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

% *Date of Judgment: 14th January, 2021*

+ **ARB.P. 629/2020 & I.A. 10833/2020**

JONES LANG LASALLE BUILDING
OPERATIONS PRIVATE LIMITED

..... Petitioner

Through: Mr Anupam Srivastava,
Advocate.

versus

TECHPARK MAINTENANCE SERVICES
PRIVATE LIMITED

..... Respondent

Through: Mr Lokesh Bhola and Ms
Aparna Gupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying that an Arbitrator be appointed to adjudicate the disputes that have arisen between the parties in respect of a Property Management Agreement entered into between them.

2. The parties had entered into a Property Management Agreement (hereafter 'Agreement') on 01.12.2011, in terms of which, the respondent had engaged the petitioner for providing maintenance

services as set out in the said Agreement.

3. On 01.01.2013, a Letter of Intent was executed by the respondent extending the time of the said Agreement for a further period of one year.

4. Admittedly, certain disputes have arisen in connection with the said Agreement. The petitioner claims that the invoices raised for the period 17.07.2013 to May, 2014 remain unpaid.

5. In view of the above, the petitioner sent a notice demanding a sum of Rs.68,92,134.70 (Rupees Sixty Eight Lakhs Ninety Two Thousand One Hundred Thirty Four and Seventy Paise) along with interest @ 18% p.a. The learned counsel appearing for the respondent states that the said notice dated 06.07.2015 also invoked the arbitration clause as set out in the Agreement.

6. Thereafter, on 31.05.2016, the petitioner instituted a suit (Civil Suit No.1190/2016) before the court of Civil Judge, Gurgaon for recovery of the amounts claimed by it. On 17.04.2018, the respondent filed an application under Section 8 of the Act praying that the parties be referred to arbitration in terms of their Agreement.

7. The said prayer was allowed by an order dated 17.04.2018. The operative part of the said order reads as under:-

“5. The present suit has been filed by the plaintiff/respondent seeking recovery of Rs. 88,73,622/- alongwith pendent-lite and future interests @ Rs. 15 % per annume on the ground that the

defendant has availed its services under property management agreement dated 01.12.2011 but the defendant started evading the invoices raised by the plaintiff and failed to pay the outstanding amount. In reply to this application, it is admitted that plaintiff and defendant had entered into an agreement dated 01.12.2011 for providing property management services. In the application in hand, defendant has averred that the said agreement was executed between the plaintiff and defendant and it was duly executed between the parties to the suit. A perusal of the said agreement clearly reveals that there is signature of the authorised representative of the defendant company as well as of the plaintiff company at the bottom of every page of agreement, and as per clause 23 of this agreement, it has been clearly mentioned that in the event of any dispute between the plaintiff and defendant, the matter shall be referred to a panel of three arbitrators, with the client and Property Manager appointing one arbitrators each and the arbitrators so appointed nominating a third and further that the place of arbitration shall be Delhi. Since there is no denial by the plaintiff that the Property Management Agreement dated 01.12.2011 is not signed by their authorised representative, therefore clause 23 of this agreement specifically goes in favour of applicant/defendant company. Moreover, placing reliance on case title as ***P. Anand Gajapathi Raju & ors. Vs. P.V.G. Raju & ors., MANUISCI08112000; Hindustan Petroleum Corporation Ltd. Vs. Pink City Midway Petroleums, AIR 2003(SC)2881***, it is clear that the court has power to refer the parties to the Arbitration. Consequently, the present application is hereby allowed and the present suit is hereby dismissed by virtue of application in hand and parties to the suit are directed to proceed before the Arbitration as per terms of the Property management agreement dated

01.12.2011. File be consigned to record-room after due compliance.”

8. Thereafter, the petitioner once again issued a notice dated 28.04.2018 proposing the name of an Arbitrator. The respondent responded to the said notice by a letter dated 30.05.2018. The respondent claimed that the claims made by the petitioner were barred by limitation. The respondent further states that the said notice calling upon the respondent to refer the disputes to arbitration was malafide and a counter blast to the various legitimate complaints and representations made by its clients. The respondent called upon the petitioner to immediately withdraw the legal notice.

9. The learned counsel appearing for the respondent now states that the present petition is liable to be dismissed as the invocation of the arbitration agreement is barred by limitation. He states that since the first notice invoking the arbitration had been issued on 06.07.2015 the present petition is beyond the period of limitation. He also referred to Section 43 of the Act, which expressly provides that the Limitation Act, 1963 shall apply to arbitration as it applies to proceedings in the court.

