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

+ **ARB.P. 608/2023**

SPACIO INTERSPACE

..... Petitioner

Through: Mr. Saurabh Agrawal with Ms.
Komal and Mr. Saurav Baisoya,
Advocates.

versus

TE HOSPITALITY AND ESTATES LTD.

..... Respondent

Through: Mr. Pankaj Kumar Singh with Mr.
Ben Daniel Mathew, Ms. Bimla
Sharma and Mr. Abhishek Garg,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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23.02.2024

I.A. 24804/2023

By way of the present application filed under section 5 of the Limitation Act 1963, the applicant seeks condonation of 25 days' delay in filing on record copies of Purchase Orders dated 09.08.2021 and 03.09.2021 ('Purchase Orders').

2. For the reasons stated in the application, which is duly supported by affidavit, the delay is condoned.
3. Copies of Purchase Orders dated 09.08.2021 and 03.09.2021 filed, are taken on record.
4. Application stands disposed-of.



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5. By way of the present petition under section 11(6) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks appointment of a Sole Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondent from the Purchase Orders.
6. Notice on this petition was issued on 14.07.2023; consequent upon which reply dated 15.01.2024 and rejoinder dated 17.02.2024 have been filed to the petition.
7. Mr. Saurabh Agrawal, learned counsel for the petitioner has drawn the attention of this court to an unnumbered clause/paragraph in the said Purchase Orders which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration in accordance with the A&C Act in the New Delhi jurisdiction.
8. Though there is no specific provision relating to territorial jurisdiction in respect of the disputes between the parties, as has been averred in the petition, the arbitral clause itself subjects the contract between the parties to the jurisdiction of competent courts at New Delhi.
9. As per the record, the petitioner invoked arbitration *vide* Notice dated 04.02.2023; and it transpires that respondent reverted to the said notice *vide* reply dated 18.02.2023.
10. Mr. Pankaj Kumar Singh, learned counsel for the respondent submits, that as pleaded in reply dated 15.01.2024, only Purchase Order dated 09.08.2021 contains a valid arbitration agreement between the parties but there is no arbitration agreement in Purchase Order dated 03.09.2021.
11. However, as pleaded in rejoinder dated 17.02.2024, Mr. Agrawal



points-out, the unnumbered clause/paragraph in the said Purchase Order dated 03.09.2021 comprises the arbitration agreement; and highlights the intention of the parties to refer their disputes under the said Purchase Order to arbitration. Counsel further submits, that *vide* reply dated 18.02.2023 to the Invocation Notice, the respondent has not disputed the existence of an arbitration agreement in the said Purchase Order.

12. Upon a conspectus of the averments contained in the petition, the stand taken by the respondent, and the submissions made, this court is 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 notice dated 04.02.2023, do not appear *ex-facie* to be non-arbitrable.
13. Accordingly, the present petition is allowed and **Ms. Mrinalini Sen Gupta, Advocate (Cellphone No.: +91 9873367274)** is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties
14. 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.
15. 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.



16. Parties shall share the arbitrator's fee and arbitral costs, equally.
17. 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.
18. Parties are directed to approach the learned Arbitrator appointed within 15 days.
19. 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.
20. The petition stands disposed-of in the above terms.
21. Other pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 23, 2024/ds