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

+ O.M.P. 373/2011

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Order delivered on: 24.10.2011

MUNICIPAL CORPORATION OF DELHI

..... Petitioner

Through : Mr. Sudhir Kathpalia, Adv. for
Ms. Suparna Srivastava, Adv.

versus

M/S ENGINEER DEVELOPMENT CORPORATION Respondent

Through : Ms. Anusuya Salwan, Adv.

CORAM:**HON'BLE MR. JUSTICE G.S.SISTANI****G.S.SISTANI, J. (ORAL)****I.A.NO.7791/2011**

1. This is an application filed by the petitioner seeking condonation of 304 days' delay in re-filing the objections under Section 34 of Arbitration and Conciliation Act.
2. The undisputed facts, which have led to filing of present application, are that an award was made and published on 10.3.2010. The objections were to be filed within a period of 90+30 days (total 120 days). It is not in dispute that the objections were filed on 1.7.2010 within the period of limitation. The objections were returned to the counsel for the petitioner in the second week of July, 2010, on account of certain defects. The defects were removed and the

objections were re-filed on 29.4.2011, thereafter on 7.5.2011 and lastly on 11.5.2011 resulting in 304 days delay in re-filing. Reasons for condonation of delay in re-filing are stated in paras 3 and 4 of the present application, which read as under:

“3. It is submitted that the Counsel for the Petitioner has filed the present petition before this Hon’ble Court on 1.7.2010 which was not cleared by the Registry due to certain defects. The said file was received by the Court Clerk of the present Counsel from the Registry to remove the defects. However, the Court Clerk of the Counsel representing Petitioner in the 2nd week of July 2010, informed the counsel that he has to go to his hometown village due to some family emergency but never returned back to the Counsel’s office despite making repeated attempts to contact him. It is submitted that the entire case file was in custody of the said clerk and it went missing in spite of making repeated attempts by the Office staff to trace it. Thereafter, only now the said file was found along with some other case file, which was the file of a regular matter and thus the same is being filed now after curing the defects.

4. As stated herein above the petition is being filed today alongwith the present application for condonation of delay in re-filing of the present petition. The delay caused is unintentional and same is sincerely regretted. The present application is bonafide and in the interest of justice.

3. Learned counsel for the petitioner submits that objections could not be re-filed on account of sufficient grounds as the Clerk of the counsel after filing the objections had gone to his hometown village due to his family emergency and he did not return despite the counsel

having made repeated efforts. Counsel further submits that the file was in the custody of the clerk and thus the defects could not be removed and objection re-filed within the time allowed.

4. Learned counsel for the petitioner has relied upon *Delhi Jal Board v. Digvijay Sanitations & Anr.*, reported at 160 (2009) DLT 92, a decision rendered by a Single Judge of this court whereby delay of ten and a half months in re-filing the objections was condoned. Counsel for the petitioner submits that in the above case the Court was of the view that litigant cannot be made to suffer on account of the inaction or negligence on the part of the counsel. Even otherwise the court was convinced that after the objections were returned the same were misplaced as two cases were pending having a similar cause title and more so the uncle of the counsel was seriously sick and he could not attend to his work. Counsel for the petitioner has also relied upon the observations made by a Division Bench of this Court in the case of *Delhi Development Authority v. R.S. Jindal*, reported at 2007 (10) DLT 42 wherein it has been observed that the statutory authority has to rely upon their counsel who conduct cases and when the counsel admitted that there was default by mistake in the office of the counsel the statutory authority should not be made to suffer for the mistake of the counsel.
5. Learned counsel for the respondent has vehemently the opposed present application for condonation of delay in re-filing the objections on two grounds firstly the present application is vague and lacks material particulars and secondly this application does not

disclose sufficient grounds for condonation of 304 days delay in re-filing the objections. Counsel next submits that in the case of *Delhi Jal Board* (supra) and *Delhi Development Authority Vs. Jindal* (supra), which have relied upon by counsel for the petitioner, both - the Division Bench as well as the Single Judge of this Court -- have also held that delay in re-filing cannot be condoned once there is inaction and negligence and the application for condonation of delay should not be allowed in a routine manner and as a matter of right.

