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

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**O.M.P. 470/2015**

**SRAVANTHI INFRATECH PRIVATE LIMITED** ..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with  
Mr. Piyush Joshi & Ms. Preksha Dugar,  
Advocates.

versus

**GREENS POWER EQUIPMENT (CHINA) CO. LTD.** ..... Respondents

Through: Mr. Chetan Sharma, Senior Advocate with  
Mr. Atul Kumar, Mr. Arun Gaur & Mr.  
Amit Gupta, Advocates.

**CORAM: JUSTICE S.MURALIDHAR**

**ORDER**

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**19.10.2016**

**IA No. 3716 of 2016 (u/O 1 Rule 10 (2) CPC)**

1. This is an application filed by the Petitioner, Sravanthi Infratech Private Limited ('SIPL') under Order 1 Rule 10 (2) of the Code of Civil Procedure 1908 ('CPC') seeking impleadment of Joint Provisional Liquidators ('JPLs') of the 100% holding company of the Respondent, Greens Power Equipment (China) Company Limited ('GPECL'), viz., Greens Holdings Limited ('GHL'), Hongkong on the ground that in terms of the announcement made in relation to the Cayman Court "having appointed inspectors for examining the affairs of the GHL and its subsidiaries."

2. Mr. Dayan Krishnan, learned Senior counsel appearing for the Petitioner draws attention of the Court to the announcement issued on behalf of GHIL by the JPLs. It is submitted that since the affairs of the Respondent, GPECL are also a subject matter of such investigation, it is necessary to implead GHIL through its JPLs as parties to the present petition.

3. The Court finds that although the investigation was ordered into the affairs of GHIL and its subsidiaries, the appointment of the JPLs was only in respect of GHIL and not its subsidiaries. It is further seen that while in the course of investigation into the affairs of GHIL it was noticed that one of the Executive Directors of GPECL had been arrested and detained for allegedly destroying various accounting vouchers and accounting books etc., there is nothing in any of the notices to indicate that the affairs of GPECL were being investigated. GPECL and GHIL are separate legal entities that can sue and be sued in their own capacity. In the circumstances, the Court fails to appreciate how GHIL or its JPLs are necessary parties to the present petition. The application is accordingly dismissed.

**IA No.18528/2015 (for condonation of delay in filing the petition)**

**IA No.18529/2015 (for condonation of delay in re-filing the petition)**

4. These are applications for condonation of delay in the filing and re-filing of the petition by Sravanthi Infratech Private Limited (SIPL) against Greens Power Equipment (China) Co. Ltd. (GPECCL) under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') challenging an Award dated 25<sup>th</sup> February, 2015 of the Arbitral Tribunal (AT) in the disputes between the parties.

5. In the application for condonation of delay in filing the petition, it is stated that a copy of the Award was received by the Petitioner on 24<sup>th</sup> March, 2015. It is pointed out that 90 days period of limitation ended on 22<sup>nd</sup> June, 2015, which was a court holiday. The Court opened after summer vacations on 29<sup>th</sup> June, 2015. However, the petition could be filed on 10<sup>th</sup> July, 2015 resulting in a delay of 11 days.

6. One explanation offered is that there were three other separate agreements between the parties resulting in three separate Awards being passed in the disputes between the same parties. It is stated that Respondent had admitted that the various agreements were part of the same transaction and therefore the impugned Award in the present case was not a standalone Award. It had to be treated as part of a series of arbitration and, therefore, the limitation did not begin to run till the last of the Awards was passed.

7. The above explanation is unacceptable for the simple reason that the attempt by the Respondent to have the separate arbitrations consolidated failed with the order passed by the Court rejecting such request. Therefore the Awards and the limitation for filing the objection petition under Section 34 of the Act would begin to run from the date each of the said Awards were delivered to the Petitioner.

8. In the reply filed to the present application it is pointed out by the Respondent that an e-mail was sent by the ICC International Court of Arbitration (ICA) on 10<sup>th</sup> July, 2015 in which it was stated that the date of

receipt by the Petitioner was 19<sup>th</sup> March, 2015 and not 24<sup>th</sup> March, 2015 as claimed by the Petitioner. It is further pointed out that if one were to go by the above date then the three month period under Section 34(3) of the Act expired on 23<sup>rd</sup> June, 2015. The petition which ought to have been filed on the opening day after summer vacation, i.e., 29<sup>th</sup> June 2015, was in fact filed only on 10<sup>th</sup> July, 2015 with a delay of 22 days.

9. It is further pointed out that the outer limit of 120 days from the receipt of the Award by the Petitioner in terms of Section 34(3) of the Act expired on 22<sup>nd</sup> July, 2015 even if 24<sup>th</sup> March, 2015 was taken to be the date of receipt of the Award by the Petitioner.

