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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB.P. 195/2024**
TECH INDIA ENGINEERS PRIVATE LIMITEDPetitioner
Through: Mr. Sahil Ansari, Adv.
versus

TRIUMPH REALTY PRIVATE LIMITEDRespondent
Through: Mr. Gaurav Bahl, Adv.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
07.08.2024

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator to adjudicate the disputes between the parties.
2. The petitioner and respondent entered into an agreement dated 07.06.2016 for electrical works for luxury resort in Goa, known as '*Hotel Triumph Resort*,' located at Plot No. 336/1A, Benaulim Village, Selcate Taluka, Goa, which is now called as '*Azaya Resorts*'.
3. For the years of 2016-18, various invoices were raised by the petitioner but the amounts of Rs. 46,51,634/- remained unpaid.
4. Disputes arose between the parties and the petitioner approached the NCLT and initiated CIRP proceedings under section 9 of the Insolvency and Bankruptcy Code, 2016 against the respondent.
5. The NCLT allowed the application of the petitioner on 04.06.2019, which was set aside on 04.06.2020 by the NCLAT. Thereafter, the SLP filed by the petitioner against the order of the NCLAT was also dismissed on 09.01.2023.



6. Thereafter, the petitioner invoked arbitration *vide* Legal Notice dated 05.05.2023, replied to by the respondent on 06.06.2023 and a rejoinder filed on 08.11.2023.

7. Mr. Bahl, learned counsel for the respondent has raised objections with regard to the notices being barred by limitation.

8. In view of the judgment of the Hon'ble Supreme Court in ***Cognizance for Extension of Limitation, In re***, (2022) 3 SCC 117 and clarified by the judgment of the Hon'ble Supreme Court in ***Arif Azim Co. Ltd. v. Aptech Ltd.***, (2024) 5 SCC 313, the period from 15.03.2020 to 28.02.2022 shall be excluded for the period of limitation. The balance period of limitation remaining on 15.03.2020 was to become available from 01.03.2022.

9. In the present case, the petitioner had a running account with the respondent and the last invoice raised was of 29.12.2018.

10. Till 15.03.2020, the petitioner had consumed about 1 year 3 months out of the period of limitation, leaving a balance period of 1 year 9 months to his credit. Therefore, the notice dated 05.05.2023 invoking arbitration by the petitioner is within the balance period of 1 year 9 months from 28.02.2022.

11. Thereafter, the present petition was filed in 2024.

12. For the said reasons, *prima facie*, the petition is within the period of limitation.

13. Mr. Bahl, learned counsel for the respondent has also raised another objection regarding the invocation notice dated 05.05.2023 not being in accordance with the arbitration clause.

14. The arbitration clause in the Agreement dated 07.06.2016 reads as under:-

“Any dispute or difference of any kind whatsoever arising out of or



in connection with this agreement including any disputes regarding the validity of this agreement shall be referred to and finally resolved by Arbitration as per the Arbitration and Conciliation Act, 1996 in accordance with the laws of India. For the purpose of this Arbitration a dispute shall be deemed to arise when one party serves a notice in writing to the other party stating the nature of dispute and nominating an arbitrator. Unless the parties agree upon a sole arbitrator, the arbitrator shall be appointed each by the party. The arbitrators so appointed shall appoint a third arbitrator and the reference shall be made to the three arbitrator tribunal thus constituted. The proceedings in the Arbitration shall be conducted in English. The Arbitration Award shall be final and binding on the parties, and the parties agree to be bound thereby and to act accordingly.”

15. The operative portion of the notice dated 05.05.2023 invoking arbitration reads as under:-

“11. My client states that inter alia, the General Conditions of Contract contained in tender document dated May 20156 bearing Ref. No. TRPL Delhi contains the following:-

42.0 Arbitration: In the event of any dispute or difference between the parties arising howsoever from this contract, the same shall, unless amicably settled, be referred to the arbitration as per the Indian Arbitration and Conciliation Act, 1996 where in the EMPLOYER and Contractor shall appoint their respective Arbitrator and the Arbitrator so appointed shall appoint the third Arbitrator. The arbitration proceedings shall be in English and the place shall be Mumbai and the award shall be binding on both the parties.