6. Learned counsel for the respondent has relied upon *Union of India v. Popular Construction Company*, reported at 2001 8 SCC 470, wherein the Apex Court has held that the Court has no power to condone the delay in filing objections after 90+30 days. It is contended that aim and object of the present Arbitration Act is to ensure that there is finality in Arbitration matters without inordinate delay by the parties and in case delay is condoned it would run contrary to the mandate of the legislature as the intent of the legislature was to limit the period during which the objections can be filed.
7. Heard counsel for the parties and also perused the application filed by the petitioner seeking condonation of delay in re-filing the objections. A bare reading of the application, which runs into four paragraphs, would show that the reasons mentioned for delay in this application are that in the second week of July the clerk of the counsel had to go to his home town and thereafter he did not return. At this stage it would be useful to refer to the objections which have

been raised by the Registry on 01.07.2010. The objections raised by the Registry are as under:

1. Court fee of Rs.20/- should be affixed (1)
2. Court fee of Rs.2.75/- should be affixed over urgent application, vakalatnama and IA(s) (3)
3. Caveat report be obtained/ at the time of each subsequent filing and proof of service be filed. (101)
4. Fresh notice of motion upon Counsel for concerned respondent be filed if 3 days have elapsed since the date of last service. (102)
5. Petition / applications/ annexures/ order/ power of attorney should be stamped and the head figure of the court fee should be punched. (109)
6. Petition / applications / power of attorney be signed and dated. (110)
7. Petition be properly classified/ nomenclature be given. (127)
8. Vakalatnama be filed and signed/ dated. Each Advocate must mention their complete name/ address/ enrolment number and phone number in Vakalatnama. Title on the Vakalatnama be checked. Signature of the client be identified. (137)
9. IA for condonation of delay in re-filing be filed with delay day."

8. A bare perusal of the objections raised by the Registry would show that the same were elementary in nature and did not require assistance of the client. As per the averment made in the application for condonation of delay, after filing of the petition, the same was received from the Registry by the court clerk of the counsel for petitioner and thereafter he proceeded on leave in the second week of July and thereafter did not return. The record of this case shows that

after 01.07.2010 the objections were filed on 31.04.2011 and thereafter on 07.05.2011 and 10.05.2011.

9. Before dealing with the arguments of counsel for the parties, I deem it appropriate to re-visit the law laid down by the Apex Court on the subject in question. In the case Union of India v. Popular Construction (Supra) the Apex Court has held that the Act prescribes a mandatory period of limitation of three months for filing objections against an award which could at most be extended by another 30 days. It has further been held that beyond the period of 30 days the Court is powerless to condone the delay. The question of condonation of delay in re-filing is to be considered under the Scheme of the Act, which has prescribed the period of limitation for filing objections i.e. 90 + 30 days 'but not thereafter'. In the case of Gautam Associates Vs. Food Corporation of India (2009) 111 DRJ 744 it has been held that condonation of delay in a petition under Section 34 has to be viewed differently than the condonation of delay in other cases because if there is unnecessary liberalness in condonation of delay, then the ratio of the Supreme Court in the case of Union of India v. Popular Construction (Supra) will be set at naught. The very object of arbitration is speedy justice and quick determination of the disputes.
10. In the case of Executive Engineer Vs. Shree Ram Construction Co. 2010 (120) DRJ at page 615 (a decision of the Division Bench of this court), the Division Bench has observed that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious

conclusion, especially where commercial and business contracts arise. In the case of Executive Engineer (Supra) the Division Bench had an occasion to deal with four petitions [FAO(OS)] which had been filed against different orders of a Single Judge of this Court. The relevant paragraphs 29 and 41 of the Judgment are reproduced below:

