In the High Court of Judicature at Madras

Reserved on	Delivered on:
18.2.2026	**23.2.2026**

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Arbitration O.P.(Com.Div.) No.708 of 2025

MIOT Hospitals Private Limited
rep.by its Authorized
Signatory Mr.B.S.Vidhyasagar
No.4/112, Mount Poonamallee
Road, Manapakkam, Chennai-89. ...Petitioner

Vs

Dr.Balaraman Palaniappan,
2146, Trellis South, Tower 2,
Arcot Road, Vadapalani,
Chennai-26. ...Respondent

PETITION under Section 11(6) of the Arbitration and Conciliation Act, 1996 praying to appoint a sole arbitrator to adjudicate the disputes between the petitioner and the respondent with regard to the professional agreement dated 08.9.2022 and to direct the respondent to bear the cost of this petition.

For Petitioner : Mr.P.S.Suman
For Respondent : Mr.S.Balamurugan

ORDER

This petition has been filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, the Act) seeking to appoint a sole arbitrator to adjudicate the disputes between the petitioner and the respondent arising out of a professional agreement dated 08.9.2022.

2. Heard both.

3. The case of the petitioner is as follows:

(i) The petitioner owns and operates a hospital under the name and style of 'MIOT International', Chennai. During September 2022, the petitioner hospital was looking for a cardio thoracic surgeon to be deployed overseas on short and long term secondments. The respondent agreed to offer his professional services and the petitioner, on being satisfied with the competence of the respondent, sent a job offer to the respondent vide letter dated 02.9.2022. Even in this letter,

it was explicitly mentioned that the respondent must sign a contract to extend his services for three years in the petitioner hospital, which would include other outreach clinics, camps and short/long term overseas secondments.

(ii) The respondent accepted the said offer and agreed to join the petitioner hospital. The petitioner and the respondent entered into a professional agreement dated 08.9.2022 whereby inter alia, the respondent was appointed as a Consultant Cardio Thoracic Surgeon. The agreement provided specific terms with respect to the secondment duties. Accordingly, the petitioner deployed the respondent on multiple short term assignments to Fiji.

(iii) After completing about two years and seven months of service, the respondent sent a communication through email dated 21.4.2025 to the petitioner expressing his intention to resign from the petitioner hospital for various personal reasons and effectively terminated the agreement dated 08.9.2022.

(iv) The petitioner, on receipt of the said communication from the respondent, gave a reply by pointing out to Clause 10.2 of the agreement, which mandated three months' notice or alternatively to

pay 3 months' professional fees in lieu of the notice period for termination of the agreement. But, there was no response from the respondent.

(v) Later, the petitioner came to know that the respondent joined Apollo Speciality Hospital. According to the petitioner, this would violate Section 8.3 of the agreement. Thus, the petitioner alleged that there was a violation of Clauses 10.2 and 8.3 of the professional agreement dated 08.9.2022 and it constituted breach of the agreement. In view of the same, the petitioner is also claiming for liquidated damages as set out in Clause 2.3 of the agreement to the tune of Rs.42 lakhs, which is the sum equivalent to three months' professional fees.

(vi) A legal notice was sent by the petitioner to the respondent alleging that the respondent committed breach of the agreement and claimed a sum of Rs.42 lakhs along with interest. On receipt of this notice, the respondent gave a reply dated 04.6.2025 denying the claim made by the petitioner.

(vii) An attempt was also made between the parties to amicably settle the dispute. However, such an attempt failed. The petitioner

issued a trigger notice dated 04.7.2025 under Section 21 of the Act for initiation of arbitration proceedings under Clause 12.2 of the agreement by providing the name of sole arbitrator and seeking for the consent of the respondent. It is under these circumstances, the above petition came to be filed seeking for appointment of the sole Arbitrator.

4. The respondent has filed a counter counter affidavit.

5. The learned counsel for the respondent, apart from raising many issues on merits, submitted that the issue involved is not arbitrable, that it is in violation of Section 27 of the Indian Contract Act, 1872 and that therefore, the above petition is liable to be dismissed by this Court.

6. This Court has carefully considered the contentions of the learned counsel on either side and perused the materials available on record.

