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Arb.O.P (Com.Div.) No.254 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2025

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THE HON'BLE Mr. JUSTICE ABDUL QUDDHOSE

Arb.O.P (Com.Div.) No.254 of 2024

M/s.City Hospital,
(City Hospital and Diagnostic Centre)

.. Petitioner

Versus

M/s.Star Health and Allied Insurance Co. Ltd.

... Respondent

Prayer: Arbitration Original Petition (Commercial Division) filed under Section 11(5) of the Arbitration and Conciliation Act, 1996 to grant an order appointing a Sole Arbitrator to conduct the arbitration proceedings for resolution of the dispute between the petitioner and respondent under the Memorandum of Understanding dated 12.12.2006.

For Petitioner : Mr.A.K.Baskarapandian

For Respondent : Mr.S.H.S.Manian

ORDER

This petition has been filed under Section 11 of the Arbitration and Conciliation Act, seeking for appointment of an Arbitrator by this Court.



2.The petitioner has entered into a Memorandum of Understanding dated 12.12.2006 with the respondent. There seems to be a dispute arising out of the same. The petitioner has invoked arbitration as per arbitration clause contained in the said Memorandum of Understanding by issuing a notice to the respondent on 09.11.2023. Since the respondent has not agreed for arbitration, the petitioner has filed this petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator.

3.A counter has been filed by the respondent raising the following contentions:

- a)Payments have been made by the respondent to the petitioner as per the Memorandum of Understanding dated 12.12.2006;
- b)Any differences between the parties can be resolved amicably through Mediation.

4.Infact, this matter was referred to Mediation by this Court. However, the Tamil Nadu Mediation and Conciliation Centre, High Court,



Madras attached to this Court has now submitted a report before this Court dated 31.01.2025 that the mediation has failed between the parties. Since the mediation has failed, necessarily, this Court will have to consider this petition filed under Section 11 of the Arbitration and Conciliation Act, 1996. The respondent does not dispute the existence of an arbitration clause in the Memorandum of Understanding dated 12.12.2006. The arbitration clause found in the Memorandum of Understanding dated 12.12.2006 is extracted hereunder:

'Article 13: Jurisdiction

13.1 Any disputes, claim arising of this Agreement are subject to arbitration and jurisdiction of Chennai courts only.

13.2 Any amendments in the clauses of the Agreement can be effected as an addendum, after the written approval from both the parties.'

5.The petitioner has also invoked arbitration in accordance with the aforementioned arbitration clause by issuing notice on 09.11.2023 as per Section 21 of the Arbitration and Conciliation Act 1996. No reply has been received by the petitioner to the said notice. Only thereafter, the petitioner



has filed this petition under Section 11 of the Arbitration and Conciliation Act seeking for appointment of an Arbitrator by this Court since there is no consensus for arbitration between the parties. While deciding the petition under Section 11 of the Arbitration and Conciliation Act, 1996 seeking for appointment of an Arbitrator, this Court will only have to look into whether on a prima facie consideration there exists an arbitration clause or not.

6.In the instant case, the respondent has admitted the existence of an arbitration clause, but only claims that payments have been made to the petitioner. However, at the same time, the respondent has stated that the differences can be resolved amicably through Mediation. The mediation between the parties by the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras attached to this Court has also failed as seen from the report of the Mediation Centre. The respondent has also not disputed the existence of an arbitration clause in the Memorandum of Understanding dated 12.12.2006, which is the subject matter of dispute between the parties.



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7.Since there exists an arbitration clause and since the petitioner has satisfied the statutory requirements of Section 21 of the Arbitration and Conciliation Act by issuing a notice to the respondent and since there is no consensus between the parties with regard to the arbitration, this Court will have to necessarily appoint an Arbitrator as prayed for in this petition.

8.For the foregoing reasons, this Arbitration Original Petition is allowed by issuing the following directions:

(a)This Court appoints Sashidhar Sivakumar, Advocate, having office at Lower Ground Floor, Krupa Sai Apartments, No.24, Kottivakkam Kuppam Road, Valmiki Ngar, Thiruvanmiyur, Chennai - 600 041, Mobile No.78381 60606 as the Sole Arbitrator to adjudicate the dispute between the petitioner and the respondent, arising out of the Memorandum of Understanding dated 12.12.2006, on merits and in accordance with law.



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(b)The Arbitrator shall be paid his remuneration/fees in accordance

with the 4th Schedule of the Arbitration and Conciliation Act, 1996.



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ABDUL QUDDHOSE, J.

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(c)Both the parties shall equally share the Arbitrator's fees.

(d)The Arbitrator shall conduct the arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 and shall complete the arbitration within the specified time as prescribed under the said Act. No costs.

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