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

† O.M.P. 756/2011

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Judgment Delivered on: 05.01.2012

DELHI TRANSCO LIMITED & ANR Petitioner

Through: Mr.S.K. Dubey, Mr.Vibhor Gupta and
Mr.Vivek, Advocates

versus

HIYTHRO ENGINEERS PVT LTD Respondent

Through: Mr.Dharmesh Misra, Mr.Siddhant Asthana
and Mr.Gaurav Malik, Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

IA.No.16371/2011

1. This is an application under Section 151 CPC read with Section 5 of the Limitation Act, seeking condonation of delay in re-filing the petition under Section 34 of the Arbitration & Conciliation Act. Before dealing with the rival submissions of counsel for the parties, the undisputed facts may be noticed.
2. In this case, the arbitrator rendered his award on 23.02.2011 and on an application filed by respondent herein, the award was modified by an order dated 22.04.2011. The petitioner admittedly filed his objections to the award within the period of limitation i.e. within 90 days on 01.07.2011. The objections were returned by the Registry, and re-filed on 21.09.2011 resulting in 72 days delay in re-filing.
3. The grounds seeking condonation of delay have been set out in

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paragraphs 2, 3 and 4 of the application. I deem it appropriate to reproduce the same.

“2. That the petitioner had filed the aforesaid petition on 02.07.2011 vide diary no.91466 in the registry of this Hon’ble Court which was returned under objections on 05.07.2011. The same was collected by the junior counsel as the clerk of the counsel for the petitioner was on leave those days. Unfortunately the petitioner after taking under objections was tagged with other files and therefore remained untraceable till 18.09.2011. Ultimately the office of the petitioners counsel started reconstructing the record for the fresh filing.

3. In the meanwhile on 19.09.2011 the counsel of the petitioner while making search for some other files suddenly found the petition aforesaid and there is a delay of about 50 days in refilling the above said petition.

4. That the delay in refilling the aforesaid petition is neither deliberate nor intentional, but has occurred due to bonafide reasons, explained herein above. It is submitted that if the delay is not condoned, the petitioner shall suffer loss and injury.”

4. Mr.Dubey, learned counsel for the petitioner submits that the delay in re-filing was neither intentional nor on account of carelessness or racklessness on behalf of counsel for the plaintiff. It is submitted that the objections were tagged with another file and therefore, remained untraced till 18.09.2011 and thereafter the counsel for the petitioner while searching for another file came across the same on 19.09.2011. He further submits that this court has wide powers to condone the delay in re-filing, as the rigors of condonation of delay in re-filing are not as stringent as condonation of delay in filing objection under Section 34 of the Arbitration & Conciliation Act, 1996. Counsel further submits that in case a party is able to show sufficient grounds to meet the ends of justice

Court should ensure that a meritorious matter is not thrown out on technicalities and the courts must exercise its discretion in favour of the petitioner and decide the matter on merits. Counsel for the respondent has vehemently opposed this application.

5. The first submission of Mr. Misra, counsel for the respondent is that an application under Section 5 of the Limitation Act, is not maintainable. In support of this submission counsel for the respondent has relied upon a judgment rendered by Division Bench of this Court in M/s. Competent Placement Services through its Director/ Partner Vs. Delhi Transport Corporation through its Chairman 2011 (2) R.A.J. 347 (Delhi). The second submission of counsel for the respondent is that the application filed by the petitioner is extremely casual in nature and it lacks material particulars and no sufficient grounds are made out for condoning the delay in re-filing the objections. Counsel also submits that having regard to the decision of the Apex Court in the case of Union of India Vs. Popular Construction CO. (2001) 8 SCC 470, the Supreme Court has held that no petition under Section 34 of the Arbitration & Conciliation Act, can be entertained beyond 90+30 days. It is contended that in case delay in re-filing is condoned without any cogent reason, it would run contrary to the mandate of the Legislature and the law laid down by the Apex Court. The third submission of counsel for the respondent is that even otherwise, the present application cannot be entertained, as the application has not been re-filed within the time allowed by the Registry. Keeping in view the Rule 5 Chapter '1' of Volume V of High Court Rules and Orders, which provides that the Deputy Registrar, Assistant Registrar, may specify the objections and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate to be fixed by him. And further in case the re-filing is not done within the time

allowed and beyond 30 days it would amount to fresh filing.

