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

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Date of decision: 17.12.2019

+ ARB.P. 604/2019

SR. DIVISIONAL COMMERCIAL

..... Petitioner

Through Mr. Joydeep Mazumdar and Mr.
Shubhangi Sangal, Advocates.

versus

SANRA HOSPITALITY PVT. LTD.

..... Respondent

Through Mr. K.B. Upadhyay, Mr. Shailesh
Tiwari and Ms. Pallavi Rawat,
Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. 13242/2019

This is an application filed by the petitioner seeking condonation of delay of 43 days in re-filing the present petition.

For the reasons stated in the application, the same is allowed.

Delay of 43 days in re-filing the present petition is condoned.

ARB.P. 604/2019

1. This is a petition filed under Section 11 (5) of the Arbitration and Conciliation Act, 1996 ('Act').
2. Mr. K. B. Upadhyay, learned counsel for the respondent submits, on instructions, from the respondent that he has no objection to the appointment of an Arbitrator.
3. Brief facts required to be noted are that acceptance of tender was

issued on 11.03.2014. Certain disputes arose between the parties with respect to the said tender. Northern Railway appointed a Sole Arbitrator on 06.03.2017 in terms of Clause 18 of the Agreement. The respondent herein filed an application under Section 12(5) of the Act seeking withdrawal of the Arbitrator on 24.04.2017.

4. Vide letter dated 04.08.2017, the Arbitrator withdrew himself from the arbitration proceedings. Hence this petition.

5. Arbitration Clause in the Agreement reads as under:-

"18. Dispute Resolution

18.1 In the event of any dispute, controversy or claim of any kind or nature arising under or in connection with this Agreement between the Parties (Disputes) the parties shall firstly attempt to amicably resolve such dispute through the highest level of negotiations and discussions.

18.2 In the Event that dispute between the parties subsist beyond 30 days of negotiations between the parties, then the dispute shall be settled as per the provision of Arbitration and Conciliation Act, 1996. The dispute shall be referred to:

a) Sole Arbitration of a Gazetted Railway Officer appointed to be the Arbitrator, by the General Manager/NR awarding the License. The Gazetted Railway Officer to be appointed as Arbitrator however, will not be one of these who had as opportunity to deal with the matters to which the contract relates or who in the course of their duties as Railway servant have expressed views on the any of the matters under dispute or difference.

b) In the event of the arbitrator dying. Neglecting or refusing to act resigning or being unable to act for any reason, or his award being set aside by the court for any reason, it shall be lawful for authority

appointing the arbitrator to appoint another arbitrator in place of the outgoing arbitrator in the manner aforesaid.

c) It is further a term of this contract that no person appointed by the authority aforesaid should be act as arbitrator and that if for any reason that is not possible, the matter is not to be referred to arbitrator at all.

d) The arbitrator may from time to time with the consent of all the parties to the contract enlarge the time for making the award.

e) Upon every and any such reference the assessment of the cost incidental to the reference and award respectively shall be in the discretion of the arbitrator.

f) Subject as aforesaid, the arbitration and conciliation Act 199 and rules there under and any statutory modifications thereof for the time being in force shall be deemed to apply to the arbitration proceedings under this clause.

g) The venue of the arbitration shall be the place from which the acceptance note is issued or such other place as the arbitrator at his discretion may determine.

h) In this clause the authority to appoint the arbitrator includes, if there be no such authority, the officer who is for the time being discharging the functions of that authority, whether in addition to other functions or otherwise.

18.3 The award passed shall be final and binding and both parties waive the right to appeal or contest the arbitral award.

18.4. It is further clarified that during the resolution of the dispute, the licensee shall be obligated for the continued performance of its obligations under the Agreement until the resolution of the disputes. "

6. With the consent of the parties, matter is referred to the Delhi International Arbitration Centre for appointment of a Sole Arbitrator to adjudicate the disputes between the parties. Arbitration proceedings will be held as per the procedure of the DIAC and under its aegis.
7. The learned Arbitrator shall give disclosure under Section 12 of the Act before entering upon reference.
8. Fee of the Arbitrator shall be fixed as per Fourth Schedule of the Act.
9. Copy of this order be sent to DIAC for information.
10. The petition is allowed in the aforesaid terms.

DECEMBER 17, 2019
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JYOTI SINGH, J