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

Date of Decision: 1st April, 2024

+ **ARB.P. 315/2024**

**CHROMA-ATOR ENERGY SYSTEMS PVT LTD (FORMERLY
M/S PRASHANT GENERATOR CO.)** Petitioner

Through: Mr. Ananvay Anandvardhan and Mr.
Anurag Tiwary, Advs. (M:
9582424922)

versus

INDRAPRASTHA GAS LIMITED Respondent

Through: Mr Kapil Sankhla, Mr. Gopesh Jindal,
Mr. Hanish Phogat & Ms. Fagun
Sharma, Advs. (M:9810901009)

**CORAM:
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The present petition is filed by the Petitioner-Chroma Ator Energy Systems Pvt. Ltd. under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'the Act'*) seeking appointment of a sole arbitrator in terms of Clause 30 of the General Conditions of Contract (*hereinafter, 'GCC'*). The GCC is provided in the tender which was issued by the Respondent-Indraprastha Gas Limited (*hereinafter, IGL*) on 25th February, 2017. The said Clause is extracted hereinunder:

“30.2 In the event, no amicable resolution or settlement is reached within a period of 30 days from the date on which dispute difference arose (in writing),



such dispute or difference shall be settled by **referring the same to Sole Arbitrator** in accordance with the provisions of the Arbitration and Conciliation Act, 1996, or any other statutory modification/amendment thereof.”

3. The dispute in the present case arises out of a Purchase Order (*hereinafter*, ‘PO’) dated 13th April, 2018, by which the Petitioner was to supply 575 KVA Gas Genset for IGL Bhawan. The total value of the PO was Rs 2,27,42,220/-. The PO was valid from 12th April, 2018 to 15th September, 2018.
4. The petition is opposed by the Respondent on the ground that the invocation of arbitration vide communication dated 4th November, 2022 as also filing of the petition under Section 11(6) of the Act is barred by limitation. It is submitted by Id. Counsel for the Respondent that the arbitrator is not liable to be appointed in view of the long duration that has passed since the expiry of the PO on 8th November, 2018.
5. It is further submitted by the Id. Counsel for the Respondent that the Petitioner is guilty of non-compliance of the terms and conditions of the GCC and, therefore, there was no specific need to terminate the contract. Even so, the cause of action for the Petitioner arose in 2018 itself and the letter dated 28th October, 2022 cannot be relied upon to constitute a fresh cause of action, thereby extending the limitation period. Reliance is placed on the calculation sheet containing the computation of limitation period, handed over in Court, to argue that the invocation of the arbitration clause by the Petitioner is barred by limitation and the filing of the petition is delayed by 129 days.



6. On the other hand, Id. Counsel for the Petitioner places reliance upon his own calculation sheet computing the limitation period, which has also been handed over in Court. Reliance is place upon the decision of the Supreme Court in *In Re: Cognizance for Extension of Limitation [Suo Moto Writ Petition (C) No. 3 of 2020, Order dated 10th January, 2022]*. He further places reliance on the recent decision of the Supreme Court in *M/s Arif Azim Co. Ltd. v. M/s Aptech Ltd. (2024 INSC 155)*. Accordingly, Id. Counsel for Petitioner submits that the present petition is well within limitation.

7. *Heard.* The Court has considered the matter. The relevant dates in this matter are as under:

- The date of the PO is 13th April, 2018 and as per the Respondent the PO stood expired on 8th November, 2018.
- The usual period of limitation for invocation of arbitral proceedings and for raising claims would have been by 7th November, 2021 in terms of Article 137 of the Limitation Act, 1963.
- However, the notice invoking arbitration was issued on 4th November, 2022.
- The present petition under Section 11(6) was filed on 1st March, 2024.

8. In *In Re: Cognizance for Extension of Limitation (supra)*, the Supreme Court considered the question as to how limitation would be calculated in the context of the COVID-19 pandemic. The Supreme Court held as under:



“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or



tribunal can condone delay) and termination of proceedings.”

9. The above order of the Supreme Court, extending the period of limitation, has been recently considered by the Supreme Court in *M/s Arif Azim (supra)*. In the said decision, the Supreme Court has considered two aspects – time period for invocation of arbitral proceedings as also limitation for filing of claims or seeking appointment of an arbitrator under Section 11 of the Act.

