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

+ **ARB.P. 605/2024**

**MR. ATUL GUPTA**

.....Petitioner

Through: Mr. Jayant Bajaj, Mr. Kushal  
Choudhary, Ms. Ritika Bansal, Advs.

versus

**MR. PRAVEEN JAWA**

.....Respondent

Through: Mr. Jatin S. Sethi, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**09.08.2024**

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1. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator to adjudicate the disputes between the parties
2. The facts are that the petitioner is the proprietor of M/S Krishna Trading Co. which is a paper and board merchant and deals in various types of paper boards. Respondent is the proprietor of M/S Yuvraj Printers and is engaged in the business of printing.
3. The respondent had approached the petitioner for purchase of paper and duplex boards and the present dispute arises out of two consignments delivered by the petitioner to the respondent.
4. On 20.07.2018, the petitioner supplied 11,124 kg of Duplex boards *vide* invoice bearing No. KTC 438
5. Subsequently, the petitioner again supplied 3,534 kg of the Duplex



Boards *vide* invoice bearing No. KTC 576 dated 28.08.2018.

6. The arbitration clause is contained in both the above said invoices, which reads as under:-

*“In case of any dispute, the judgment of the Arbitrator/Arbitrators/Tribunal or any other appointed by the Sadar Bazar Paper Board Merchant Association (Regd.) Delhi or Paper Merchants Association (Regd), Chawri Bazar, Delhi will be final & binding on both the parties”*

7. Since certain disputes arose between the parties, the petitioner filed a suit being C.S.(COMM.) 501/2019 before the District Commercial Court, Rohini on 17.12.2019.

8. The respondent contested the said suit by filing an application under Section 8 of the Arbitration and Conciliation Act, 1996 before the District Commercial Court, Rohini stating that in view of the arbitration clause the civil suit cannot proceed.

9. The said application was allowed and the suit was dismissed as withdrawn on 04.03.2021.

10. Thereafter, the petitioner approached the Sadar Bazar Paper and Board Merchant Association (Regd.), Delhi seeking appointment of an arbitrator for adjudication of the disputes arisen between the parties. The Sadar Bazar Paper and Board Merchant Association (Regd.), Delhi appointed an Arbitrator and the Arbitral Award came to be passed in favor of the petitioner on 26.09.2022.

11. The respondent challenged the said award under Section 34 of the Arbitration and Conciliation Act, 1996 before the Hon'ble District Judge,



(Commercial Court), Tis Hazari Court, Delhi on the ground that the learned sole Arbitrator appointed by the Sadar Bazar Paper and Board Merchant Association (Regd.), Delhi was appointed unilaterally and the same violated the law laid down by the Hon'ble Supreme Court in "***Perkins Eastman Architects DPC & Anr. vs. HSCC (India) Ltd.***" (2020) 20 SCC 760.

12. The petition filed by the respondent under section 34 of the Arbitration and Conciliation Act, 1996 was allowed and the Arbitral Award came to be set aside on 23.11.2023 by the Hon'ble District Judge (Commercial Court), Tis Hazari Court, Delhi petition under Section 34 of the Arbitration and Conciliation Act, 1996.

13. Since disputes were still subsisting between the parties, the petitioner again issued a notice under Section 21 of the Arbitration and Conciliation Act, 1996 on 22.01.2024.

14. Mr. Sethi, learned counsel for the respondent has raised an objection and states that in the present the case the invoices raised by the petitioner are of July, 2018 and August, 2018 and the petitioner has invoked arbitration on 22.01.2024 and hence the same is barred by limitation.

15. Learned counsel for the respondent has also relied on Article 137 of the Limitation Act, 1963 to state that the period of limitation for appointment of an arbitrator would be 3 years starting from August, 2018.

16. I am of the view that in the present case, it is an admitted position that the petitioner initially filed a suit in the year 2019 and the same was dismissed as withdrawn on 04.03.2021 followed by the petitioner invoking arbitration on 13.04.2021 which resulted in an Arbitral Award dated 26.09.2022.

17. The Section 34 petition filed by the respondent was allowed by the



Hon'ble District Judge (Commercial Court), Tis Hazari Court, Delhi and the Arbitral Award came to be set aside on 23.11.2023.

18. Hence the total period starting from issuance of second invoice bearing No. KTC 576 dated 28.08.2018 till the notice issued by the petitioner invoking arbitration dated 22.01.2024 is for a total period of about 5 years and 5 months. However, the said fact cannot be ignored that during this period, the petitioner had also diligently prosecuted his suit being CS(COMM.) 501/2019 and the arbitration proceedings before the Sadar Bazar Paper and Board Merchant Association (Regd.), Delhi.

19. To my mind, out of the total period of 5 years and 5 months the limitation will be excluded for a period of 3 years 8 months i.e. the period from 17.12.2019 to 04.03.2021 (1 year 2 months) whereby the petitioner was prosecuting his suit being CS(COMM.) 501/2019 before the District Court, Rohini, New Delhi.

20. Furthermore, the period from 13.04.2021 to 23.11.2023 (2 years 6 months) will also not be taken into the account while computing the limitation whereby the parties were referred to arbitration and a section 34 petition was filed by the respondent before the Hon'ble District Judge (Commercial Court), Tis Hazari Court, Delhi against the Arbitral Award dated 26.09.2022.

21. In this regard, Section 14 of the Limitation Act, 1963 reads as under:-

***“Section 14(1) in The Limitation Act, 1963***

*14(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be*



*excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”*

22. I am of the view that the petitioner is entitled to the benefit of the time for which he was prosecuting his legal remedies diligently and in a bonafide manner.

23. Hence the present petition is well within the period of 3 years as the limitation will be excluded for a period of 3 years 8 months leaving an unexpired portion of about 5 months out of the limitation of 3 years.

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

- (i) Mr. Abhimanyu Garg , Adv. (Mob. No. 9811092113) 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.

25. The claims, counter claims and all other objections are left open to be decided by the sole arbitrator.

**JASMEET SINGH, J**

**AUGUST 9, 2024/NG**

*Click here to check corrigendum, if any*