10. It appears that on 13<sup>th</sup> July, 2015 on scrutiny of the petition filed, the Registry checked it and marked the following defects:

“No document filed, no Vakalatnama, no resolution/authority, no application for condonation of delay, no affidavit, no signature of party on the petition etc.”

11. The defects pointed out by the Registry had to be cured within 30 days as per Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders and this date fell on 12<sup>th</sup> August, 2015. However, by this date the defects were not removed. The position continued even on 18<sup>th</sup> & 20<sup>th</sup> August, 2015 when again the defects marked by the Registered were not cured.

12. It is pointed out by the Respondent as under:

“Petition was neither signed by the Petitioner and nor by the counsel for the Petitioner, all previous objections were not removed. The

application for condonation of delay in refiling the petition is not signed and dated by the Petitioner. The Petitioner was asked to file condonation of delay in refiling the petition.”

13. It is only on 3<sup>rd</sup> September, 2015, the petition was refiled but again without removing the complete defects. Therefore, for the purposes of Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders, the date of filing of the petition had to be considered as 3<sup>rd</sup> September, 2015. It is stated that there is a delay of 83 days in filing the petition and in the absence of any application seeking condonation of delay filed at the time of initial filing of the petition no indulgence is sought to be granted to the Petitioner. Significantly it is pointed out that on 10<sup>th</sup> July, 2015 when the petition was first filed it contained only 66 pages whereas when it was refiled on 18<sup>th</sup> August, 2015 it consisted 859 pages.

14. Having considered the submissions of the learned counsel for the parties, the Court is of the view that although the number of days delay in filing the petition was 17 days, even if the date of receipt is taken as 24<sup>th</sup> March, 2015 as claimed by the Petitioner what was filed could not be considered as a petition. What was filed was a petition without a *vakalatnama*, without an affidavit, without signature of the party on the petition. These are fatal defects and what was filed on 10<sup>th</sup> July, 2015 can hardly be considered a proper filing of the petition with there being no documents, no *vakalatnama*, no application for condonation of delay, no affidavit, no authority.

15. Secondly, despite knowing that initial limitation of 90 days in terms of Section 34(3) of the Act had expired on 23<sup>rd</sup> June, 2015 even according to

the Petitioner, the petition was filed only on 10<sup>th</sup> July, 2015. Thus, the Petitioner knew on that date itself that the petition was beyond the 90 days limitation period. The Petitioner ought to have filed an application for condonation of delay on the very date that the petition were filed, i.e. 10<sup>th</sup> July, 2015.

16. Thirdly, the Petitioner also did not pursue the matter diligently despite knowing that the outer limit of 120 days was expiring on 22<sup>nd</sup> July, 2015 and no attempt was made to cure the defects before 12<sup>th</sup> August, 2015, the date on which 30 days period for curing the defects as per Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders expired. The defects were not cured up to 18<sup>th</sup> August, 2015. It was only then that a petition containing 859 pages was filed. When this was compared with the 66 page petition, it confirmed the suspicion that what was initially filed was neither a comprehensive nor a properly signed petition.

17. The excuse given is that the Clerk of the counsel for the Petitioner had misplaced the file is not convincing the Court at all. With there being such enormous delay and given that the delay is beyond 90 days and that in terms of Section 34(3) of the Act a very strict view has to be taken of the delay in filing the petition beyond 90 days it was incumbent on the Petitioner to have been diligent enough to not only ensure that the petition was filed with an application for condonation of delay but also that the petition was re-filed after curing the defects within the period of 30 days from the date on which defects were pointed out.

18. The other strange phenomena is that when the petition was filed on 10<sup>th</sup> July, 2015 it was without any affidavit of the Petitioner. Later when the defects were cured and the petition was re-filed on 18<sup>th</sup> August 2015, the date of the supporting affidavit and the signing of the petition by the Petitioner was shown as 10th July 2015. In other words they were ante-dated to 10<sup>th</sup> July, 2015. This is *prima facie* an attempt to falsify the record.

19. The Court is not expected to mechanically condone the delay in filing the petition in terms of the proviso to Section 34(3) of the Act. It can only be upon the Petitioner satisfying that the delay was for *bona fide* reasons can the Court proceed to condone the delay. In the present case the Court is unable to be persuaded to hold that the delay in filing and re-filing the petition was for *bona fide* reasons.

20. By filing a petition with just 66 pages to start with (which later on -re-filing grew to 859 pages) with no signature of the petitioner, without affidavit, without *vakalatnama* the Petitioner has sought to defeat the whole object of Section 34(3) of the Act. This Court is statutorily mandated to take a strict view of the outer limit within which petitions under Section 34 of the Act have to be filed. It is, therefore, not possible for this Court to lightly condone the delays that have occurred in the present case in filing and re-filing of the petition.

21. Consequently these applications are dismissed.

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22. In view of the dismissal of the applications for condonation of delay in filing and re-filing the petition, the petition and pending applications are also dismissed.

**S. MURALIDHAR, J**

**OCTOBER 19, 2016**

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