



\$~27

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

+ O.M.P. (COMM) 13/2024 & I.A. 290/2024 (*stay*)
THOMAS AND COMPANY PRIVATE LIMITED Petitioner
Through: Mr. Gursat Singh, Advocate.

versus

THAPAR BUILDERS PVT LTD Respondent
Through: Mr. Pankaj Kumar Singh, Mr. Ben
Daniel Mathew, Ms. Binla Sharma,
Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

% **ORDER**
08.01.2024

1. Issue notice. Mr. Pankaj Kumar Singh, learned counsel, accepts notice on behalf of the respondent.
2. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner – Thomas and Company Pvt. Ltd [“Thomas”] challenges three decisions of the learned Arbitral Tribunal dated 12.09.2023, 14.09.2023 and 12.10.2023.
3. The learned Arbitral Tribunal is presently adjudicating claims raised by the respondent – Thapar Builders Pvt. Ltd. [“Thapar”] under an agreement dated 10.05.2014 for construction of a residential tower at Vaishali, Ghaziabad, Uttar Pradesh.
4. The impugned decisions pertain to rejection of a counter claim lodged by Thomas on the ground that it was belated. It is accepted by Mr.



Gursat Singh, learned counsel for Thomas, that the counter claim was filed beyond the period of six months permitted in Section 23(4) of the Act. Thomas filed an application for condonation of delay, although this was filed 258 days after the counter claim had been lodged.

5. It is not necessary to adjudicate the petition on merits because, during the course of hearing, learned counsel for the parties have come to an agreement that the petition may be disposed of with the following directions:

- A. The order of the learned Arbitral Tribunal dated 12.09.2023 rejecting the counter claim lodged by Thomas on the ground of delay is set aside;
- B. The counter claim is taken on record of the learned Arbitral Tribunal subject to payment of costs of Rs.30,000/- by Thomas to Thapar before the next date of hearing before the learned Arbitral Tribunal;
- C. Learned counsel for the parties state that the affidavits of evidence filed by them deal both with the claims of Thapar and counter claim of Thomas. No further affidavits of evidence, therefore, need to be filed;
- D. As the parties have already filed their respective affidavits of evidence, and the matter is listed for cross examination of Thapar's witness, there will be no necessity for adjournment on account of these directions;
- E. It is submitted on behalf of Thapar that the counter claims raised by Thomas are barred by limitation. The learned Arbitral Tribunal may, at the request of either of the parties, consider the issue as a



preliminary issue, if it is in his opinion, possible to decide the same without evidence.

6. The petition, alongwith pending application, is disposed of in terms of the aforesaid agreed directions.

PRATEEK JALAN, J

JANUARY 8, 2024
“*Bhupi*”/