

\$~A-3

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

%

Date of decision: 10.10.2019

+ ARB.P. 599/2019

TCI FREIGHT (A DIVISION OF TRANSPORT
CORPORATION OF INDIA LIMITED)

..... Petitioner

Through: Mr. Gaurav Mitra & Mr. Aruj
Dhingra, Advocates with Mr. Rajeev
Pandey, AR

versus

M/S INDIAN OIL CORPORATION LIMITED Respondent

Through: Ms. Rimali Batra, Ms. Iti Agarwal &
Mr. Paritosh Goel, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No.13161/2019 (Delay)

This is an application seeking condonation of 258 days' delay in re-filing of the petition.

Learned counsel for the respondent has no objection to the delay being condoned.

In view of no objection and for the reasons stated in the application, the delay of 258 days in refiling the petition is condoned.

The application stands disposed of.

ARB.P. 599/2019

1. Vakalatnama on behalf of the respondent has been handed over in Court and is taken on record.

2. The disputes in the present case relate to two agreements dated 15.06.2012 and 28.06.2013 as well as two work orders dated 29.06.2012 and 28.06.2013. The agreements between the parties are governed by an Arbitration Clause which is as under:

“5.0 Resolution of Disputes/Arbitration:

5.1 All questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director (Planning & Business Development) of the Corporation. If Director (Planning & Business Development) is unable or unwilling to act as the sole arbitrator, the dispute shall be referred to another officer of the Corporation as may be nominated by Director (Planning & Business Development) in his place, who is willing to act as such sole arbitrator. It is known to the Parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be Shareholder of the Corporation and the Bidder/Contractor expressly waives any objection to the appointment of the arbitrator on this ground. The arbitrator to whom the matter is originally referred, whether the Director (Planning & Business Development) or officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Planning & Business Development) shall designate any other person to act as arbitrator in accordance with the terms of the Agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Planning & Business Development) or the person designated by the Director (Planning & Business

Development) as aforesaid shall act as arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all the Parties to the Agreement and provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the Rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.”

3. Learned counsel appearing on behalf of the respondent submits that the respondent has no objection in the appointment of the Arbitrator. However, the allegations and other averments against the respondent in the petition except the Arbitration Agreement are denied. She also submits that there is an objection on behalf of the respondent to the claims being barred by limitation.
4. With the consent of the parties, the parties are referred for Arbitration to the Delhi International Arbitration Centre (‘DIAC’). The parties will appear before the DIAC on 15.10.2019 at 2:00 p.m.
5. The DIAC will appoint a Sole Arbitrator in accordance with the Arbitration Clause. The procedure of the Arbitration will be as per the DIAC. The fee of the Arbitrator will be fixed as per the Fourth Schedule to the Arbitration & Conciliation Act, 1996 (‘Act’).
6. The Arbitrator shall give a disclosure under Section 12 of the Act before entering upon reference.
7. The objection of the respondent with regard to limitation is left open to be decided by the learned Arbitrator. Respondent is at liberty to raise all its counter claims before the Arbitrator.

8. The petition is allowed in the aforesaid terms.

JYOTI SINGH, J

OCTOBER 10, 2019

rd/

