THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.12.2016

\+ **FAO (OS) 231/2016**

STEEL AUTHORITY OF INDIA LIMITED ... Appellant

versus

M/S EVEREST ROLLING INDUSTRIES PRIVATE LIMITED ... Respondent

<u>Advocates who appeared in this case</u>:-

For the Appellant : Mr Shaiwal Srivastava

For the Respondent : Ms Gaganpreet Chawla

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE ASHUTOSH KUMAR

<u>JUDGMENT</u>

<u>BADAR DURREZ AHMED, J</u>

1. This appeal has been preferred against the judgment and / or order dated 23.05.2016 delivered by a learned single Judge of this court in OMP 20/2016 and IA Nos.6525-6526/2016. By virtue of the impugned judgment, the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), which was filed by the appellant, was dismissed on the ground of limitation.

2. The arbitral award was made on 20.10.2014 and was received by the appellant on 03.11.2014. Initially, the appellant filed OMP No.198/2015

under Section 34 of the said Act. This petition was filed in this court. It was admittedly filed on the 89th day from the receipt of the award by the appellant. Notice was issued on the said OMP. But, the same was withdrawn by the appellant on 17.03.2016 allegedly on the objection raised on behalf of the respondent that the petition had been filed before this court, which did not have jurisdiction to entertain the same and that the same ought to have been filed before the Principal Civil Court of Original Jurisdiction.

3. It would be pertinent to note that the petition (OMP 198/2015) was withdrawn unconditionally by the learned counsel for the appellant. This would be evident from the order dated 17.03.2016 which permitted the withdrawal and which reads as under:-

> "Learned counsel for the petitioner wishes to withdraw the present petition. Such statement was also made before the Joint Registrar.
>
> The petition is disposed of as withdrawn."

4. After withdrawal of the said OMP No.198/2015, the appellant filed a subsequent petition being OMP (COMM.) 241/2016 again in this court on 18.04.2015. This petition, that is, OMP (COMM.) 241/2016 was also

withdrawn by the learned counsel for the appellant on 09.05.2016 with liberty to file a fresh petition in accordance with law. On the next day, that is, on 10.05.2016, OMP 20/2016 under Section 34 of the said Act was filed in this court. It is this OMP which has been dismissed as being barred by limitation on account of the fact that it had been filed beyond the period of three months and 30 days which, in the maximum, could have been available to the appellant in view of the provisions of Section 34 (3) of the said Act.

5. The explanation given by the appellant for following this course of events have been set out in paragraphs 9, 10, 11 and 12 of the said OMP No.20/2016 and the same are reproduced hereinbelow:-

> "9. The arbitral Award was passed on 20 October 2014, however, the same was received by SAIL on 3 November 2014. Within three months from the receipt of the said Award, the petitioner filed an OMP no. 198/2015 before this Hon'ble Court on 31.01.2015. The Hon'ble Delhi High Court was pleased to issue notice to the Respondent on 04.03.2015.
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> 10. After notice when the matter was taken up for consideration on 17.03.2016, it was realized that the petition so filed due to bonafide belief was inadvertently filed in before a wrong forum and therefore, the petitioner withdrew the said petition on 17 March 2016. But in view of the amendment in the Arbitration and Conciliation Act, 2015 effective from 23.10.2015 and since the subject matter related to an "international commercial arbitration" for which purpose, the court of competent jurisdiction is the Hon'ble High Court, fresh

OMP No. 241 of 2016 under Section 34 of the Act, 1996 (Amended) was filed on 18.04.2016.

11. The above petition was taken up for consideration by this Hon'ble Court on 09.05.2016. It however transpired that the value of the present matter being less than "Specified Value", as defined under Section 2(i) of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts, Ordinance 2015, the petition could not be entertained by this Hon'ble Court as a Commercial Court under the abovesaid Ordinance 2015, but under its ordinary jurisdiction. This Hon'ble Court, under the circumstances, vide its order of 09.05.2016 was pleased to grant liberty to the petitioner to withdraw the petition (so that petition could be filed under its ordinary jurisdiction).

12. The petitioner has been advised to submit that in absence of any other equally efficacious alternative remedy / forum for redressal of petitioners grievances other than under the provisions of the Act 1996 (amended) read with the ordinance 2015, the present petition is being preferred before this Hon'ble Court with an application under Section 34(3) of the Arbitration and Conciliation Act, 1996 (Amended) read with Section 5 and Section 14 of the Limitation Act, 1963 seeking condonation of delay in filing the present petition before this Hon'ble Court."

