



2024:DHC:9166



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

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Date of Decision : 25.11.2024+ **ARB.P. 1430/2024**

DR. DURGESH CHAUHAN

.....Petitioner

Through: Mr. Rahul Chauhan, Adv.

versus

CYGNUS JK HINDU HOSPITAL & ORS.

.....Respondents

Through: Advocate (appearance not given)

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

1. The present petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') seeking constitution of an arbitral tribunal to adjudicate the disputes between the parties.
2. The disputes between the parties have arisen in context of a Memorandum of Understanding dated 01.01.2021 (hereinafter '*the MoU*'), by virtue of which, the petitioner was engaged for providing physiotherapy services at the respondent/hospital.
3. Disputes between the parties have arisen on account of the alleged non-payment of the petitioner's monetary dues under the Agreement by the respondent, for which, a legal notice dated 15.10.2022 was issued by the petitioner. Despite attempts at settling the monetary dues of the petitioner, the respondent failed to clear the entire amount.
4. Admittedly, the said MoU between the parties contains an arbitration



clause as under:-

“16. Arbitration

In the event of disputes, difference or controversies between the parties arising out of this agreement of any matter incidental thereto. During this tenure or after completion, the same shall be resolved by mutual discussion and negotiations, failing which such disputes, differences or controversies shall be referred to sole arbitrator to be appointed in accordance with arbitration and conciliation act. The arbitration proceedings shall be conducted as per the Arbitration and conciliation act 1996, as amended from time to time. The award made in pursuance of the arbitration proceedings, shall be final and binding on both the parties. The venue of arbitration shall be New Delhi and arbitration proceedings shall be conducted in English language. The cost of arbitration shall be born in equal halves by the parties.”

5. Thereafter, a suit under Order XXXVII CPC, 1908 was instituted by the petitioner for recovery of its outstanding monetary entitlements under the MoU, however, the same is stated to have been withdrawn on account of certain technical defects and lack of jurisdiction.
6. Consequently, a notice invoking arbitration dated 22.11.2023 was issued by the petitioner, proposing the names of three persons who could be appointed as the sole arbitrator to adjudicate the disputes between the parties. The respondent failed to reply to the same. As the parties were unable to mutually agree on the appointment of a sole arbitrator to adjudicate the disputes between the parties, the present petition has been filed.
7. Notice was issued by the Court in the present petition on 13.09.2024 subject to an amended memo of parties being filed by the respondent, which now stands filed, as on 18.09.2024.
8. Learned counsel for the respondent, while refuting the claims sought to be raised by the petitioner, does not dispute the existence of the arbitration agreement and accedes to the appointment of an independent



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Sole Arbitrator to adjudicate the disputes between the parties.

9. In the circumstances, at joint request, Ms. Akriti Arora, Advocate (Mob. No.: +91 9653270258) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

10. It is further agreed by the parties that the arbitration shall take place under the aegis of and as per the Rules of Delhi International Arbitration Centre (DIAC). It is directed accordingly.

11. 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.

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

13. 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 their merits, in accordance with law.

14. Needless to say, nothing in this order shall be construed as an expression of opinion of this court on the merits of the case.

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

SACHIN DATTA, J

NOVEMBER 25, 2024/dn