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

+ **ARB.P. 141/2023**

ALTRADE HOSPITALITY PRIVATE LIMITED Petitioner

Through: **Mr. Pulkit Thareja and Mr. Sourabh Harihar, Advocates.**

versus

NEOTAS DEVELOPMENT PVT LTD Respondent

Through: **Mr. Dhruv Pande with Mr. Soumitra Rai, Advocates.**

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER
01.04.2024

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I.A. 20826/2023

By way of the present application filed under section 5 of the Limitation Act 1963, the respondent/applicant seeks condonation of a 01-day delay in filing the reply.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. Delay in filing the reply is condoned.
4. The reply is taken on record.
5. The application stands disposed-of.



ARB.P. 141/2023

6. By way of the present petition under section 11 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator in relation to disputes that are stated to have arisen with the respondent from Office Service Agreements dated 06.10.2021 and 01.04.2022.
7. Notice on this petition was issued on 07.02.2023; consequent upon which, reply dated 15.09.2023 has been filed by the respondent.
8. Mr. Pulkit Thareja, learned counsel for the petitioner has drawn the attention of this court to clauses 43 to 47 of Office Service Agreement dated 06.10.2021 and clauses 45 to 49 of Office Service Agreement dated 01.04.2022, which comprise the arbitration agreements; and contemplate reference of disputes between the parties to arbitration in accordance with the A&C Act; with the 'seat' of arbitration being at Delhi.
9. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 43 of the Office Service Agreement dated 06.10.2021 and clause 45 of the Office Service Agreement dated 01.04.2022, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
10. Briefly, the Office Service Agreements comprise a contract of leasing office units by the petitioner to the respondent, in relation to which certain disputes have arisen.
11. In the course of their engagement, the parties have also signed Letter Amendment dated 01.12.2021, whereby certain clauses of the Office Service Agreements were amended. It is pertinent to note that Office



Service Agreement dated 01.04.2022 contained an un-numbered paragraph with the heading “*Additional Comments*” which reads as follows :

“This agreement will be read as part of the original agreement and same terms & conditions will be applicable.”

12. Mr. Thareja draws attention to clauses 43, 44 and 45 of Office Service Agreement dated 06.10.2021, as originally drawn-up, which contain the arbitration agreement between the parties and read as follows :

“43. This Agreement shall be construed and enforced in accordance with the Laws of India and both Parties agree that, subject to the arbitration proceedings below, the Courts at Delhi shall have the exclusive jurisdiction to hear and decide any matter pertaining to this Agreement.

“44. Any dispute, difference, controversy or claim between the Parties arising out of or relating to this Agreement or any breach, termination or validity thereof shall, upon the written request of either Party, be referred to the authorized representatives of the Parties, who shall promptly meet and attempt to negotiate in good faith a resolution of the dispute. In the event that the Parties are unable to resolve the dispute through negotiation within 30 (thirty) days from the date of commencement of negotiations, the dispute shall be referred to and finally resolved by arbitration conducted as per the provisions of the (Indian) Arbitration & Conciliation Act, 1996.

*“45. In the event of a dispute, it shall be resolved by reference to Arbitration by a sole Arbitrator to be appointed mutually from the panel of Arbitrators provided in **Schedule E.**”*

(bold in original)

13. Counsel however submits, that as part of Letter Amendment dated 01.12.2021, the parties amended the arbitration clause, to delete the



reference to the panel of arbitrators and the amended arbitration clause 45 now reads as follows :

“In the event of a dispute, it shall be resolved by reference to a single Arbitrator to be mutually appointed in accordance with the provisions of the (Indian) Arbitration and Conciliation Act, 1996. It is agreed and acknowledged by the Parties that, in case the Parties fail to appoint the sole arbitrator mutually, the sole arbitrator shall be appointed in accordance with the Indian Arbitration and Conciliation Act, 1996 and the rules formed thereunder, as in force on the date thereof.”