10. In respect of invocation of arbitration and the applicable principles relating to limitation period under Section 11 of the Act as also the Limitation Act, 1963, the Supreme Court has clearly held as under:

*“82. Thus, in ordinary circumstances, the limitation period available to the petitioner for raising a claim would have come to an end after an expiry of three years, that is, on 27.03.2021. However, in March 2020, the entire world was taken under the grip of the deadly Covid-19 pandemic bringing everyday life and commercial activity to a complete halt across the globe. Taking cognisance of this unfortunate turn of events, this Court vide order dated 23.03.2020 passed in **Suo Motu Civil Writ Petition No. 03/2020** directed the period commencing from 15.03.2020 to be excluded for the purposes of computation of limitation. The said extension of limitation was extended from time to time by this Court in view of the continuing pandemic. As a result, the period from 15.03.2020 to 28.02.2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15.03.2020 would become available from 01.03.2022. Operative part of the order dated 10.01.2022 is extracted hereinbelow:*



“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138



of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

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*84. The effect of the above-referred order of this Court in the facts of the present case is that the **balance limitation left on 15.03.2020 would become available w.e.f. 01.03.2022. The balance period of limitation remaining on 15.03.2020 can be calculated by computing the number of days between 15.03.2020 and 27.03.2021, which is the day when the limitation period would have come to an end under ordinary circumstances. The balance period thus comes to 1 year 13 days.** This period of 1 year 13 days becomes available to the petitioner from 01.03.2022, thereby meaning that the limitation period available to the petitioner for invoking arbitration proceedings would have come to an end on 13.03.2023.”*

11. Applying the interpretation set out above, since limitation in this case expired on 7th November, 2021, firstly, the period of limitation between 15th March, 2020 and 7th November, 2021 would stand excluded. The recommencement of the limitation period would be from 1st March, 2022.

12. Thus, the invocation of arbitration on 4th November, 2022 would not be barred by limitation, rendering the present arbitration petition under Section 11(6) of the Act to be within limitation period under Article 137 of the Limitation Act, 1963.

13. Coming to the question whether the petition under Section 11(6) of the Act was filed in time, it is seen that the Supreme Court in *M/s Arif Azim (supra)* further holds as under:



*“56. The other way of ascertaining the relevant point in time when the limitation period for making a Section 11(6) application would begin is by making use of the Hohfeld’s analysis of jural relations. It is a settled position of law that the limitation period under Article 137 of the Limitation Act, 1963 **will commence only after the right to apply has accrued in favour of the applicant.** As per Hohfeld’s scheme of jural relations, conferring of a right on one entity must entail the vesting of a corresponding duty in another. When an application under Section 11(6) of the Act, 1996 is made before this Court without exhausting the mechanism prescribed under the said sub-section, including that of invoking arbitration by issuance of a formal notice to the other party, this Court is not duty bound to appoint an arbitrator and can reject the application for being premature and non-compliant with the statutory mandate. However, once the procedure laid down under Section 11(6) of the Act, 1996 is exhausted by the applicant and the application passes all other tests of limited judicial scrutiny as have been evolved by this Court over the years, this Court becomes duty-bound to appoint an arbitrator and refer the matter to an arbitral tribunal. **Thus, the “right to apply” of the Applicant can be said to have as its jural correlative the “duty to appoint” of this Court only after all the steps required to be completed before instituting a Section 11(6) application have been duly completed. Thus, the limitation period for filing a petition under Section 11(6) of the Act, 1996 can only commence once a valid notice invoking arbitration has been sent by the applicant to the other party, and there has been a failure or refusal on part of that other party in complying with the requirements mentioned in such notice.***

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62. A perusal of the above shows that the request for appointment of an arbitrator was first made by the petitioner vide notice dated 24.11.2022 and a time of one month from the date of receipt of notice was given to the respondent to comply with the said notice. The notice was delivered to the respondent on 29.11.2022. Hence, the said period of one month from the date of receipt came to an end on 28.12.2022. Thus, it is only from this day that the clock of limitation for filing the present petition would start to tick. The present petition was filed by the petitioner on 19.04.2023, which is well within the time period of 3 years provided by Article 137 of the Limitation Act, 1963. Thus, the present petition under Section 11(6) of the Act, 1996 cannot be said to be barred by limitation.”

14. Thus, once the invocation letter was issued by the Petitioner, on 4th November, 2022, the refusal by the Respondent came only on 9th December, 2022. In terms of the decision of the Supreme Court in *M/s Arif Azim (supra)*, the limitation for filing of the petition would **not** have lapsed on 1st March, 2022. However, on the issue as to whether the claims have been filed within limitation or not, the arbitral tribunal may take the final view in the matter.

15. The arbitration clause in the present case contemplates appointment of a sole arbitrator. Accordingly, **Ms. Vibha Datta Makhija, Advocate (M: 9810150602)** is appointed as the Id. Sole Arbitrator in the matter.

16. The arbitration proceedings shall take place under the aegis of the Delhi International Arbitration Centre (*hereinafter, DIAC*). The arbitration proceedings shall be conducted under the Rules of DIAC. The fee of the Id. Sole Arbitrator shall be as per the Fourth Schedule of the Act, as amended by the DIAC Rules.



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17. List before the DIAC on 23rd April, 2024. Let a copy of the present order be emailed to Secretary, DIAC on email id- delhiarbitrationcentre@gmail.com.

18. Accordingly, the petition is disposed of. All pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 01, 2024

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(corrected & released on 6th April, 2024)