6. Elaborating his argument further counsel for the respondent submits that in the facts of this case, the objections were filed on 01.07.2011 and returned on 05.07.2011, and the objections were to be removed within 7 days. Since, admittedly the objections were not removed within the time allowed, and beyond 30 days it would amount to fresh filing of the objections, and thus would be squarely hit by the decision rendered by the this Court in the case of Competent Placement Services (Supra). Mr.Misra has also placed reliance in support of this argument on a decision rendered by another Single Judge of this Court in the case of M/sGautam Associates Vs. Food Corporation of India (2010) 2 R.A.J. 595 Delhi.
7. In response to the submission made by counsel for the respondent, Mr.Dubey, counsel for the petitioner has drawn attention of the Court to the observations made by the Division Bench in the case of Competent Placement Services (Supra) and more particularly paragraph 9, which is reproduced below:

“9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in refiling are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refiling the petition.”

8. While relying on the aforesaid paragraph, Mr.Dubey submits that there is ample powers with the Court to condone the delay even if the objections were filed beyond the period of 30 days, as Division Bench has held that rigors of condonation of delay in re-filing are not as strict as condonation

of delay of filing petition under Section 34 (3) of the Arbitration & Conciliation Act.

9. To buttress his argument further, Mr. Dubey counsel for the petitioner submits that while deciding the matter the Division Bench has noticed the Delhi High Court Rules and thus this court should exercise discretion in favour of the petitioner and condone delay of 72 days. Counsel for the petitioner has also relied upon Union of India Vs. Mohan Lal Harbanslal Bhayana & Co. [2001 (4) RAJ 248 (Del.)], and more particularly paragraphs 5, 7 and 9, which read as under:

“5. Section 34(3) of the Act provides that period for limitation within which an application can be filed for setting aside of the award. It is three months from the date of receipt of the arbitral award or if request has been made under Section 33 from the date on which such request has been disposed of. There is a proviso to sub-section (3) to Section 34 which permits that court to condone the delay if there is a sufficient cause for making the application beyond three months but 30 days is the outer limit in this regard. In other words, after the expiry of 30 days delay even cannot be condoned. In the present case in hand, the review petitions had been filed and was finally disposed of on 10th February, 2000. Objections have been filed on 25th May, 2000 i.e. to say after the expiry of the three months period. The short question Therefore that arises for consideration is that whether there was sufficient cause for making the application beyond three months. The expression 'sufficient cause' as such has not been defined. Even it is not defined in the Limitation Act because necessarily facts of each case has to be examined on its own merit. By the large the meaning of sufficient cause must be drawn as it exists in Section 5 of the Limitation Act, 1963. This question as to what would be the meaning of sufficient cause came up for consideration before the Supreme Court in the case of Shakuntala Devi Jain Vs. Kuntal Kumar & Ors. AIR 1969 SC 575. The Supreme court held that the expression sufficient cause should be given a liberal meaning and in this regard while approving the earlier decision of the Madras High Court held:

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7. The next question is whether the delay in filing the certified copy or, to put it differently, the delay in re-filing the appeal with the certified copy should be condoned under Section 5 of the Limitation Act. If the appellant makes out sufficient cause for the delay the Court may in its discretion condone the delay. As laid down in Krishna v. Chathappan. 1890 13 Mad 269 "Section 5 gives the Courts a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words "sufficient cause" receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fides is imputable to the appellant."

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7. From the perusal of what has been reproduced above, the conclusions can conveniently be drawn that the Legislature in its wisdom did not define the expression sufficient cause. This is for the reason that facts of each case necessarily have to vary. The precise factual reasons for delay within the general ambit of the expression sufficient cause must be established and that too to the satisfaction of the court. However, the powers of the court have not to be exercised arbitrarily. They have to be weighed on judicial scales. But the said power must be exercised to advance the substantial justice rather than confine to the narrow compass. If a party is negligent and not interested necessarily it will not be a sufficient cause for condensation of delay. One would hasten to add that as noted above, there cannot be a precise and definite conclusion in this regard because it is the facts of the case which take prominence and the front seat.

9. However, learned counsel for the respondent highlighted the fact that despite such a fact that objections were filed within 30 days of the expiry of the limitation three months still when the same were returned, again for 2-1/2 months the objections were not filed. The plea already reproduced above on behalf of the petitioner, is that the file after it was returned was mixed up with certain other files and was traced by the

counsel only after the department asked about next date of hearing. There is precious little on the record to disbelieve. Otherwise also once he objections had been filed and delay had been condoned as recorded above, it shows that the petitioner indeed was interested in pursuing the matter. The said delay also is condoned on payment of Rs.2,000/- as costs."

