

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

% **Judgment reserved on :14th March, 2016**
Judgment pronounced on: 7th April, 2016

+ **O.M.P. 495/2015 & I.A. Nos.20555-56/2015**

TECHNO FORGE LTD. & ORS. Petitioners
Through Ms.Meera Kaura Patel, Adv.with
Ms.Shivani Singh, Adv.

versus

RELIGARE FINVEST LTD. Respondent
Through Mr.Ajay Uppal, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present petition under Section 34 of Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') for setting aside ex-parte award dated 25th October, 2012 passed by the sole Arbitrator.
2. Along with objections, the petitioner has also filed an application, being I.A. No.20555/2015 for condonation of delay of 1065 days in filing the objections. Notice of the said application was issued by order dated 12th October, 2015.
3. It is stated by the petitioner that an ex-parte arbitral award dated 25th October, 2012 ("impugned award") in the matter titled as '*Religare Finvest Ltd. v. TechnoForge Ltd. & Ors.*' was passed by the sole

Arbitrator appointed by the respondent in respect to loan facility advanced by the respondent, which is subject matter of challenge in the present petition.

4. It is also stated that they came to know about the existence of award on 29th July, 2015, upon receipt of summons from Additional District Court, Ankleshvar, Gujarat where execution of the impugned award vide Exe. R. 40/2014 was preferred by the respondent.

5. On merit, it is admitted by the petitioners that they had obtained the SME loan facility of Rs.30,00,000/- from the respondents (Non-Banking Financial Institution) vide Loan Agreement bearing reference no. XSMEANK00024019 dated 24th April, 2011 which was repayable in 36 equal monthly instalments along with an interest and there are many defaults in repayment of loan amount.

6. Counsel for the respondent has informed the Court that his client is ready to settle the account on reasonable terms. But it appears that the petitioners are not ready with the same. During hearing, the petitioners have not shown any interest to repay the amount due.

7. Section 34 of the Act read as under:-

“34 Application for setting aside arbitral award. —

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

(i) a party was under some incapacity; or

- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
- (iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.

Explanation. —Without prejudice to the generality of sub-clause (ii) it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

8. The objections are not filed within the prescribed period of time.
9. There is admitted delay of 1065 days in filing the objections. Original record is produced by the respondent which has been examined by the Court. It reveals that the copy of the award is received and A.D. cover after service has been tagged with the original record.
10. It appears from the record that the petitioners were fully aware about the pendency of the arbitration proceedings as well as the passing of the award.
11. The delay after expiry of the prescribed period under Section 34 of the Act cannot be condoned. Hence, the objections are dismissed.
12. No costs.

(MANMOHAN SINGH)
JUDGE

APRIL 7, 2016