42.1 Jurisdiction: All matters relating to the aforesaid Arbitration and all judicial proceedings in connection therewith and/or otherwise shall be held exclusively in Delhi and the appropriate Courts in Delhi shall have the jurisdiction.



12. *My client has its disputes vide the documents referred hereinabove and also through litigation mentioned herein you yourself have contended an existence of a 'dispute'. In such circumstances, you are estopped from claiming otherwise.*

13. *In such circumstances, my client has instructed me to call upon you to pay to my client the following:*

a. Rs. Rs 46,51,634.00 towards the various unpaid invoices referred hereinabove.

b. Interest on Rs. 46,51,634.00 at the rate of 24% commencing from 29/ 12/ 2018 amounting to Rs. 49,29,987.78.

c. Rs. 10,00,000.00 towards cost of litigation till date;

14. *My client hereby calls upon you to pay to my client a sum of Rs. 1,05,81,621.78 within 7 days from receipt hereof failing which my client shall be constrained to take requisite legal action including but not limited to filing Application under Section 11 of the Arbitration and Conciliation Act for appointment of Arbitration and initiation of Arbitration proceedings. My client makes it clear that in such case, my client's claim shall stand increased to including interest pendent lite as well as compensation for costs of further litigation which shall entirely be at your risks and cost which please note."*

16. The reply dated 06.06.2023 by the respondent to the notice invoking arbitration reads as under:-

"While our Client disputes each and every claim made by your Client in totality, however, it may be noted that the disputes, if any have to be adjudicated by the Arbitrator duly appointed by both the parties at Delhi in terms of the Agreement. This however, is without prejudice to the rights of our Client, to contest, inter-alia, that the alleged claims made by your Client are barred by limitation amongst others."



17. In the rejoinder dated 08.11.2023 to the reply of the respondent, the petitioner agreed to the contentions of the respondent that the disputes are to be adjudicated by the Arbitrators duly appointed by both the parties and thereafter stated as under:-

“3. Without prejudice to my client's contention and claims and further without prejudice to my client's complete denial of your client's fabricated and engineered counter claim, my client has instructed me to state as under:

a. With reference to your letter under reply, more particularly the second last and last para, my client accepts your invitation to nominate an arbitrator and to prevent any back-and-forth nomination and rejection, my client proposes to remit the disputes to arbitration before the Delhi International Arbitration Tribunal (DIAC).

b. If you agree to the same, you may contact the undersigned through Email at @ansarisahil35@gmail.com to communicate your acceptance and the parties can proceed to file joint memorandum of reference before the DIAC as per their prevailing rules.

c. My client clarifies that failure on your part to communicate acceptance or within 7 days of receipt hereof shall be deemed to be a refusal and my client shall proceed with filing of requisite Application under Section 11 of the Arbitration and Conciliation Act without any further intimation.”

18. To my mind the legal notice dated 05.05.2023 is a valid notice invoking arbitration since the petitioner duly informed the respondent regarding the disputes between the parties and duly informed the intention of the petitioner to take requisite legal steps, including filing of application under section 11 of the Arbitration and Conciliation Act, 1996 for appointment of arbitrators, in case the disputes are not settled.



19. Even assuming for the sake of arguments that the said invocation was wrong, there is no dispute by Mr. Bahl, learned counsel for the respondent that the invocation of arbitration by way of Rejoinder dated 08.11.2023 by the petitioner was in accordance with the arbitration clause in the agreement.

20. The said rejoinder dated 08.11.2023 is also a valid invocation notice and the same is also within the limitation period of 3 years from the approval of cause of action.

21. For the said reasons, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Ms. Indrani Ghosh, Adv (Mob. No. 9810618813) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration will be held under the aegis of the Delhi International Arbitration Centre, Delhi High Court, Sher Shah Road, New Delhi (hereinafter, referred to as the 'DIAC'). The remuneration of the learned Arbitrator shall be in terms of the Fourth Schedule of the Arbitration & Conciliation Act, 1996.
- iii) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Act prior to entering into the reference.
- iv) It is made clear that all the rights and contentions of the parties, including as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The parties shall approach the learned Arbitrator within two



weeks from today.

22. The claims, counter claims and all other objections of the parties are left open to be decided by the arbitrator.

23. The above findings are only made *prima facie* for the purpose of deciding this petition.

JASMEET SINGH, J

AUGUST 7, 2024/NG

Click here to check corrigendum, if any