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

+ O.M.P. (E) (COMM.) 3/2024

DHARAMVIR KHOSLA

..... Petitioner

Through: Mr. Priyesh Mohan Srivastava, Mr.  
Abhishek Singh and Ms. Sonal K.  
Chopra, Advocates.

versus

ASIAN HOTELS (NORTH) LTD.

..... Respondent

Through: Ms. Aakanksha Kaul, Mr. Satya  
Sabharwal, Ms. Rhea and Mr. Aman  
Sahani, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

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**14.02.2024**

**I.A. 1992/2024 (Exemption)**

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed-of.

**I.A. 1993/2024 (condonation of delay in re-filing the petition)**

By way of the present application filed under section 5 of the Limitation Act, 1963 read with section 151 of the Code of Civil Procedure 1908 ('CPC'), the applicant/petitioner seeks condonation of 160 days' delay in *re-filing* the petition.

2. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
3. Delay in *re-filing* the petition is condoned.
4. The petition is taken on Board.
5. The application stands disposed-of.



**O.M.P. (E) (COMM.) 3/2024**

6. By way of the present petition filed under section 27 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioner seeks assistance of this court for recording the cross-examination of their own witness Mr. R.L. Malhotra, whose examination-in-chief has been tendered by way of affidavit as CW-2, but who has omitted to appear for cross-examination thereafter.
7. The petition is premised on order dated 24.04.2023 made by the learned Arbitrator, where he records that since Mr. R.L. Malhotra has tendered his examination-in-chief by way of an affidavit, but has failed to appear for cross-examination, either physically or virtually, the claimant cannot be held responsible for such conduct; and that that is reason enough for the claimant to be granted approval to apply to the court for seeking assistance in taking evidence under section 27 of the A&C Act.
8. Issue notice.
9. Ms. Aakanksha Kaul, learned counsel appears on behalf of the respondent on advance copy; accepts notice; and submits that though she does not wish to file reply, she opposes the present petition, submitting that the evidence of Mr. R.L. Malhotra is irrelevant and therefore the learned Arbitrator ought not to have granted approval to the petitioner to file the present petition.
10. Be that as it may, what weighs with the court is that the examination-in-chief of Mr. R.L. Malhotra has already been tendered; and for that to be read in evidence, it is necessary to grant to the respondent the opportunity to cross-examine the said witness.



11. In view of the above, the present petition is allowed, thereby issuing a direction to CW-2 Mr. R.L. Malhotra to present himself for cross-examination on such date(s) as the learned Arbitrator may set-down for the purpose.
12. A perusal of order dated 24.04.2023 shows that perhaps one of the reasons why Mr. R.L. Malhotra was not making himself available for cross-examination was his old age and illness. In the circumstances, it is directed that cross-examination of Mr. R.L. Malhotra shall be completed in not more than 02 sittings of about 02 hours each, on such dates as the learned Arbitrator may set-down.
13. The petition is disposed-of, in the above terms.
14. Pending applications, if any, also stand disposed-of.

**ANUP JAIRAM BHAMBHANI, J**

**FEBRUARY 14, 2024/uj**