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

+ **ARB.P. 1286/2023**

**M/S ECO COATINGS** ..... Petitioner

Through: Mr Idresh Ahmad, Adv.

versus

**M/S RAHEJA DEVELOPERS LIMITED** ..... Respondent

Through: Mr Gurtejpal Singh, Mr Chandan  
Malav and Ms Aashna Arora, Advs.

**CORAM:**

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

**ORDER**

**27.03.2024**

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1. This is a petition under Section 11 of the Arbitration & Conciliation Act, 1996 (hereinafter, "the Act") seeking appointment of an Arbitrator for adjudicating the disputes between the parties arising out of work orders dated 20.07.2015 and 07.05.2016.
2. The brief facts are that the respondent approached the petitioner for external painting work in tower 1, 2, & 3 at project Shilas High Rise, Group housing, and Tower E, F, G & H at other project Atharva, Group Housing at Sector No. 109, Gurgaon, Haryana and accordingly two work orders dated 20.07.2015 were signed between the parties. It is stated that the work was halted and bills were raised, however, they were not paid by the respondent.
3. It is further stated that the respondent again approached the petitioner for external painting work in tower 3 at respondent's project Shilas High Rise, Group housing, and Tower A & F at other project Atharva, Group Housing at Sector No. 109, Gurgaon, Haryana and accordingly two new



work orders dated 07.05.2016 were signed between the parties.

4. The petitioner concluded the work and submitted its last running bill on 30.01.2017. The respondent made some payment on 06.03.2017 and on 28.03.2017, *vide* e-mail acknowledged the amounts due and payable to the petitioner.

5. On 04.03.2020, the petitioner instituted Pre-Institution Mediation which was declared a 'Non-Starter' on 14.01.2021. On the same day, the petitioner filed a civil suit for recovery of Rs. 38,67,088/-.

6. The respondent moved an application under Section 8 of the Act seeking rejection of the plaint in view of the arbitration agreement between the parties. Vide order dated 04.04.2022 in the suit for recovery bearing CS (COMM) 43/21, the application was allowed and the parties were referred to arbitration. Subsequent to that order, the petitioner invoked the arbitration clause *vide* notice dated 18.04.2022 and filed the present petition on 29.11.2023.

7. Mr Singh, learned counsel for the respondent has filed a reply in which the objection of the respondent is primarily on the ground that the claims of the petitioner are time barred.

8. According to the learned counsel for the petitioner, the petition under Section 11 of the Act is within the period of limitation.

9. Whether the claims of the petitioner are barred by limitation or not is according to me a mixed question of fact and law. The petitioner will be required to lead evidence with regard to its claims.

10. *Prima facie*, there seems to be an acknowledgement in writing regarding the claims of the petitioner *vide* e-mail dated 28.03.2017. The petitioner initiated Pre-Institution Mediation within 3 years i.e. 04.03.2020.



The Pre-Institution Mediation was declared non-starter and on the same day the petitioner filed civil suit for recovery. On 04.04.2022 the section 8 Arbitration & Conciliation Act application filed by the respondent was allowed and within two weeks notice invoking arbitration was issued on 18.04.2022. Hence, *prima facie*, the petition filed on 29.11.2023 seems to be within limitation.

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

- i) Ms. Aruna Tikku, Advocate (Mob. No. 9810104685) 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 on merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
- v) The respondent shall be entitled to file counter-claim(s) as well as raise the issue of limitation and also the true meaning, extent



and scope of the e-mail dated 28.03.2017 before the learned Arbitrator.

vi) The parties shall approach the learned Arbitrator within two weeks from today.

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

**JASMEET SINGH, J**

**MARCH 27, 2024**

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*Click here to check corrigendum, if any*