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

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ARB.P. 79/2018

**RANJAN KUMAR**

..... Petitioner

Through: Ms.Barnali, Adv.

versus

**FIITJEE LTD**

..... Respondent

Through: Mr.Mukesh M.Goel, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**ORDER**

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**22.10.2018**

**IA 10732/2018**

This is an application seeking condonation of 47 days delay in filing the rejoinder.

For the reasons stated in the application, the delay is condoned and the rejoinder is taken on record.

The application stands allowed.

**ARB.P. 79/2018**

1. This petition under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the contract of employment of the petitioner by the respondent. The 'Service Rules for the employees of FIITJEE' contain an Arbitration Agreement between the parties in form of Clause 36(a) thereof, which is reproduced hereinbelow:

*“36(a). All disputes and differences of any nature with regard to the FIITJEE service manual and the interpretation & adjudication of clauses and claims respectively shall be referred to the Sole Arbitrator appointed by the Company i.e. FIITJEE Ltd. The arbitration proceedings shall be conducted in accordance with the provisions of the Arbitration & Conciliation Act, 1996 and statutory modification thereof & rules made thereunder. The award of arbitrator shall be final & binding on both the parties. The award of the arbitrator shall be final & binding on every matter arising hereunder. It is further agreed that in spite of the fact that the Sole Arbitrator may be known to any of the Directors or share holders and that he may have been dealing with the Company or had occasion to deal with any matter of this agreement shall not disqualify him. Even if the Arbitrator may have expressed opinion in similar matter earlier shall also not render him disqualified. The venue of the arbitration shall be Delhi/New Delhi only.”*

2. Disputes having arisen between the parties regarding the dues of the petitioner, the petitioner invoked the Arbitration Agreement vide notice dated 26.06.2017. Having failed to receive any response, the present petition was filed by the petitioner on 05.01.2018.

3. The respondent in its reply, apart from making submissions on merits of the claim of the petitioner, has contended that the notice invoking arbitration had not been received by it. It is further contended that the respondent had prepared a settlement dated 18.01.2017 in relation to the full and final settlement of all petitioner's, dues however, the petitioner refused to accept the same.

4. The petitioner in response, while reiterating that it had duly sent notice invoking Arbitration at the correct address of the respondent has also produced an application dated 27.08.2018 made by it to the postal department seeking the delivery report of the notice on the

respondent. In response to the said request, the postal department vide letter dated 13.09.2018 has stated that as per rules, the preservation period of speed post article is two months for online and six months for manual ones and therefore, the report of service cannot be made available at this stage.

5. I have considered the submissions made by the counsels for the parties. Though, it is correct that the petitioner has been unable to prove the due delivery of notice invoking arbitration on the respondent, the fact remains that the petitioner has filed on record the postal receipt of posting the same at the correct address of the respondent. Petitioner is handicapped from producing the proof of delivery of such notice on the respondent for reasons of rules of the postal department. Further, though this petition was filed on 05.01.2018 and the respondent had been duly served with the copy of the same and had even entered appearance through counsel as far back as 12.03.2018, the respondent has failed to appoint an Arbitrator in terms of the Arbitration Agreement.

6. In my view, the service of notice of the present petition itself should have acted as a notice invoking arbitration and the respondent having failed to appoint an Arbitrator, I see no impediment in appointing an Arbitrator in the present petition. The petitioner cannot be called upon to re-file the same petition once over again only in response to a technical defence.

7. As far as the defence of full and final settlement is concerned, admittedly the petitioner has not signed the same. The same, therefore, cannot be a reason to refuse appointment of an Arbitrator.

8. In view of the above and with the consent of the parties, the parties are referred to the Delhi International Arbitration Centre (DIAC), where they shall appear on 2<sup>nd</sup> November, 2018 at 2.00 p.m.
9. The DIAC shall appoint a Sole Arbitrator for adjudicating the disputes between the parties. The arbitration proceedings and the fee shall be governed by the DIAC rules.
10. The petition is allowed in the above terms with no order as to costs.

**NAVIN CHAWLA, J**

**OCTOBER 22, 2018**  
**RN**