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

+ **ARB.P. 84/2024**

VIJAY JAIN AND ORS

..... Petitioners

Through: Mr. Ashish Verma, Ms. Salonee Keshwani, Mr. Kartikey Bhargava, Advocates.

versus

OMAT BUSINESS PVT LTD AND ANR

..... Respondents

Through: Mr. Samyam Khetarpal, Mr. Nitai Agarwal and Mr. Aayush Gaur, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

22.01.2024

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I.A. No. 1572/2024 (Exemption)

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.

I.A. No. 1573/2024 (for condonation of delay in re-filing the petition)

By way of the present application, the respondents seek condonation of delay of 32 days' in re-filing the petition.

2. For the reasons stated in the application, which is duly supported by affidavit, the application is allowed.
3. Delay in re-filing the petition is condoned.
4. Application stands disposed of.



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5. By way of the present petition under section 11(4)(b) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioners seek appointment of a third Arbitrator to adjudicate upon the disputes that are stated to have arisen with the respondents from the Shareholder Purchase Agreement dated 03.02.2022.
6. Issue notice.
7. Learned counsel is present on behalf of the respondents on advance copy; and accepts notice.
8. Learned counsel for the petitioner has drawn the attention of this court to clause 12.2 of the Shareholder Purchase Agreement which comprises the arbitration agreement; and contemplates reference of disputes between the parties to arbitration by a 03-member Arbitral Tribunal in accordance with the A&C Act.
9. For completeness, it may be recorded that a separate territorial jurisdiction provision is also contained in clause 12.1 of the Shareholder Purchase Agreement, which subjects the contract between the parties to the jurisdiction of competent courts at Delhi.
10. As per the record, the petitioner invoked arbitration *vide* Notice dated 25.08.2022; and the respondent replied to the said notice *vide* reply dated 22.09.2022 and 19.10.2022.
11. Upon a conspectus of the averments contained in the petition, the stand taken by the respondents, and the submissions made, this court is satisfied that there is a valid and subsisting arbitration agreement between the parties; that this court has territorial jurisdiction to entertain and decide the present petition; and also that the disputes



that are stated to have arisen between the parties, as set-out *inter-alia* in invocation notice dated 25.08.2022, do not appear *ex-facie* to be non-arbitrable.

12. Though the arbitration agreement contained in clause 12.2 of the Shareholder Purchase Agreement contemplates a 03-member arbitral tribunal; and parties state that they have nominated their respective arbitrators, the court is informed that the two nominated arbitrators have been unable to come to a consensus on the appointment of the third arbitrator.
13. In the circumstances, parties submit that they are willing to have the disputes referred to a Sole Arbitrator under the aegis of Delhi International Arbitration Centre, New Delhi ('DIAC').
14. Learned counsel for the parties however also submit, that the parties be given an opportunity to attempt an amicable resolution of their *inter-se* disputes through mediation.
15. In the circumstances, the course that commends itself for acceptance to this court, is to appoint a sole arbitrator to adjudicate upon the disputes between the parties; and to then hold the appointment in abeyance, affording to the parties sufficient time to attempt an amicable resolution of their *inter-se* disputes through mediation.
16. Accordingly, the present petition is allowed and Hon'ble Mr. Justice Vinod Goel, former Judge, Delhi High Court (Cellphone No.: +91 9910384637) is appointed as the learned Sole Arbitrator to adjudicate upon the disputes between the parties; with arbitration proceedings to be conducted under the aegis of the DIAC, in accordance with applicable rules.



17. In view of the request made by counsel, and to afford to the parties an opportunity for a mediated settlement, the order appointing the learned Arbitrator is held in abeyance for a period of 01 (one) month from the date of release of this order, during which time the parties are at liberty to attempt a mediated settlement of their disputes; failing which, the order of appointment shall take effect.
18. Accordingly, parties are referred to mediation before the Delhi High Court Mediation & Conciliation Centre, with a request to the learned Organizing Secretary to appoint an appropriate mediator in the matter.
19. At request, list before Mediation Centre on Thursday *i.e.* 01st February 2024 at 2:30 P.M. for the purpose.
20. A copy of this order be sent to the learned Organizing Secretary of the Mediation Centre, for information and compliance.
21. If mediation were to fail, parties are directed to approach the learned Arbitrator appointed within 10 days of closure of the mediation proceedings.
22. The learned Arbitrator may then proceed with the arbitral proceedings subject to furnishing to the parties requisite disclosures as required under section 12 of the A&C Act; and in the event there is any impediment to the appointment on that count, the parties are given liberty to file an appropriate application in this court.
23. The learned Arbitrator shall proceed with the arbitral proceedings in accordance with the rules and regulations of DIAC and subject to arbitrator's fee and arbitration costs, as may be applicable.



24. All rights and contentions of the parties in relation to the claims/counter-claims are kept open, to be decided by the learned Sole Arbitrator on merits, in accordance with law.
25. A copy of this order be communicated *forthwith* to the Co-ordinator, DIAC, for information and compliance.
26. A copy of this order be sent by e-mail to the learned Sole Arbitrator, as also to learned counsel for the parties.
27. The petition stands disposed-of in the above terms.
28. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 22, 2024/uj

(Released on : 29th January 2024)