
(2022) 02 DEL CK 0155

In the Delhi High Court

Case No : Arbitration Petition No. 111, 112, 203 Of 2022, Miscellaneous
Application No. 2791 Of 2022

CFS Netralaya Private Limited

APPELLANT

Vs

Dr. Roop & Ors

RESPONDENT

Date of Decision : 18-02-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 11, 12

Citation : (2022) 02 DEL CK 0155

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Anil Sapra, Ajay Bhargava, Arvind Kumar Ray, Karan Gupta,
Rajshekhar Rao, Monish Panda, Mrinal Bharat Ram, Prabjot Hora

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. The above captioned three petitions have been filed under the provisions of Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator.

2. Pertinently, parties to these petitions are common and the subject matter of these petitions is also common, therefore, with the consent of learned Senior Counsel for the parties, these petitions have been heard together and are being disposed of vide this common judgment.

3. Learned Senior Counsel for petitioner submits that petitioner in the above captioned petitions [ARB.P. 111/2022 & ARB.P. 112/2022] is a joint venture company between New Delhi Centre for Sight ("NDCFS") and respondent Nos.1 and 2, incorporated under provisions of the Companies Act 1956. NDCFS is a company founded by Dr. Mahipal S Sachdev, an eminent ophthalmologist, and Padma Shri awardee, as a leading eye care provider in India.

4. Petitioner in (ARB.P. 203/2022) is a wholly owned subsidiary of New Delhi Centre for Sight ("NDCFS") and is engaged in the business of providing pharma, optical and other related products at the eye care centres owned/run by NDCFS. The said petitioner also provides pharma, optical and other related products at the eye centre operated by CFS Netralaya Private Limited ("CFSNPL") i.e., a joint venture entity of NDCFS and the respondents.

5. Further, petition (ARB.P. 111/2022) has been preferred on behalf of the petitioner seeking appointment of Sole Arbitrator for adjudication of the disputes and differences which have arisen under the Lease Deed dated 02nd March 2013 ("Lease Deed"), read with the Memorandum of Understanding dated 26th April 2019 ("2019 Agreement") executed between the petitioner and the respondents. Clause 15.2 of the Lease Deed provides for settlement of disputes through arbitration & the Lease Deed and the 2019 Agreement are binding on the parties. The Lease Deed has been signed by the petitioner and all the respondents, while the 2019 Agreement has been executed by the petitioner along with respondent Nos.1 and 2 (on their behalf as well as on behalf of the Respondent Nos. 3 and 4).

6. Petition (ARB.P. 112/2022) has been preferred on behalf of the petitioner seeking appointment of Sole Arbitrator for adjudication of the disputes and differences which have arisen under the Consultancy Services Agreements dated 10th March, 2011 (as amended) executed by the respondents ("Consultancy Services Agreements") read with the Memorandum of Understanding dated 26th April, 2019 ("2019 Agreement") executed between the petitioner, NDCFS and the respondents. Clause 11 of the Consultancy Services Agreements provides for settlement of disputes through arbitration & the Consultancy Services Agreements and the 2019 Agreement are binding on the parties. The Consultancy Services Agreements and the 2019 Agreement have been signed by the petitioner and the respondents.

7. It is submitted that petition (ARB.P. 203/2022) has been preferred on behalf of the petitioner seeking appointment of Sole Arbitrator for adjudication of the disputes and differences which have arisen under the Joint Venture Agreement dated 10th March, 2011 ("Joint Venture Agreement") as amended by and read with First Amendment Agreement dated 14th August, 2012 to Joint Venture Agreement ("First Amendment Agreement to the Joint Venture Agreement") and the Memorandum of Understanding dated 26th April, 2019 ("2019 Agreement"). Clause 22 of the Joint Venture Agreement provides for settlement of disputes through arbitration & the arbitration clause in the Joint Venture Agreements stands incorporated in the First Amendment Agreement to the Joint Venture Agreement.

8. Learned Senior Counsel for petitioner further submits that in light of disputes and differences that arose between the petitioner and the respondents, the petitioner in (ARB.P. 111/2022) vide Notice of Arbitration dated 22nd April 2021 invoked arbitration in accordance with Clause 15.2 of the Lease Deed read with

the 2019 Agreement & the petitioner in ARB.P. 112/2022 vide Notice dated 02nd June 2021 invoked arbitration in accordance with Clause 11 of the Consultancy Service Agreement read with the 2019 Agreement. Arbitration was also invoked by the petitioner in (ARB.P. 203/2022) vide Notice of Arbitration dated 07th February 2022 ("Arbitration Notice) in accordance with Clause 22 of the Joint Venture Agreement read with the First Amendment Agreement to the Joint Venture Agreement and the 2019 Agreement.

9. Meanwhile, due to the respondents' continued breaches, the petitioner filed a petition (ARB. P. No.559/2021) under Section 11 of the Act for appointment of Sole Arbitrator and vide order dated 12th October 2021, this Court appointed Mr. Justice Deepak Gupta (retired) as Sole Arbitrator to adjudicate the disputes between the parties.

10. Learned Senior Counsel for the petitioner submitted that since the disputes raised by NDCFS and CFSNPL against the respondents relate to the same composite transaction, the disputes between the petitioner and the respondents ought to be heard by the same Arbitrator in order to avoid any conflicting findings in resolution of the disputes between the parties.

11. During the course of hearing, learned Senior Counsel appearing on behalf of respondent has raised objections that there is no consolidation, however, he has no objection if Mr. Justice (Retd.) Deepak Gupta, former Judge of the Supreme Court of India is appointed as Sole Arbitrator to adjudicate the dispute between the parties subject to all issues including consolidation and maintainability of claims remain open before the learned Arbitrator.

12. Accordingly, Mr. Justice Deepak Gupta (Retd.) [Mobile No.+91 9816533333] is appointed sole Arbitrator to adjudicate the dispute between the parties. All issues including consolidation and maintainability of claims as well as non-arbitrability of the disputes shall remain open before the learned Arbitrator.

13. The fee of the learned Arbitrator shall be governed by the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

14. The learned Arbitrator shall ensure compliance of Section 12 of Arbitration and Conciliation Act, 1996 before commencing the arbitration.

15. The present petitions and pending applications, if any, stand disposed of accordingly.

16. A copy of this order be sent to the learned Arbitrator for information.