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

+ **O.M.P. (T) (COMM.) 52/2024**

MALKIT SINGH AND BROSPetitioner

Through: Ms Manveen Dhanjal, Adv. (through VC)

versus

UNION OF INDIA & ANR.Respondents

Through: Mr Chetanya Puri, SPC with Mr Vinod Tiwari,
G.P., Ms Nisha Puri and Mr Mohit Chaurasia,
Advvs. with Mr S.K. Kanuzia, A.E.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

04.09.2024

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1. This is a petition filed under Section 15 of the Arbitration and Conciliation Act, 1996 seeking substitution of an Arbitrator as the previous Arbitrator has recused himself on 14.05.2021.
2. Notice was issued on 28.05.2024 and Mr Puri, learned SPC was granted four weeks to file a reply.
3. Even though there is no reply, Mr Puri, learned counsel has addressed oral submissions which have been heard.
4. He states that it is the petitioner who has delayed the proceedings and hence the petition should not be allowed.
5. I am of the view that the Arbitrator recused himself on 14.05.2021.
6. The Hon'ble Supreme Court *In Re:Cognizance For Extension Of Limitation, 2022 (3) SCC 117* has 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.”

7. The said judgment was clarified in **Arif Azim Co. Ltd. v. Aptech Ltd., (2024) 5 SCC 313** wherein it was observed as under:

“84. 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 27-3-2021. 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 cognizance of this unfortunate turn of events, this Court vide order dated 23-3-2020 passed in Cognizance for Extension of Limitation, In re [Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801] directed the period commencing from 15-3-2020 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 15-3-2020 to 28-2-2022 was finally determined to be excluded for the computation of limitation. It was provided that the balance period of limitation as available on 15-3-2020 would become available from 1-3-2022.”

8. In view of the said judgments, the petitioner is entitled to the benefit of the period from 15.03.2020 to 28.02.2022. If the said period is excluded then the present petition is within the limitation period.

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

- i) Mr. Roshan Lal Goel, Advocate (Mob. No.9654169406) is appointed as a Sole Arbitrator to adjudicate the disputes between the parties who will commence the proceedings from where the previous Arbitrator had left.
- 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 Delhi International Arbitration Centre (Administrative Cost and



Arbitrators' Fees) Rules, 2018.

- 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.
10. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

SEPTEMBER 4, 2024

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Click here to check corrigendum, if any