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

+ **ARB.P. 1454/2024**

M/S AMJAY MEDIMAX INDIA PVT LTDPetitioner

Through: Mr. Nitin Gupta, Mr. Tia Sachdeva,
Mr. Sahil Chopra, Advocates

versus

**M/S ESCORTS HEART AND SUPER SPECIALITY HOSPITAL
LIMITED**Respondent

Through: Ms. Aanchal Basur and Mr. Abhay
Kumar, Advocates

**CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

ORDER
13.12.2024

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1. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 by the Petitioner seeking appointment of an Arbitrator to adjudicate upon the disputes which have arisen between the parties under the Agreement dated 01.04.2018 under which the Petitioner was to provide certain services to the Respondent, which is a multi-speciality Hospital.
2. Article 14 of the said Agreement, which is the arbitration clause, reads as under:

“14.1 In case any difference or dispute arises between the Parties, the Parties shall hold mutual discussions to resolve such difference and/ or dispute in an amicable manner for the best interests of both Parties. Parties shall try to resolve the difference and/or



dispute within 30 days or such extended time as agreed between the Parties, In case, any difference and/or dispute could not be resolved through mutual discussion than such difference and/or dispute between the Parties shall be referred to arbitration in accordance with the Indian Arbitration Conciliation Act, 1996. The venue of the arbitration shall be Delhi. The award of arbitration shall be final and binding between the Parties.

14.2 Subject to provisions of Article 14.1 above, the Courts in Delhi shall have exclusive jurisdiction on any matter arising out of this Agreement.”

3. Material on record discloses that certain disputes arose between the parties and a notice dated 27.09.2022 under Section 21 of the Arbitration and Conciliation Act was issued by the Petitioner herein invoking arbitration. It is stated that despite receiving the notice, the Respondent has not replied to the said Notice and, therefore, the Petitioner has approached this Court by filing the present Petition.

4. Learned Counsel appearing for the Respondent opposes the present Petition by contending that the claims of the Petitioner are barred by limitation. She has drawn the attention of this Court to the Notice invoking Arbitration to contend that admittedly the disputes have arisen between the parties regarding non-payment of money between 01.04.2018 and 31.07.2021 and, therefore, the claim of the Petitioner is barred by limitation.

5. In SK Engineering and Construction Company India v. Bharat Heavy Electricals Ltd., **2023 SCC OnLine Del 7575**, a Co-ordinate Bench of this Court has held that while construing an arbitration agreement, the Court must lean in favour of giving effect to the arbitration agreement between the



parties as the legislative object and intent of the framers of the Statute is to encourage arbitration. In Intercontinental Hotels Group (India) (P) Ltd. v. Waterline Hotels (P) Ltd., (2022) 7 SCC 662, the Apex Court has also held that “*when in doubt, do refer*” and has observed as under:

“19. At the outset, we need to state that this Court's jurisdiction to adjudicate issues at the pre-appointment stage has been the subject-matter of numerous cases before this Court as well as the High Courts. The initial interpretation provided by this Court to examine issues extensively, was recognised as being against the pro-arbitration stance envisaged by the 1996 Act. Case by case, Courts restricted themselves in occupying the space provided for the arbitrators, in line with party autonomy that has been reiterated by this Court in Vidya Drolia v. Durga Trading Corpn. [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] , which clearly expounds that Courts had very limited jurisdiction under Section 11(6) of the Act. Courts are to take a “prima facie” view, as explained therein, on issues relating to existence of the arbitration agreement. Usually, issues of arbitrability/validity are matters to be adjudicated upon by arbitrators. The only narrow exception carved out was that Courts could adjudicate to “cut the deadwood.....”.

225.1. In line with the categories laid down by the earlier judgment of *Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117]* the Courts were examining “subject-matter arbitrability” at the pre-arbitral stage, prior to the 2015 Amendment.

225.2. Post the 2015 Amendment, judicial interference at the reference stage has been



substantially curtailed.

225.3. Although subject-matter arbitrability and public policy objections are provided separately under Section 34 of the Act, the Courts herein have understood the same to be interchangeable under the Act. Further, subject-matter arbitrability is interlinked with in rem rights.

225.4. There are special classes of rights and privileges, which enure to the benefit of a citizen, by virtue of constitutional or legislative instrument, which may affect the arbitrability of a subject-matter.”

(emphasis supplied)

6. The issue as to whether the dispute is arbitrable or not or whether the claim of the Petitioner is barred by limitation would be decided by the Arbitrator.
7. In view of the above, this Court is inclined to appoint Mr. D. P. Singh, Senior Advocate, (Mob No.9873980000) as a Sole Arbitrator to adjudicate on the disputes between the Parties.
8. The arbitration would take place under the aegis of the Delhi International Arbitration Centre (DIAC) and would abide by its rules and regulations. The learned Arbitrator shall be entitled to fees as per the Schedule of Fees maintained by the DIAC.
9. The learned Arbitrator is also requested to file the requisite disclosure under Section 12(2) of the 1996 Act within a week of entering on reference.
10. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.



11. Needless to say, nothing in this order shall be construed as an expression of this Court on the merits of the contentions of the parties.

12. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 13, 2024

Rahul