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

+ O.M.P. 38/2016

LANCO RANI JOINT VENTURE

..... Petitioner

Through: Ms Manisha Agrawal Narain and Ms
Vineeta Bansal, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF
INDIA

..... Respondent

Through: Mr Rajiv Kapoor and Mr Srikant
Sharma, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **29.11.2016**

IA 14757/2016

1. The petitioner has filed the present application seeking condonation of delay of 368 days in re-filing the above-captioned petition. The above captioned petition was filed impugning an arbitral award dated 04.08.2015.
2. It is stated that the petition was filed within the period as specified under Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'). However, the petition was returned under defects on 04.11.2015 and thereafter re-filed on 11.11.2016. A perusal of the application indicates that the only reason for the delay in re-filing is that there was some confusion and a communication gap between the petitioner and its counsel.
3. Mr Kapoor, learned counsel appearing for the respondent has contested the averments made in the application, particularly, the averment made in paragraph 8 of the application wherein it is stated that the

misunderstanding was discovered around 08.11.2016 after the Manager (Commercial) of the petitioner called the petitioner's advocate to make certain enquiries. He submits that the application is dated 10.08.2016 and, therefore, the said averment is palpably incorrect. The affidavit accompanying the application, which is affirmed on 10.11.2016 also refers to the month of August 2016. The learned counsel for the petitioner sought to explain the same by contending that there are several cases between the same parties and, therefore, the date on the application (10.08.2016) may have been cut and pasted from another document.

4. It is necessary to examine the aforesaid contention since, in my view, the reasons indicated by the petitioner to explain the delay in re-filing cannot be accepted.

5. A Division Bench of this Court in **Delhi Development Authority vs. M/s Durga Construction Co.** 2013 (139) DRJ 133 has held that the jurisdiction to condone the delay in re-filing would vest with this Court, however it also cautioned that such a power can be exercised only when the applicant satisfies the Court that it had pursued the matter diligently and that the delays were beyond his control and were unavoidable. The Court further held that power of condoning the delay in re-filing is not to be exercised liberally in view of the principal object of the Act to provide an alternate dispute resolution mechanism for effective and expeditious adjudication of disputes. The relevant extract of the said judgment is as follows:

“25. 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.”

6. In the present case, there has been a delay of 368 days and the reason that there was some misunderstanding between the applicant and its counsel certainly cannot be held to be a sufficient reason to condone such delay in re-filing the present petition.

7. The applicant has not been able to show any sufficient reason for condoning the delay in re-filing, therefore, the present application is dismissed.

8. Consequently, the petition is also dismissed.

VIBHU BAKHRU, J

NOVEMBER 29, 2016
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