10. I have heard counsel for the parties and also considered their rival contentions. In the case of Executive Engineer Vs. Shree Ram Construction Co. 2010 (120) DRJ at page 615, 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

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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. In the case of *P.K. Ramachandran Vs. State of Kerana & Anr.* (1997) 7 SCC 556, the Supreme Court has held that an essential pre-requisite of exercising discretion to condone the delay is that the Court must record its satisfaction that the explanation for delay was either reasonable or satisfactory. There is no quarrel to the proposition that the Supreme Court had consistently held that while dealing with the application under Section 5 of the Limitation Act the Court must take a liberal approach, and the application for re-filing should not be subjected to rigorous test which are usually applied in cases under Section 5 of the Limitation Act, however, the present case is to be considered in the light of the Arbitration & Conciliation Act, 1996 and the aims and objects of the legislature.
12. In this case the grounds for condonation of delay do not inspire confidence. The petitioner has been highly careless in pursuing re-filing of objection. Any liberal approach in the facts of this case would completely run against the intention of Parliament, which has fixed a cut-off date beyond which there can be no condonation of delay. In my view petitioner has not been able to satisfy this court that the delay in re-filing

the objection was on account of *bona fide* reasons, but on the contrary the delay was on account of the carelessness, inaction and negligence on the part of the petitioner. Admittedly the petitioner has the benefit of a legal department, it is their responsibility to see that the objections are filed within the period of limitation. It is also their responsibility to ensure that half baked objections are not filed and thereafter in case any objection is raised the same is removed within the time allowed and thereafter to ensure that the same is re-filed, as early as possible to safeguard their own interest. In case the objections were misplaced the petitioner should have taken appropriate steps at the earliest and not waited for 72 days.

13. A bare reading of Rule 5, Chapter '1', Part A of Volume 5 of High Court Rules and Orders, would show that the objection can be re-filed within a time not exceeding 7 days at a time and 30 days in aggregate to be fixed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with note also makes it abundantly clear that in case objection is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of the Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution although the order passed by the Deputy Registrar, Assistant Registrar, Incharge of Filing Counter can be assailed by filing an appeal to the Judge in Chamber and in case the Court comes to the conclusion that the party was prevented from sufficient cause in not complying with Rule 5 (1) (A) the Court would not be powerless in condoning the delay.
14. It may be noticed that in the present case no such appeal has been filed. I have carefully examined the application, which has been filed seeking condonation of delay.
15. The consistent view of Courts has been that before considering an application for condonation of delay and before condoning the delay the

Court must satisfy itself that a party was prevented by sufficient cause from filing the application.

16. There is no quarrel to the proposition and the submissions made by counsel for the petitioner that even if Section 5 of the Limitation is not applicable to an application seeking condonation of delay in moving the application under Section 34 Sub-Section 3 of the Act and an application seeking condonation of delay in re-filing, however, the courts have ample powers to condone the delay in re-filing for sufficient reasons. It would be useful to reproduce Rule 5 of the Delhi High Court Rules and Order:

“The Delhi High Court Rules framed in exercise of power conferred under Sections 122 and 129 of the Code of Civil Procedure, 1908 and Section 7 of the Delhi High Court Act, 1967, were amended w.e.f. 1st December, 1988 and Rule 5 in Chapter 1-A (a) of Volume 5 was substituted to read as under:-

“Rule 5(1) The Deputy Registrar/Assistant Registrar, In-charge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

Rule 5(2) If the memorandum of appeal is not taken back, for amendment within the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution. **Rule 5(3)** If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Explanation: The period of seven days or thirty days mentioned above shall commence from the date, the objections are put on the notice board.

Note: The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether Civil or Criminal.”

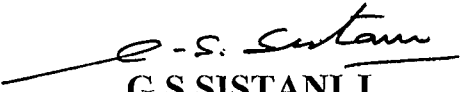
17. The application to say least is extremely casual in nature and does not disclose any specific details. The application is only supported by the affidavit of the petitioner. The application is not supported either by the affidavit of the clerk, who had mis-placed the objections or of the junior counsel, who had accepted the objection from the Registry. The application is blissfully silent on these issues.
18. Keeping in view the aim and object and purpose of legislature to limit the time for filing the objection which is 90 + 30 days and not thereafter, and the decision of the Apex Court is a mandate that matters pertaining to arbitration & Conciliation Act, should not be prolonged and should be decided expeditiously. In case the delay in re-filing the objection, is condoned merely as a matter of routine, the aim of the legislature will be frustrated. In case the objections had been mis-placed the petitioner should have immediately taken all steps available either by filing fresh objections or such other remedies which were available to the petitioner, who is not an uneducated illiterate individual but a company with a responsible legal department.
19. The decisions relied upon by counsel for the petitioner are not applicable to the facts of the present case, and the present case is fully covered against the petitioner by the decision rendered by the Division Bench in the case of Executive Engineer (Supra). Accordingly, the application is without any merit and the same is dismissed.

IA.No.16370/2011

20. In view of order passed in the application [I.A. No.16371/2011], the application is dismissed.

O.M.P. 756/2011

21. In view of order passed in the application [I.A. No.16371/2011], the suit is dismissed.


G.S.SISTANI,J

JANUARY 05, 2012

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