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

+ O.M.P. (COMM) 19/2016

GOYAL AGROS & ORS. Petitioners
Through Mr.Vishal Arun, Adv. with
Mr.Ujjawal Kumar, Adv.

versus

EICHER TRACTORS (NOW KNOWN AS EICHER MOTORS LTD.)
Through None Respondent

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

ORDER
% **29.01.2016**

I.A. No.1166/2016 (exemption)

Exemption allowed, subject to just exceptions.

The application is disposed of.

**O.M.P. (COMM.) No.19/2016, I.A. No.1165/2016 (for stay) and
I.A. No.1167/2016 (for condonation of delay in re-filing the
petition)**

The petitioners have filed the present petition under Section 34(2)(a) (i), (ii), (iii), (iv) and (b) (i) of the Arbitration and Conciliation Act, 1996, for setting-aside the *ex parte* Arbitral Award dated 12th February, 2009 published by the sole Arbitrator. Along with the petition, the petitioners have filed two applications, one being I.A. No.1165/2016 seeking stay of the impugned Award, and another being I.A. No.1167/2016 for condonation of delay of 250 days in re-filing the petition.

The impugned Award is an *ex parte* Award which was passed on

12th February, 2009. The petitioners were aware about the pendency of the proceedings and were duly represented earlier before the Arbitrator. However, later on, they stopped appearing before the Arbitrator.

The contention of the petitioners is that they came to know about the impugned Award only after the Court notice published in the newspaper 'Hari Bhumi' on 12th February, 2015 that an execution proceeding is pending before the Addl. District Judge, Jhajjar, Haryana. The petitioners appeared before the said Executing Court on 25th March, 2015 and obtained the certified copies of the said proceedings along with the impugned Award which were made available to them on 5th May, 2015. The present objection petition was initially filed in the Registry on 13th May, 2015. However, the same was lying under objections which were removed and it was re-filed on 22nd January, 2016. There is a delay of 250 days in re-filing of the present petition.

Learned counsel for the petitioners argued that after having the knowledge about the passing of the Award, the present petition has been filed in time and no doubt, there is a delay of 250 days in re-filing the same. I do not agree with the learned counsel for the petitioners, in view of the fact that the petitioners were appearing before the Arbitrator and later on they stopped appearing and ultimately, on 16th April, 2008 they were proceeded *ex parte*. The petitioners cannot take the advantage under these circumstances. It was the duty of the petitioners to track the arbitration proceedings if they had chosen not to appear before the Arbitrator. The objections, therefore, could have been filed in time. On the face of the record, the present objections are not filed within the prescribed period of

time as stipulated under Section 34 of the Act and against the settled law, in the case of ***Union of India vs. M/s Popular Constructions Co.***, reported in AIR 2001 SC 4010. The delay, thus, cannot be condoned. There is also a delay of 250 days in re-filing the petition. Even otherwise, the said delay also cannot be condoned, as the petitioners were having full knowledge about the arbitration proceedings and under the settled law, since the petitioners were appearing before the Arbitrator, they had deeming knowledge about the Award passed on 12th February, 2009.

The objection petition as well as the pending applications are accordingly dismissed.

MANMOHAN SINGH, J.

JANUARY 29, 2016/vp/ka