

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

+ **FAO No. 177/2013**

% **10th November, 2017**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Abhishek Kumar and Mr.
Vijay Singh, Advocates.

versus

M/s AMBIFIN SYSTEM Respondent
Through: Mr. Somesh Arora and Mr.
Aditya Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act'), is filed by the appellant impugning the judgment of the court below dated 17.1.2013 by which the objections filed by the appellant under Section 34 of the Act have been dismissed as time barred.

2. The following are the admitted facts:

- (i) The award dated 15.5.2007 was served upon the appellant on 23.5.2007.

(ii) A period of four months or 120 days to file objections under Section 34 of the Act would therefore expire on 23.9.2007.

(iii) Appellant however filed objections under Section 34 of the Act in this Court only on 4.10.2007 i.e after expiry of the limitation, and which objections were returned back to the appellant for being filed in the court having pecuniary jurisdiction as this Court did not have the pecuniary jurisdiction.

(iv) The objections were returned by order of this Court dated 28.4.2008. This period from 4.10.2007 till 28.4.2008, therefore can only be excluded for filing of objections under Section 14 of the Limitation Act, 1963.

(v) Appellant thereafter filed the objections in the district court on 30.5.2008.

2. Essentially therefore it is seen that the objections, even though filed in the wrong court of pecuniary jurisdiction i.e this Court, are taken to have been validly filed, yet, the same were filed beyond the limitation period which expired on 23.9.2007 as the objections were filed on 4.10.2007. Consequently, the exclusion of period

beyond 4.10.2007 till 28.4.2008 under Section 14 of the Limitation Act will not in any manner help the appellant because even if benefit of Section 14 of the Limitation Act is given, yet, objections if are deemed to be filed in the district court on 4.10.2007, even then such objections admittedly would be time barred.

3. It is also noted that not only the objections before the trial court would be taken to be filed on 4.10.2007 but the objections would be taken to be filed on 4.10.2007 plus a period of one month and two days i.e the period from 28.4.2008 to 30.5.2008, and therefore this period of one month and two days has to be added to 4.10.2007 and which would take us to 7.11.2007. Therefore, objections filed by the appellant would have to be taken as filed in the District Court on 7.11.2007, and since the limitation for filing of objections expired on 23.9.2007, hence on this court also the objections filed by the appellant would have to be taken as time barred.

4. Once the objections filed by the appellant are time barred, there cannot be condonation of delay in filing of the objections in view of the judgment of the Supreme Court in the case of *Union of India Vs. M/s Popular Construction Company (2001) 8 SCC 470*.

5. In view of the above discussion, there is no merit in the appeal and the same is hereby dismissed.

6. Amount deposited in this Court in terms of the impugned award be released to the respondent by the Registry of this Court, along with accrued interest thereon if any, within a period of four weeks from today.

NOVEMBER 10, 2017

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VALMIKI J. MEHTA, J