“29. Reliance on the decision in Improvement Trust, Ludhiana –vs- Ujagar Singh, (2010) 6 SCC 786 to the effect that “justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold” is of no avail in the backdrop of the A&C Act which decidedly and calculatedly shuts off curial discretion after the expiry of thirty days beyond three months having elapsed from the date on which a copy of the Award had been received by the appealing party. In the context of the A&C Act, it appears to us that liberality in condoning delay in refiling would run counter to the intention of Parliament which has employed plain language to facially prescribe a cut off date beyond which there is no latitude for condonation of delay. And this is for very good reason. Across the Globe, it has been accepted that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business conflicts arise. We think it wholly impermissible to extend or expand the time for concluding judicial proceedings at the second stage, that is, that of refiling, when this is impermissible at the very initial stage, that is, of filing objections to an award. It will be apposite to immediately recall the dicta of Union of India –vs- **Popular Construction Company**, (2001) 8 SCC 470. We can do no better than reiterate the words therein – “the history and scheme of the 1996 Act supports the conclusion that the time- limit prescribed under Section 34 to challenge an award is absolute and unextendible by Court under Section 5 of the Limitation

Act". This very reasoning has also been clarified and followed in Chief Engineer of BPDP/REO, Ranchi –vs- **Scoot Wilson Kirpatrick India (P) Ltd.**, (2006) 13 SCC 622 in these words:-

8. The decision in Union of India -vs- Popular Construction Company, (2001) 8 SCC 470 did not deal with specific issues in this case. In that decision it was held that in respect of "sufficient cause cases" the provisions of Section 34(3) of the Act which are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short "the Limitation Act"). The position was reiterated in State of Goa -vs- Western Builders, (2006) 6 SCC 239 and also in Fairgrowth Investments Ltd. -vs- Custodian, (2004) 11 SCC 472. There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act.

41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the refiling of the Objections. Since this delay crosses the frontier of the statutory limit, that is, three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D.Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing Counsel, namely, Ms Prem Lata Bansal. We have called for the records of OMP No.291/2008 and we find that the Objections have not been signed by Late Shri

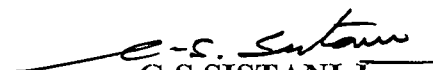
R.D.Jolly but by Ms Sonia Mathur on 9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D.Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of re-filing of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal. CM No.5212/2009 is also dismissed.”

11. The facts of the present case are to be considered keeping in view the judgments relied upon by counsel for the parties and the law laid down by the Supreme Court.
12. While dealing with an application for condonation of delay, the court must satisfy itself that the delay was due to bona fide reasons and not on account of inaction, carelessness or negligence on the part of the petitioner. A perusal of the objections raised by the Registry would show that the objections were of such a nature could have been easily removed at the earliest opportunity available, however, the petitioner has shown complete negligence in not re-filing the objections after removing the defects within a reasonable period. The grounds in the application are devoid of particulars nor the petition is supported by the affidavit of the clerk, lawyer who had employed the clerk nor sufficient material to show that as to how long the clerk was working in the office of the lawyer.

13. Having regard to the settled position of law and applying the same to the facts of the present case delay of 304 days in re-filing the objections cannot be condoned on account of complete inaction and negligence on the part of the petitioner. It may also be added that petitioner before this Court is not an ordinary litigant. Petitioner is a Department, which has its own Law Office and a Legal Department and they are well aware about the period of limitation and the law on the subject. It was for the petitioner to really to have taken appropriate steps to have the objections re-filed within the prescribed period with an affidavit duly attested and thereafter in case of any objections clear the same to ensure that Department does not suffer on account of inaction and negligence. In the facts of the present case, the enormous delay in re-filing and for which there are no bona fide reasons or explanation, cannot be condoned as the same would run contrary to the mandate of the legislature.
14. In view of above, present application cannot be allowed and the same is accordingly dismissed.

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15. In view of the order passed in I.A.NO.7791/2011, present petition is beyond the period of limitation and the same is accordingly dismissed.


G.S.SISTANI, J

OCTOBER 24, 2011

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