



2024:DHC:8999



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

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**Date of Decision: 21.11.2024**

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**ARB.P. 1623/2024****M/S ESKAG SANJEEVANI PVT LTD**

.....Petitioner

Through: Mr. Nitesh Bhandari, Ms. Stuti Bisht  
and Mr. Aditya Goyal, Advs.

versus

**JANAKPURI SUPER SPECIALTY HOSPITAL SOCIETY  
THROUGH ITS DIRECTOR**

.....Respondent

Through: Mr. Tushar Sannu, Adv.

**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 appointment of a Sole Arbitrator to adjudicate the disputes between the parties. The disputes between the parties have arisen in the background of a Contract bearing no. F1(1)/Pur/JSSHA/17-18/358 dated 18.09.2018 relating to the installation, operation and management of a 'Hemodialysis facility' in the Department of Nephrology at the Janakpuri Super Speciality Hospital (respondent/hospital).

2. Section IX (9) of the tender enquiry document contains an arbitration clause as under:-

***"9. Arbitration***

*a) If dispute or difference of any kind shall arise between the purchaser and the service provider in connection with or relating to the contract, the parties shall make every effort to resolve the same amicably by mutual consultations.*



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*b) If the parties fail to resolve their dispute or difference by such mutual consultations within thirty days of commencement of consultations, then either the purchaser or the service provider may give notice to the other party of its intention to commence arbitration, as hereinafter provided. The applicable arbitration procedure will be as per the Arbitration and Conciliation Act, 1996 of India. In that event, the dispute or difference shall be referred to the sole arbitration of an officer to be appointed by the Director, JSSHS as the arbitrator. If the arbitrator to whom the matter is initially referred is transferred or vacates his office or is unable to act for any reason, he/she shall be replaced by another person appointed by The Director, JSSHS to act as Arbitrator. Such person shall be entitled to proceed with the matter from the stage at which it was left by his predecessor.*

*c) Work under the contract shall, notwithstanding the existence of any such dispute or difference, continue during arbitration proceedings and no payment due or payable by the Purchaser or the service provider shall be withheld on account of such proceedings unless such payments are the direct subject of the arbitration.*

*d) Reference to arbitration shall be a condition precedent to any other action at law.”*

3. Disputes between the parties have arisen on account of alleged outstanding monetary entitlement of the petitioner, for which the petitioner sent a legal notice on 24.05.2024.

4. The disputes having remained unresolved, the petitioner finally issued a notice invoking arbitration on 11.06.2024. However, an arbitral tribunal could not be constituted by the parties. Hence the present petition has been filed.

5. Since the existence of the arbitration agreement is evident from a perusal of the Agreement, there is no impediment to appointing an independent Sole Arbitrator to adjudicate the disputes between the parties as prayed for, and as mandated in terms of the judgments of the Supreme Court in ***Perkins Eastman Architects DPC v. HSCC (India) Ltd.*** (2020) 20 SCC 760, ***TRF Limited v. Energo Engineering Projects Ltd.***, (2017) 8 SCC 377, ***Bharat Broadband Network Limited v. United Telecoms Limited.***, 2019



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SCC OnLine SC 547 and *Interplay between Arbitration Agreements under the Arbitration & Conciliation Act, 1996 & the Indian Stamp Act, 1899, In re*, 2023 SCC OnLine SC 1666 and *SBI General Insurance Co. Ltd. v. Krish Spinning* 2024 INSC 532.

6. Accordingly, Mr. Siddhant Nath, Advocate (Mob. No.: +91 9910870397) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.

7. The respondent shall be entitled to raise preliminary objections as regards jurisdiction/arbitrability, which shall be decided by the learned arbitrator, in accordance with law.

8. It is agreed by the parties that the arbitration shall be conducted under the rules and aegis of the Delhi International Arbitration Centre (DIAC), and the payment of arbitrator's fees and costs, shall also be governed by the said rules. It is directed accordingly.

9. It is made clear that the observations in this order shall not be construed as an expression of opinion, of this Court, on the merits of the matter.

10. All rights and contentions of the parties are left open to be considered by the learned Sole Arbitrator.

11. The present petition stand disposed of in the above terms.

**SACHIN DATTA, J**

**NOVEMBER 21, 2024/DN**