

(2022) 01 DEL CK 0149

In the Delhi High Court

Case No : Arbitration Petition No. 1144 Of 2021, Miscellaneous Application No. 15588 Of 2021

M/S City X-Ray And Scan Clinic (P) Ltd

APPELLANT

Vs

Medeor Hospital Ltd.

RESPONDENT

Date of Decision : 19-01-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 11, 12

Citation : (2022) 01 DEL CK 0149

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : Manish Malhotra, Abhishek Singh, J. Amal Anand, Elvin Joshy, Kirtika Chhatwal

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

I.A. 15588/2021 (exemption)

1. Allowed, with direction to file requisite clear copies, legible copies with appropriate margins and original copies within six weeks of this Court.

2. Application is disposed of.

ARB.P. 1144/2021

3. The present petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of sole Arbitrator to adjudicate the disputes inter-se the parties.

4. Petitioner is a company registered under the Companies Act, 1956 and claims to be engaged leading medical diagnostic laboratory and imaging center, accredited by NABH and NABL. Petitioner also claims to be associated/

empanelled with various Government Organizations, PSUs,

Hospitals and corporate houses for diagnostic services, both imaging and laboratory facilities.

5. According to petitioner, respondent - company is registered under the Companies Act, 1956 and engaged in the business of Health-Care services.

Earlier the name of the company, operating the Hospital at premises bearing no. Sector-12, Phase-I, HAF-B, Near Ashirwad Chowk, Dwarka, New

Delhi-110075, was Rockland Hospitals Limited and the name of the hospital therein was Rockland Hospital/VPS Rockland Hospital. Pursuant to a

Memorandum of Understanding dated 10.02.2017, the above said company / hospital started availing aforesaid diagnostic services of the petitioner

company including Radiology & Pathology Services. Thereafter, the name of the respondent was changed from Rockland Hospitals Limited to

Medeor Hospital Limited w.e.f. 05.10.2018. Subsequently, at request of the respondent, a fresh Diagnosis Services Agreement dated 11.02.2019 was

entered into between the petitioner and the respondent. Under the said arrangement, petitioner used to raise bills/invoices to the respondent on monthly

basis and the respondent were to make payment of each monthly bill within 45 to 90 days of the submission of the respective monthly bill to the

petitioner. Petitioner claims that the respondent not only failed to make payment within the aforesaid period but also continued to induce the petitioner

to render services to the respondent.

6. Petitioner claims to have raised bills amounting to INR 41,55,956/- for the services rendered by the petitioner to the respondent during the period

May, 2019 to September, 2019 but the respondent, claiming adjustment of discounts etc., reduced the bill amounts of abovesaid period to INR

35,12,749/-. Out of their said self-determined/reduced amount also, the respondent has paid only an amount of INR 8,00,000. Subsequently, petitioner

sent a legal notice dated 22.07.2020 demanding the outstanding dues. Although the said notice was duly served upon the respondent, but the same was

not responded. After receipt of aforesaid legal notice, the respondent made a small payment of INR 1,00,000/- on 07.09.2020 to the petitioner but did

not clear the entire outstanding amount. So, the disputes continued between the parties.

7. Thereafter, petitioner sent communication dated 26.06.2021 for invocation of

arbitration and also proposed name of Sh. Jai Narayan Yadav, Retd.

District Judge for being appointed Sole Arbitrator for adjudication and resolution of disputes between the parties. The said communication was duly

served upon the respondent but no reply was sent.

8. Thereafter, petitioner preferred a petition under Section 9 of the Arbitration and Conciliation Act, 1996 before the learned District Judge,

Commercial Court (Commercial Division), District-South West, Dwarka Courts, Delhi and the said petition is registered as OPM (I) (COMM)

13/2021 and which is pending before the Court of Mr. Harish Dudani, District Judge (Commercial Court).

9. During the course of hearing, learned counsel for petitioner has submitted that as per Clause 17 of the Agreement, in case of any dispute between

the parties, the sole Arbitrator is to be appointed mutually by the parties. However, since respondent has failed to appoint the sole Arbitrator, hence,

the present petition has been filed.

10. During the course of hearing, learned counsel appearing on behalf of respondent has not opposed the present petition and has agreed to the

appointment of sole Arbitrator by this Court for adjudication of dispute between the parties.

11. In view of above, the present petition is allowed. Accordingly, Mr. Madan Lal Kalkal, Advocate (Mob.: 7290050129) is appointed as sole Arbitrator

to adjudicate the dispute between the parties.

12. The arbitration shall be conducted under the Delhi International Arbitration Centre (DIAC). The fee of the Arbitrator shall be in accordance with

the Schedule of Fees prescribed under the Delhi International Arbitration Centre (DIAC) (Administrative Cost and Arbitrators Fees) Rules, 2018.

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

14. The present petition stands disposed of accordingly.

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