

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

FAO No. 241 of 2008

Date of Decision : 20-08-2008

UNION OF INDIA Appellant
Through Mr. Bijender Singh, Advocate

versus

M/S MITTAL STEELS Respondent
Through None

CORAM:

HON'BLE MISS JUSTICE REKHA SHARMA

1. Whether the reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be reported in the 'Digest'? Yes

REKHA SHARMA, J.

The question which arises for consideration in this appeal is whether objections to an arbitration award admittedly filed in the court of an Additional District Judge not only after the expiry of three months from the date on which the arbitral award was received by the applicant but also after a lapse of further 30 days from the expiry of said three months were rightly dismissed as barred by time or could the time period be extended depending upon the cause shown in the application for condonation of delay?

The limitation period for filing objections to an arbitral award is provided in Section 34(3) of the Arbitration and Conciliation

Act, 1996 (in short called 'the Act of 1996'). This is how it runs:-

“34(3) - An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

It is not disputed that the arbitral award concerning the present appeal was made on February 2, 2005 and the period of three months in terms of Section 34 after the receipt of the award expired on May 17, 2005 and further 30 days in view of the proviso to Section 34(3) expired on June 16, 2006. The objections to the award were filed on September 15, 2005 and those were clearly barred by time for a good period of over three months. The learned Additional District Judge relying upon the aforementioned section of the Act of 1996 held the objections to be barred by time and consequently declined to entertain the same.

The learned counsel for the appellant does not dispute that Section 34 (3) of the Act of 1996 provides an outer limit of three months in filing objections to an arbitral award from the date it is received by the party challenging the same and also provides for a grace period of thirty days beyond the period of three months if

sufficient cause is shown for not making the application within the period of three months. Nonetheless, he contends that the limit set out in the said section cannot put fetters on the power of the Court to entertain the objections even if they are filed after the expiry of the period as laid down therein. In support of his submission, he has referred to Order VIII Rule 1 of the Code of Civil Procedure wherein it is provided that the defendant shall file written statement within 30 days from the date of service of summons and if a defendant fails to file written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but it shall not be later than 90 days from the date of service of summons. It is contended that language of Order VIII Rule 1 is couched in a more negative form than the expression used in Section 34(3) of the Act of 1996 and that the Supreme Court in the case of **Kailash Vs. Nanhku and others** reported in (2005) 4 Supreme Court Cases 480 has held that the provisions of Order VIII Rule 1 do not take away the power of the Court to take a written statement on record though filed beyond the time as provided therein. On the basis of parity with this judgment, it is argued that there is no absolute bar on the courts to entertain objections to an arbitral award even beyond the period of limitation provided therein.

A court derives power to extend period of limitation either by virtue of Section 5 of the Limitation Act, 1963 if it is applicable to a special enactment or by virtue of the enactment itself if it is so provided therein. In the case of **Union of India Vs. M/s Popular Construction Company** reported in (2001) 8 Supreme Court Cases 470, the Apex Court has considered the question whether the

provisions of Section 5 of the Limitation Act, 1963 are applicable to an application challenging the award under Section 34 of the Arbitration and Conciliation Act, 1996. This is what the Court has held:-

“As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are ‘but not thereafter’ used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase ‘but not thereafter’ wholly otiose. No principle of interpretation would justify such a result.”

The Apex Court has further held as under:-

“Furthermore, section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub Section 2 and sub Section 3. Sub Section 2 relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that

"where the time for making an application to set aside the arbitral award under Section 34 has expired...the award shall be enforced and the Code of Civil Procedure 1908 in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow". Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the Court's powers by the exclusion of the operation of Section 5 of the Limitation Act."

In view of the fact that the Supreme Court in the aforementioned case has categorically held that the period of limitation as provided under Section 34(3) of the Act of 1996 cannot be extended by the Court beyond the time frame set out therein, I see no reason why this Court should look into the judgment rendered in the case of **Kailash** vs. **Nanhku and others** (supra). The judgment in **Union of India** vs. **M/s Popular Construction Company** (supra) is on the Arbitration and Conciliation Act itself and, therefore, it is this and no other judgment which shall guide the Courts while dealing with applications under Section 34 of the Act of 1996.

Learned counsel for the appellant has also referred to

judgment of the Apex Court in the case of **State of Goa** vs. **Western Builders** (2006) 6 Supreme Court Cases 239. It is true that the court in the said judgment has held that Section 14 of the Limitation Act shall apply to the Arbitration and Conciliation Act but it has not in any way watered down the judgment rendered in **Union of India** vs. **M/s Popular Construction Company** (supra). Rather it has reiterated what has been laid down therein. It has been held in case of **State of Goa** (supra) that “**under Section 34 by virtue of sub-section (3) only the application for filing and setting aside the award, a period has been prescribed as three months and delay can be condoned to the extent of 30 days and to this extent the applicability of Section 5 of the Limitation Act will stand excluded but there is no provision in the Act of 1996 which excludes operation of Section 14 of the Limitation Act.**”

As the present appeal relates to filing of an application under Section 34(3) of the Act of 1996, it is the judgment in **Union of India** vs. **M/s Popular Construction Company** (supra) which applies and therein as noticed above, it has been held that the period of limitation prescribed in Section 34(3) of the Act of 1996 cannot be extended.

In view of the above, I find no infirmity in the impugned order. The same is upheld. The appeal is dismissed.

REKHA SHARMA, J.

AUGUST 20, 2008
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