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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of decision: 18th March, 2024***
+ **ARB.P. 198/2024**

POSTERITY ASSOCIATES PRIVATE LTD. Petitioner

Through: Mr. Udai Prakash, Advocate.
versus

VLCC HEALTH CARE LTD. Respondent

Through: None.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

I.A. 3382/2024 (u/S 5 of Limitation Act, 1963 r/w Section 151 of CPC, 1908)

1. By way of present application, the applicant/petitioner seeks condonation of 420 days' delay in re-filing the present petition.
2. It is submitted in the application that the present Petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 (*hereinafter referred to as the "Act, 1996"*) was filed before this Court on 21.10.2022 seeking appointment of a sole Arbitrator.
3. However, the defects were marked by the Registry on 14.11.2022 and the limitation for re-filing the matter was upto 13.12.2022. However, in the meanwhile, the original file and the documents got misplaced from the office of the counsel for the applicant/petitioner and got mixed up with the disposed of files. The case file was traced on 08.04.2023 in the disposed of files and thereafter, the matter was prepared for re-filing, but in the



meanwhile on 25.04.2023, the Apex Court in the case of N.N. Global Mercantile Private Ltd. vs. Indo Unique Flame Limited (2021) 4 SCC 379 held that an Agreement which is not duly stamped cannot be enforced, even for the purpose of arbitration. Hence, the present petition was re-filed.

4. However, recently, the Supreme Court in In Re, Interplay Between Arbitration Agreements Under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, Curative Petition (C) No. 44 of 2023 decided on 13.12.2023 overruled the Judgment in the case of N.N. Global Mercantile Private Ltd. (supra). Therefore, for the aforesaid reasons, the applicant/petitioner had not reprocessed the matter and the present petition has been filed with a delay of 420 days. Therefore, applicant/petitioner has made the prayer that the delay of 420 days in re-filing the present petition may be condoned.

5. **Submissions heard.**

6. For the reasons and grounds stated in the present application, the application is allowed, the delay of 420 days in re-filing the present petition is hereby condoned.

7. Accordingly, the application is disposed of.

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8. The present Petition under Section 11(6) of the Act, 1996 has been filed on behalf of the petitioner seeking appointment of a sole Arbitrator to adjudicate the disputes having arisen *inter se* the parties in respect of Master Service Agreement dated 01.05.2017.

9. It is submitted that the petitioner and the respondent entered into the Master Service Agreement dated 01.05.2017 to avail the service of employees suitable for requirements of the respondent adopting the method



to identify appropriate person on the basis of advertising research of existing data base and also head hunting; thereafter, to send list of suitable candidates for requirement of the respondent.

10. It is further submitted that the petitioner rendered its service to the respondent under the Master Service Agreement dated 01.05.2017 and submitted the Invoices for payment to the respondent from time to time, which are in total sum of Rs. 5,42,348/-.

11. The respondent was required to make the payment of the aforesaid amount within 45 days from the date of joining, but it has failed to make the payment till date.

12. On 03.09.2018, the respondent *vide* Correspondence dated 07.09.2018 admitted the aforesaid payment and sought some time to make the payments.

13. The petitioner *vide* Reminder dated 12.04.2019 sent to the respondent demanded the due payment.

14. Despite demand and request of the petitioner, the respondent failed to make the payment.

15. Thereafter, the petitioner moved an Application on 13.06.2022 for pre-litigation mediation before the District Legal Service Authority, South-East District, Saket Court, New Delhi, however, the same was closed on 11.07.2022 as “non-starter”.

16. The Notice dated 25.08.2022 sent by the petitioner through its counsel to the respondent thereby seeking consent for the appointment of the sole Arbitrator as the Master Service Agreement dated 01.05.2017 provided for the dispute or difference arising out of the Agreement to be settled by an Arbitrator.



17. The respondent *vide* its Reply dated 12.09.2022 did not give its consent and did not admit any dispute with regard to the non-payment of the aforesaid dues.
18. The petitioner left with no option has filed the present petition seeking appointment of a sole Arbitrator.
19. None is present on behalf of the respondent despite service.
20. **Submissions heard.**
21. In view of Master Service Agreement dated 01.05.2017 *inter se* the parties, which contains the Arbitration Clause, the present petition is allowed, and is referred to the Delhi International Arbitration Centre.
22. The Coordinator, Delhi International Arbitration Centre is requested to appoint an Arbitrator in accordance with the provisions of the Act, 1996 for adjudication of the disputes between the parties.
23. The parties are at liberty to raise their respective objections before the Arbitrator.
24. The fees of the learned Arbitrator would be fixed in accordance with the Delhi International Arbitration Centre Rules.
25. This is subject to the Arbitrator making necessary disclosure as under Section 12(1) of the Act, 1996 and not being ineligible under Section 12(5) of the Act, 1996.
26. The Arbitration shall be conducted under the aegis of Delhi International Arbitration Centre within the High Court precinct.
27. Accordingly, the present petition is disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 18, 2024/S.Sharma