10. He also referred to the decision of this court in ***Golden Chariot Recreations Pvt. Ltd. v. Mukesh Panika and Anr.: 253(2018) DLT 219*** in support of his contention that the period of limitation would not be extended by issuance of subsequent notices.

11. It is apparent from the above that there is no dispute as to the

existence of the arbitration agreement. The Agreement includes an arbitration clause, which reads as under:-

“23. DISPUTE RESOLUTION

23.1 The parties agree to cooperate and meet and conduct in good faith such discussions and negotiations as may be necessary to resolve any dispute between them which may arise. The said negotiations shall be conducted and proceed for no longer than 30 days from the notice thereof by the aggrieved party to the other party;

23.2 If a dispute arises out of or in connection with this Agreement and the parties do not resolve it in accordance with Section 22.1, the dispute shall be determined as follows;

23.2. either party may give the other written notice giving particulars of the unresolved dispute. The dispute shall then be referred to the chief executive officers of the Parties or their nominees who shall then meet and attempt to resolve the dispute in time not extending 30 days. Any agreement reached by those persons shall be binding on the parties to the Agreement.

23.2.2 In the case of failure by the Parties to resolve the dispute in the manner set out above within 30 days from the date when the dispute arose, the dispute shall be referred to a panel of three arbitrators, with the Client and Property Manager appointing one arbitrator each and the arbitrators so appointed nominating a third. The place of arbitration shall be Delhi. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 and shall be conducted in the English language.

12. The contention that the present application is barred by limitation is unpersuasive. The petitioner had filed a suit and in the said action, respondent had filed the application praying that the parties be referred to arbitration. The said application was allowed on 17.04.2018 and the present application has been filed within the period of three years from the said date.

13. Apart from the above, it is also necessary to note that after the application under Section 8 of the Act was allowed, the petitioner had filed a notice calling upon the respondent for appointment of an Arbitrator. However, it appears that the parties have been unable to agree to the appointment of an Arbitrator.

14. As stated above, the respondent now revisited the petitioner's endeavour to appoint a mutually acceptable arbitral tribunal by alleging that the petitioner's notice was *malafide* and called upon the petitioner to withdraw the same. After having succeeded before the civil court to compel the petitioner to take recourse to the Arbitration Act and after having secured an order for referring the parties to arbitration to settle the dispute, it is not open for the respondent to now take a stand that recourse to provisions of the Arbitration Act cannot be taken.

15. Be that as it may, it is apparent that since the present application has been filed within the period of three years from the date of the order of the learned civil court referring the parties to arbitration, the contention that the present application is beyond the period of

limitation is unsustainable.

16. The decision in the case of *Golden Chariot Recreations Pvt. Ltd.* (*supra*) is of little assistance to the petitioner. In that case, the parties had issued a notice invoking the arbitration clause and the other party had contested the said invocation by disputing the existence of the arbitration agreement. The said party claimed that the arbitration agreement was forged. The party invoking the arbitration had once again invoked the arbitration clause about three years thereafter the first notice. In that context, this court had held that the limitation would run from the notice first issued.

17. The facts in the present case are different. As noticed above, in this case the petitioner did institute an action in a civil court after it had issued the legal notice. However, in that suit the respondent prevailed in its contention that the parties be referred to arbitration. Clearly, in the circumstances, the period of limitation would not run from the notice dated 06.07.2015, which was issued by the petitioner but from the date of the order referring the parties to arbitration which was passed at the instance of the respondent.

18. In view of the above, this court considers it apposite to allow the present petition.

19. The learned counsel for the parties on instructions state, that a sole arbitrator be appointed instead of a tribunal of three members. They further request that the Arbitrator be appointed by the Delhi International Arbitration Centre (hereafter 'DIAC') and the arbitration

be conducted under the aegis of DIAC.

20. In view of the consensus between the parties and at their instance, this court directs that a Sole Arbitrator be appointed by the DIAC in accordance with its rules. The arbitration shall be conducted under the aegis of DIAC and in accordance with its rules.

21. The parties are at liberty to approach the Coordinator, DIAC for further proceedings.

22. The application is allowed in the aforesaid terms.

JANUARY 14, 2021
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VIBHU BAKHRU, J



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