6. It is evident from the above that the petitioner seeks the benefit of Section 14 of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act') for the period 31.01.2015 to 17.03.2016 during which OMP 198/2015 was pending before this court. The same benefit is sought for the period commencing on 18.04.2016 and ending on 09.05.2016 during which OMP (COMM.) 241/2016 was pending before the learned single

Judge. In addition, the appellant is also claiming the benefit of the proviso to Section 34(3) of the said Act. From the impugned judgment, it is evident that the learned counsel for the appellant had conceded to the fact that on the withdrawal of OMP 198/2015 on 17.03.2016, the petition should have been filed latest by the next day, that is, 18.03.2016. The impugned judgment also records the concession on the part of the appellant's counsel that the benefit of Section 14 of the Limitation Act for pursuing a remedy before a wrong forum would not be available for the period after 18.03.2016. Despite these concessions made by the learned counsel for the appellant, the present appeal has been filed. According to the learned counsel for the appellant, the concessions on points of law would not bind the appellant.

7. Even if we were to give this benefit to the appellant, let us examine as to whether OMP 20/2016 was within the prescribed period of limitation. Section 34(3) of the said Act reads as under:-

> "**34. Application for setting aside arbitral award.–**
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> (1) xxxx xxxx xxxx xxxx
>
> (2) xxxx xxxx xxxx xxxx
>
> (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.
>
> xxxx xxxx xxxx xxxx"

8. It is material to note that the normal period for filing an application for setting aside an award is, *inter alia*, three months from the date on which the party making the application had received the arbitral award. The first OMP, that is, OMP 198/2015 was filed on the 89th day and, therefore, when the same was withdrawn on 17.03.2016, a fresh OMP could be filed, if at all, on the very next day because only one day was left. This is, even if we were to give the benefit of Section 14 of the Limitation Act to the appellant for the period 31.01.2015 to 17.03.2016 during which OMP 198/2015 was pending before the learned single Judge. But, the appellant did not file any petition under Section 34 of the said Act on the next day and the next petition, that is, OMP(COMM.) 241/2016 was, in fact, filed only on 18.04.2016, that is, 32 days later. According to the learned counsel for the appellant, the appellant would get the benefit of the proviso and, thereby it would have had a further 30 days time to file the

petition. The petition was ultimately filed on the 32nd day after the withdrawal. Since the court was closed on 15th, 16th and 17th of April 2016, that is, three days, according to the appellant, these three days ought to be excluded and, therefore, the filing of OMP (COMM.) 241/2016 would have to be regarded as having been filed on the 29th day of the 30 days available under the proviso to Section 34(3). It was further contended that OMP (COMM.) 241/2016 was ultimately withdrawn on 09.05.2016 and the period of its pendency before this court from 18.04.2016 to 09.05.2016 ought to be excluded in view of the provisions of Section 14 of the Limitation Act. Thus, according to the learned counsel for the appellant, since OMP 20/2016 was filed the very next day, that is, on 10.05.2016, it was within limitation as it was on the 30th day as permitted under the proviso to Section 34(3) if the computation is done in the manner as indicated by the learned counsel.

9. We have examined these arguments and have also taken note of the arguments of the learned counsel for the respondent that the proviso to Section 34(3) would only come into operation 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 is only in that event

that the court could entertain the application within a further period of 30 days, but not thereafter.

10. Upon a plain reading of the provisions of Section 34(3) and, in particular, the proviso thereto, it is evident that before the further period of 30 days is triggered, the condition precedent is that the court must be satisfied that the applicant was prevented by sufficient cause from making the application within the prescribed period of three months. In the present case, we note that when OMP 198/2015 was withdrawn on 17.03.2016, there was only one day left out of the initial period of three months for making the application. But, the petition was filed only 29 days later (giving the benefit of 3 days when the courts were closed between 15^{th} to 17^{th} of April 2016). There is no reason given as to why the petition could not have been filed on the very next day. As long as there is no satisfaction of the court that the applicant was prevented by sufficient cause from making the application within the period of three months, there is no question of the applicant seeking to avail the further period of 30 days under the proviso.

11. Thus, we see that, even if we give the greatest of the latitude to the appellant, first, by allowing him to retract from his concessions, second, by giving him the benefit of section 14 of the Limitation Act in respect of both the OMPs 198/2015 and OMP (COMM.) 241/2016, as also the fact that the withdrawal of OMP 198/2015 was unconditional, yet the petition remains barred by time. There is no merit in the appeal. The same is dismissed. The parties shall bear their own costs.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

December 01, 2016

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