilshad Garden,  
Delhi-110095.

**Sub: Submission of Biometric Attendance of March 2017**

Sir,

1. Biometric Attendance of March 2017 is submitted herewith for your further necessary action.
  2. You are requested to acknowledge the same please.
- Enclosure: as mentioned above.

Date: 11 April, 2017

With warm regards

Place: New Delhi

For Ravi Kant Joshi Security Agency

Copy To

Assistance Medical Director,  
GTB Hospital, Dilshad Garden  
Delhi-110095"

Authorised Signatory

17. Therefore, in our view, the record, as examined by us, establishes that

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the relevant data downloaded from the biometric machine was supplied to the appellants including the GTB Hospital. In both accounts, the decision of the arbitral tribunal which concerned issue nos. 1 & 4 is correct.

18. We find no reason to interfere with the impugned judgement passed by the learned District Judge, whereby the award dated 01.09.2023 was sustained.

19. In these circumstances, the appeal is dismissed.

20. The executing court will make an endeavour to expedite the proceedings pending before it.

21. Pending application shall also stand closed.

**RAJIV SHAKDHER  
(JUDGE)**

**AMIT BANSAL  
(JUDGE)**

**SEPTEMBER 19, 2024**  
Kd

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