



\$~1

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

+ **ARB.P. 250/2024**

MODERN TECHNOLOGIES

.....Petitioner

Through: Mr Akshay Goel, Mr Shaurabh
Tripathi, Ms Deepti Arya, Mr Paras
Arora and Ms Vishali Nahar, Advs.

versus

INART CONSTRUCTIONS PVT. LTD.

.....Respondent

Through: Mr Sadheer Aaryaan, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

06.08.2024

%

I.A. 4398/2024

1. This is an application seeking condonation of 60 days delay in re-filing the petition.
2. In view of the submissions made by learned counsel and for the reasons stated in the application, the delay of 60 days in re-filing the petition is condoned.
3. The application is disposed of.

ARB.P. 250/2024

4. This is a petition filed under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator for adjudication of disputes between the parties.
5. The respondent issued a purchase Work Order dated 19.07.2018 in the



name of the petitioner for supply of CCTV, fire alarm and networking work for JMD Empire Square, 3rd and 4th Floor, MG Road, Gurugram, Haryana.

6. The arbitration clause is Clause 18 which reads as under:

“18. In case of any concern or issue arising out of this Work Order, the same shall be referred to a Sole Arbitrator to be appointed by M/s Inart Constructions Pvt. Ltd., but the cost shall be borne by equally by both the parties.”

7. As the amount due and payable to the petitioner was not paid, the petitioner issued Legal Notice dated 19.07.2019 calling upon the respondent to make the payment of outstanding dues.

8. Since the amounts were not paid, the petitioner filed Civil Suit for Recovery of the said amount being CS (Comm) No. 64/2022. In the said suit, the respondent filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 stating that the suit cannot proceed and the parties must resort to arbitration as contained in the Purchase Order. The said application was allowed by the learned District Judge (Commercial Court-02), South District, Saket, New Delhi *vide* Order dated 04.05.2022. Hence, the petitioner has filed the present petition.

9. *Vide* Order dated 26.02.2024, this Court issued notice to the respondent.

10. Mr Aaryaan, learned counsel appears for the respondent and states that the claim of the petitioner is barred by limitation and there is no notice under Section 21 of the Arbitration and Conciliation Act, 1996.

11. I am unable to agree with either of the contentions.

12. As regards limitation is concerned, the cause of action arose on 19.07.2018 when the Purchase Order was issued. The petitioner filed the suit



in January, 2021 which is within the period of three years for recovery of its claims. The application under Section 8 of the Arbitration and Conciliation Act, 1996 filed by the respondent was allowed *vide* Order dated 04.05.2022 and the present petition has been filed within three years of the order of 04.05.2022. For the said reasons, the claim of the petitioner is within limitation.

13. As regards the other contention that no notice under Section 21 of the Arbitration and Conciliation Act, 1996 has been issued, I am of the view that once the respondent has itself filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 seeking reference of the parties to arbitration, the same is substantial compliance of the notice under Section 21 of the Arbitration and Conciliation Act, 1996. Also, the claims which are sought to be referred to the arbitration are notified to the respondent in the said civil suit filed by the petitioner.

14. Further, the order dated 04.05.2022 clearly records that the matter be referred to the arbitration. The operative portion of the order dated 04.05.2022 reads as under:

“In view of the aforesaid reasons, the matter is required to be referred to the Ld. Arbitrator. Application U/s 8 of A&C Act, filed by the applicant/defendant, is allowed. No order as to costs. File be consigned to record room.”

15. In this view of the matter, the petition is allowed. Since the parties are still having disputes between them, the following directions are issued:-

- i) Mr. Neeraj Gupta, Advocate (Mob. No. 9811267045) 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/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned arbitrator.
 - v) The parties shall approach the learned Arbitrator within two weeks from today.
16. The petition is allowed and disposed of in the aforesaid terms.

JASMEET SINGH, J

AUGUST 6, 2024

sr [Click here to check corrigendum, if any](#)