14. Mr. Thareja submits, that disputes having arisen from both Office Service Agreements, the petitioner issued to the respondent a Demand Notice dated 21.09.2022, seeking recovery of the sum of about Rs.29.62 lacs alongwith interest, for the reasons explained in the said notice. Having received no response, the petitioner invoked arbitration *vide* notice dated 28.10.2022, thereby seeking reference of disputes under both Office Service Agreements to arbitration.
15. It is clarified however, that it so happened that in invocation notice dated 28.10.2022, the petitioner proposed the name of an arbitrator from the panel of arbitrator that had earlier been agreed-to between the parties in Schedule-E to Office Service Agreement dated 06.10.2021. To this notice, the petitioner received a reply dated 17.11.2022, in which the respondent faulted (only) the *mechanism* by which the appointment of the arbitrator had been sought, stating that the amended arbitration agreement did not permit nomination of a person from the panel at Schedule-E to the agreement.
16. In view of the objection taken by the respondent, *vide* a second notice dated 05.12.2022, the petitioner suggested the name of a different



arbitrator, who was not on the panel of arbitrators mentioned in Schedule-E to the agreement.

17. It is pertinent to note that notice dated 05.12.2022 was part of the ongoing correspondence between the parties that commenced with the invocation notice dated 28.10.2022; to which the respondent had sent reply dated 17.11.2022; to which the petitioner had issued the last invocation notice dated 05.12.2022.
18. Mr. Dhruv Pande, learned counsel appearing for the respondent submits, that the first invocation notice dated 28.10.2022 was faulty inasmuch as it had invoked arbitration under the un-amended arbitration clause. Counsel further submits that the petitioner could not have nominated a person from the panel mentioned in Schedule-E to the un-amended Office Service Agreement.
19. Insofar as the second invocation notice dated 05.12.2022 is concerned, Mr. Pande argues, that the said notice was also faulty in relation to the second Office Service Agreement, since the notice had purported to invoke arbitration only under the first Office Service Agreement.
20. Having carefully considered the contents of the petition; the reply filed; the provisions of the two Office Service Agreements and the original and amended arbitration clauses, in the opinion of this court the following inferences arise :
 - 20.1. The respondent does not dispute the existence of an arbitration agreement between the parties. They also do not contest that disputes have arisen between the parties from both Office Service Agreements dated 06.10.2021 and 01.04.2022.



- 20.2. The respondent only contends that the invocation of arbitration by the petitioner is faulty insofar as the second Office Service Agreement is concerned, though it is valid insofar as the first Office Service Agreement is concerned.
- 20.3. This objection proceeds on the basis that in the (corrected) invocation notice dated 05.12.2022 the petitioner had failed to invoke arbitration insofar as the second Office Service Agreement is concerned. However, it is evident from an objective reading of invocation notice dated 28.10.2022, its reply dated 17.11.2022, and the second invocation notice dated 05.12.2022, that these 03 notices are part of *continuing* correspondence between the parties; and most importantly, the first invocation notice dated 28.10.2022 had expressly invoked arbitration under *both* Office Service Agreements dated 06.10.2021 and 01.04.2022.
- 20.4. Moreover, the respondent's objection, insofar as the invocation of arbitration is concerned, is *only* limited to saying that the petitioner could not have nominated a person from the panel mentioned in Schedule-E of the un-amended version of the agreement. This defect in the invocation procedure was corrected by the petitioner by way of second invocation notice dated 05.12.2022, whereby they nominated a person who was not on the panel, in-line with the amended version of the arbitration agreement.
21. In the circumstances, this court is not inclined to accept the objection that the invocation of arbitration by the petitioner was faulty in a way



that would go to the root of the matter; or that would negate the very existence of the arbitration agreement between the parties.

22. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is therefore satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notices dated 28.10.2022 and 05.12.2022, do not appear *ex-facie* to be non-arbitrable.
23. Accordingly, the present petition is allowed and **Mr. Soutik Banerjee, Advocate (Cellphone No.: +91 8527075320)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties
24. The learned Sole Arbitrator would furnish to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
25. The learned Arbitrator shall be entitled to fee in accordance with Fourth Schedule to the A&C Act; or as may otherwise be agreed to between the parties and the learned Arbitrator.
26. Parties shall share the arbitrator's fee and arbitral costs, equally.
27. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Arbitrator on their merits, in accordance with law.



28. Parties are directed to approach the learned Arbitrator appointed within 01 month.
29. A copy of this order be communicated by the Registry *via* e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
30. The petition stands disposed-of in the above terms.
31. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

APRIL 1, 2024

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