

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

Date of decision: May 06, 2015

+ O.M.P. 275/2015 & IAs 8568-69/2015

ASHOK ENGINEERING CORPORATION

..... Petitioner

Through: Mr.Chinmoy Pradip, Adv.
with Mr.Atul Kumar,
Mr.Rajiv K.Raj, Mr.Sayan
Ray, Advs.

versus

BHARAT HEAVY ELECTRICALS LTD.

..... Respondent

Through: Dr. J.C. Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **06.05.2015**

IA 8568/2015

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P. 275/2015 & IA 8569/2015

1. The challenge in this petition under Section 34 of the Arbitration & Conciliation Act, 1996 is to the award dated May 31, 2014 received by the petitioner on August 02, 2014, whereby the learned Arbitrator has dismissed the claims on the ground of limitation. The petition is accompanied by an application seeking condonation of delay of 124 days in re-filing the petition. I note that

in the application seeking condonation of delay in re-filing, the following are the averments made:-

“1. That the petitioner had filed the accompanying appeal on 1.11.2014 with the registry of this Hon'ble Court raised some objection(s). The counsel for the petitioner was travelling around this time due to which the defects of the registry could not be rectified within 30 days from the date of the first filing.

2. That the counsel for the petitioner is now re-filing the accompanying appeal by correcting and rectifying all objection raised by the registry but there is a delay. The delay occurred is not substantial and is totally inadvertent and unintentional on the part of the respondent herein.

3. That inadvertently delay due to mistake of clerk of counsel. The file remained in objection and was not taken back from the registry when it came to notice of the counsel, the file was taken back. That after taking the file from registry, the objection was removed and immediately refilled.”

2. Suffice to state, the application being vague and devoid of relevant facts, does not show sufficient cause to condone the delay in re-filing the petition. An application for re-filing must offer satisfactory explanation. This Court in the case reported as **2014(1)**

RAJ 490 Delhi Development Authority vs. Durga Construction

Company held as under:-

“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. Even on merits the learned Arbitrator has dismissed the claim petition on the ground of limitation by concluding as under:-

“On the question of limitation, the Tribunal is of the view that BHEL's contention is well founded, The cause of action or right to sue arose to A.E.C, when it completed the work and submitted the bill for payment. According to section 9 of Limitation Act 1963, the cause of action once commenced, .does not stop The exact language of Section 9 is as follows:-

"9, Continuous running of time- Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it:

Provided that where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues.”

4. I agree with the aforesaid conclusion of the learned Arbitrator.

5. The application and the petition are dismissed.

V. KAMESWAR RAO, J

MAY 06, 2015/km