7. It will be relevant to extract Clause 8 of the agreement, which reads as hereunder:

> *"8. Restrictive Covenants*
>
> *8.1. Confidentiality: The Contractee agrees to hold confidential, all material information which has or shall come into their possession or knowledge, in connection with this Agreement and/or in performance of their obligations under this Agreement, and agrees not to make use thereof other than for the performance of this Agreement, and not to disclose it to any party without the prior approval of the Contractor, except as required by the law.*
>
> *8.2. Non-solicitation: The Contractee agrees and undertakes that during the term of this Agreement and for a period of 3 (three) years thereafter, the Contractee shall not directly or indirectly solicit with a view to offer employment to or contract with any of the Contractor's staff/ member(s)/worker(s), in order for them to leave the employment/working arrangement of the Contractor.*
>
> *8.3. Non-compete: The Contractee agrees and undertakes that for a period of 3 (three) years after the termination of this Agreement, the Contractee shall not join any rival hospital or set up a practice, in the vicinity of 15 km from the*

Contractor's Hospital in Chennai. In the event of breach, the Contractee agrees to pay to the Contractor, the liquidated damages as set out in Clause 2.3 of this Agreement, without prejudice to any other rights and remedies of the Contractor.

8.4. Survival: Unless agreed to otherwise, the Contractee's obligations under Clause 8 of this Agreement, shall survive the termination of this Agreement."

8. It is also relevant to extract Clauses 10.1 and 10.2 of the agreement, which read as hereunder:

"10. Termination

10.1. The Contractor may terminate this Agreement with prior written notice of at least 1 (One) month or by paying of 1 (One) month Professional Fees in lieu of the notice period.

10.2. The Contractee may terminate this Agreement with prior written notice of at least 3 (Three) months or by paying of 3 (Three) months Professional Fees in lieu of the notice period."

9. It must be kept in mind that the respondent, who is a doctor by profession, cannot be construed as an employee of the petitioner hospital since, by the very nature of service provided by a doctor, at

the best, a hospital can only utilize the services and cannot treat a qualified doctor like a regular employee of an organization.

10. In so far Clause 8 that has been relied upon by the petitioner is concerned, it deals with confidentiality, non solicitation and non compete covenants. It is quite unfortunate that a hospital has incorporated such a clause in an agreement entered into with a doctor. Either the above clause is as a result of cut, copy and paste syndrome from an agreement, which is regularly entered into between technology companies with their employees or the petitioner hospital has forgotten the fact that they are running a hospital to serve the patients and that they are indirectly admitting that the organization is nothing short of a profit making entity like any other business entity.

11. This Court is constrained to make such a strong observation considering the attitude shown by the petitioner towards doctors. Doctors are qualified and competent to discharge their duties to patients. Hospitals do not give them any special training nor equip them. On the other hand, it is the hospitals, which utilize the services

of doctors in order to effectively run the operations.

12. In other words, doctors can thrive without hospitals whereas a hospital can never exist without doctors supporting such hospitals by rendering their services. Therefore, by no stretch, a hospital can treat a doctor like a workman in a factory or a technical person or a regular employee employed by an organization in the field of technology and other service sectors.

13. A careful reading of Clause 8 would show that a doctor, who works with the petitioner hospital, must maintain confidentiality and should not directly or indirectly solicit with the staff/member/worker of the petitioner hospital for a period of three years after the expiry of the period of contract, that the doctor should not join any other hospital, which is treated by the petitioner as a rival hospital or set up any practice within the vicinity of 15 Km from the petitioner hospital and that if there is a breach of any of these conditions, the doctor has to pay liquidated damages.

14. In the considered view of this Court, the petitioner hospital has come to a conclusion that the respondent, by joining the Apollo Speciality Hospital, has joined the rival hospital and thereby the respondent is trying to solicit patients, who would have otherwise gone to the petitioner hospital and that the respondent is going to reveal all the confidential information at the Apollo Speciality Hospital.

15. The above attitude of the petitioner demeans the stature of a doctor. A doctor is an independent professional, who cannot be stopped from rendering his services wherever he wants to and also cannot be stopped from attending to patients just because those patients were earlier taking treatment in the petitioner hospital. When it comes to running a hospital, there is no question of a rival hospital and each hospital is an independent entity, which is being run to serve the patients and the society at large.

16. A rivalry between hospitals is a misnomer considering the nature of services rendered and a term that is normally used in commercial business parlance pertaining to trade business, cannot be

imported to a hospital, which, by the very nature of service rendered, should not project itself as a business venture even though the reality is otherwise. It will not be out of context to state that doctors do visit various hospitals, which engage their services and their independence can never be curtailed by binding them with the terms of a contract like the case in hand.

17. Hypothetically, let us take a case of a law firm, which engages the services of a qualified advocate. The advocate, who is engaged by the law firm, may be paid a fixed remuneration and the advocate might deal with the work of that law firm and also engage in consultation with clients. This does not mean that the advocate, who later comes out of the law firm, cannot take up any independent practice or join some other law firm. This is in view of the fact that one law firm cannot treat another law firm as a rival. The same hypothesis will apply to a hospital. By no stretch, one hospital can treat another hospital as a rival and consequently, the non-compete clause can never form part of an agreement between a hospital and a doctor.

