

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 08.11.2013

+ **FAO(OS) 230/2013 & CM No.7187/2013**

**NAGALAND INDUSTRIAL RAW MATERIALS & SUPPLY
CORPORATION LIMITED**

..... Appellant

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr K.N. Balgopal, Sr. Advocate alongwith
Mr Mohit Chadha & Mr T. A. Prakash.

For the Respondents : Mr Saqib for UOI.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This appeal has been preferred against the order dated 06.03.2013 in IA No.16577 (for condonation of delay of 112 days in re-filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996). The learned Single Judge had dismissed the said application on the ground that the condonation of delay would amount to granting a relief contrary to the provisions of the said Act.

2. Yesterday, this Bench has delivered a judgment in **DDA v. M/s Durga Construction Co., FAO(OS) 485-86/2011** on the issue of whether the delay in re-filing a petition under Section 34 of the said Act can be condoned by the Court. In that context this Court had observed as under:-

“18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.

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20. It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.

21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond

the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in *M/s. Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman*: 2011 (2) R.A.J. 347 (Del) has held as under:-

“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.”

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25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our

view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred.”

3. From the above, it is clear that while, the Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in Section 34(3) of the said Act. However, the Court would have to be satisfied that the petitioner had pursued the matter diligently and the delays were beyond his control and were unavoidable. It is also emphasised that a liberal approach in condoning the delay in re-filing an application under Section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application for setting aside an award under Section 34 of the Act could be preferred.

4. In the present case, we find that the learned Single Judge has not returned a finding as to whether there was sufficient cause to explain the delay in re-filing the petition. This is so because of the view taken by the learned Single Judge, in law. Now, when the position has been clarified in our decision in ***Durga Construction*** (*supra*), we feel that the matter be remanded to the learned Single Judge for returning a finding and for considering as to whether the application for condoning the delay, in re-filing the petition under Section 34, on the part of the appellant deserves to be condoned or not. Consequently, the impugned order is set aside and the matter is remitted to the learned Single Judge to decide the IA

No.16577/2011 on merits. It will be open to both the side to take up all issues.

5. The appeal stands disposed of accordingly.

BADAR DURREZ AHMED, J

**NOVEMBER 08, 2013
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VIBHU BAKHRU, J