18. Apart from that, even assuming that a client, who was earlier seeking for the professional services of the law firm, later decides to approach the advocate, who earlier served in the law firm, that can never be treated as a violation of a non solicit clause. Ultimately, whether it is a patient or a client, he will engage a firm/ hospital or an advocate/doctor, with whom, he has confidence. This is in view of the very nature of duty that is performed by a professional like a doctor or an advocate.

19. At this juncture, this Court must keep in mind Section 7 of the Act. The parties, who are seeking for appointment of an arbitrator, must first establish that there is an agreement between the parties; it has to be in writing; it must be signed by the parties; and such agreement must also contain an arbitration clause. These four conditions are sine qua non for constituting a valid and enforceable arbitration agreement.

20. An agreement, as contemplated under Section 7, must be a valid and lawful agreement. Where an agreement is hit by Section 23

of the Indian Contract Act, 1872 on the ground that it is opposed to public policy or it is hit by Section 27 of the Indian Contract Act, 1872 where such an agreement restrains a person from exercising a lawful profession, to that extent, such an agreement has to be construed as void ab initio and the arbitration clause contained in such an agreement cannot certainly survive in so far as adjudication and enforceability of a clause rendered as void in the eye of law are concerned.

21. Useful reference can be made to a decision of the Hon'ble Apex Court in ***Shin Satellite Public Co. Ltd. Vs. M/s.Jain Studios Limited [reported in 2006 (2) SCC 628].***

22. An agreement entered into by a doctor with a hospital, which contains a non solicitation and/or non compete clause, is certainly opposed to public policy and such an agreement is squarely hit by Section 23 of the Indian Contract Act, 1872. Consequently, it must be held to be unlawful, unenforceable and void ab initio to that extent.

23. The above clauses also go against Section 27 of the Indian Contract Act, 1872 since a doctor is restrained from practising his profession and more so, when such restraints are sought to be enforced even after the expiry of the contract.

24. The petitioner is relying upon Clauses 8.2 and 8.3 of the agreement and is taking a stand that there is a breach of contract on the part of the respondent, which, in the considered view of this Court, is certainly unenforceable and not a valid agreement to that extent in the eye of law.

25. That leaves this Court with the only other issue pertaining to breach of clause 10.2 of the agreement. This Clause provides for three months' notice or paying three months' professional fees in lieu of the notice period.

26. The admitted case of the petitioner is that the respondent submitted a resignation letter on 29.1.2024 and requested the petitioner hospital to relieve him from his duties by 29.4.2024. This

clearly constitutes three months' notice. However, the petitioner hospital made a request to the respondent to undertake an assignment at Fiji and considering the relationship of the respondent with the petitioner hospital, the respondent rendered his services. Ultimately, on 21.4.2025, the respondent informed the petitioner hospital that he wanted to move out of the petitioner hospital and also thanked them for all the opportunities given to him.

27. The petitioner hospital is conveniently taking the communication through the email dated 21.4.2025 as the resignation letter whereas the resignation letter had been given much earlier on 29.1.2024 and the three months' notice was given with a request to the petitioner hospital to relieve the respondent from his duties on 29.4.2024. Conveniently, the petitioner hospital does not want to treat the letter dated 29.1.2024 as a resignation letter. The respondent, for having rendered his services thereafter on the request made by the petitioner hospital, is now targeted and the petitioner hospital now wants to initiate arbitration proceedings against the respondent – doctor.

28. This Court persuaded the petitioner hospital to settle the dispute amicably.

29. In fact, the learned counsel for the respondent submitted that under Clause 10.1 of the agreement, the petitioner hospital may even terminate the agreement and that the respondent is wiling to pay one month's professional fee.

30.To that extent, the respondent was willing to settle the dispute. But, the petitioner hospital, being a big organization, wants to show their might against a doctor by making him undergo arbitration proceedings.

31. On the admitted documents, this Court finds that the respondent – doctor had, in fact, given three months' notice in compliance with Clause 10.2 of the agreement. In such an event, there is no further dispute to be resolved before the Arbitral Tribunal. For all the above reasons, this Court holds that the above petition is devoid of merits and it has been filed to witch-hunt a doctor, whom the

petitioner hospital expected to dance to their tunes for ever.

32. Accordingly, the above original petition stands dismissed ***with costs of Rs.1,00,000/- (Rupees one lakh only)*** payable by the petitioner hospital to the respondent doctor.

23.2.2026

Index : Yes
Neutral Citation : Yes

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N.ANAND VENKATESH,J

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