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

+ **O.M.P. (COMM) 167/2017**

ERA INFRA ENGINEERING LTD.

..... Petitioner

Through: Mr Harish Malhotra, Senior Advocate
with Mr Vijay K. Singh, Advocates.

versus

GEODESIC TECHNIQUES PVT. LTD

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.03.2017

VIBHU BAKHRU, J

IA No. 4032/2017

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

IA No. 4030/2017

3. The petitioner has filed the above captioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') assailing an arbitral award dated 16.04.2014 (hereafter 'the impugned award') passed by the sole arbitrator, Justice Tejinder Singh Doabia (Retired).

4. The above captioned petition was filed on 15.07.2014 and was returned under objections on 16.07.2014. It is stated that the counsel engaged by the petitioner was suffering from cancer and was thereafter

hospitalised for substantial period of time during which he was not reachable. It is stated that even the office of the counsel did not apprise the applicant (the petitioner) about the status of the matter. It is stated that in the meantime, Mr Bansal, the learned counsel engaged by the petitioner expired. It is affirmed that after the demise of Mr Bansal, the petitioner contacted the office of the counsel and was handed over the relevant documents only in the last week of February 2017 and the above petition was filed thereafter.

5. It is seen that the present petition has been re-filed after a delay of 945 days and although the applicant had indicated certain mitigating circumstances, this Court is unable to accept that the applicant was prevented by sufficient cause from taking any steps for over a period of two and a half years.

6. It is also relevant to state that the respondent had filed a petition for enforcement of the impugned award (Ex. P. No 315/2014 captioned *M/s Geodesic Techniques Ltd. v M/s Era Infra Engineering Ltd.*). The said petition was moved on 01.09.2014 and on the said date the learned counsel appearing for the petitioner accepted notice and was granted four weeks time to file a reply and the hearing was deferred to 28.01.2015. On the said date - 28.01.2015 - the petitioner indicated that it had filed its objections. Paragraph 10 of the said objections (EA 389/2015) is relevant and is reproduced below:-

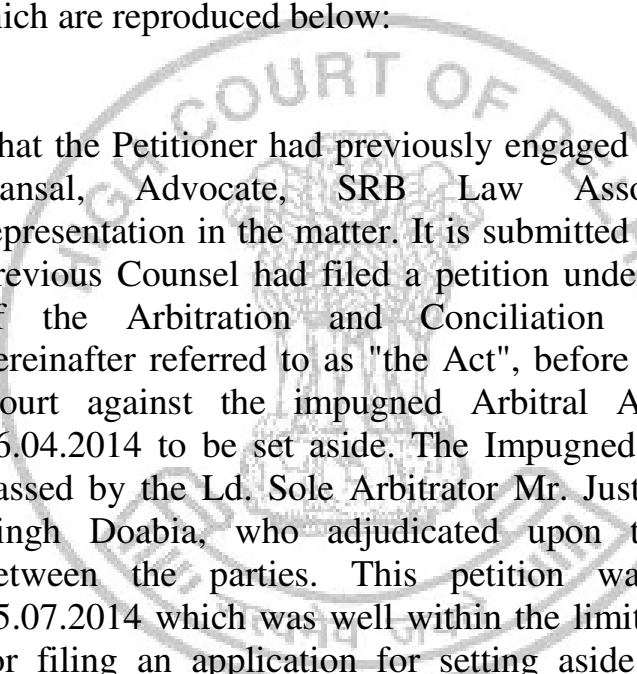
"10. That further without prejudice to the aforesaid, the Judgment Debtor herein preferred filed Petition under Section 34 challenging the Arbitral Award on

15.07.2014 vide Diary No.113170/2014. The Petition, however, came to be returned under objections by the Registry of this Hon'ble Court on 16.07.2014. In the meantime, the offices of both the Counsel for the Objector as also the Objector itself were in the process of shifting to their respective new offices, on account of which many case files/records including the said Petition, which had been returned with defects, along with supporting record were rendered untraceable. It is submitted that the Registered office of the Objector was changed from '370-371/2, Sahi Hospital Road, Jungpura, Bhogal, New Delhi-110014' to '1107, Indraprakash Building, Barakhamba Road, New Delhi-110001'. Despite best efforts of both Counsel and Objector, the said record and Petition could not be retrieved. That while the said search process was on, the official of the Objector Company, Sh. Aniruddha Kumar, who was handling the case record of the said Matter and was also dealing with the same, left the Objector Company in October/November, 2014. Upon his so leaving, the Objector Company appointed a new official to look after the said matter. The newly appointed official along with the Counsel for the Objector made best efforts to trace out/re-construct the case file of the said matter. That after much efforts, the Counsel of the Objector along with the official of the Company were able to unearth the Objection Petition along with the voluminous Case records only in the last week of January, 2015. It is submitted that the Judgment Debtor herein is in the immediate & urgent process of re-filing its objections along with an application seeking condonation of delay in re-filing the same. It is most humbly submitted that further consideration of the present execution Petition (which was even otherwise preferred pre-maturely in contravention of the provisions of law and also which does not seek enforcement of the final Arbitral Award dated 04.07.2014, as stated above) would prejudice the

adjudication of the objection Petition being preferred by the Judgment Debtor herein."

[Emphasis supplied]

7. It is apparent from the above, that even according to the petitioner's stand in that petition (Ex. P. No 315/2014), it had the relevant records by the last week of January 2015 and was fully aware that the present petition was returned under objections. This is contrary to the averments made in the application which are reproduced below:

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- "2. That the Petitioner had previously engaged Mr. Sanjeev Bansal, Advocate, SRB Law Associates for representation in the matter. It is submitted that the said previous Counsel had filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the Act", before this Hon'ble Court against the impugned Arbitral Award dated 16.04.2014 to be set aside. The Impugned Award was passed by the Ld. Sole Arbitrator Mr. Justice Tejinder Singh Doabia, who adjudicated upon the disputes between the parties. This petition was filed on 15.07.2014 which was well within the limitation period for filing an application for setting aside an Arbitral Award. However, the petition was returned by the Registry for the purposes of removal of defects (Diary No. 113170/2014) on 16.07.2014. The petitioner was under bona fide impression that the objection under Section 34 of the Arbitration and Conciliation Act has been filed and is pending adjudication before this Hon'ble Court.
3. It is humbly submitted that thereafter the previous Counsel took to sudden illness and became unavailable for all work purposes. It was subsequently known to the

petitioner that the then Counsel Mr. Sanjeev Bansal was suffering from Cancer. The Counsel was hospitalized for a substantial period of time during which he was not reachable. The office of the then Counsel also could not apprise the Applicant about the status of the matter and the petitioner was under the impression that the said objection is pending adjudication before this Hon'ble Court. And consequently, the Applicant learnt about the unfortunate death of the then Counsel Sh. Sanjeev Bansal.

4. After his death, however, the authorized representative of the Applicant/Petitioner contacted his office to collect the brief pertaining to this matter. But it was only after repeated follow ups that the documents were finally handed over to the authorized representative of the Applicant in the last week of February 2017."

8. It is apparent from the above, that no credence can be placed on the averments made in the application. It is also material to note that objections (EA 389/2015 in Ex. P. No. 315/2014) were filed by the petitioner through M/s SRB Law Associates. It appears, that the petitioner has simply sought to take undue benefit of a counsel's demise. Although it may be appropriate to initiate proceedings for perjury, this Court is refraining to do so.

9. This Court in the case of **Delhi Development Authority v. Durga Construction Co: 2013 (139) DRJ 133** had held that while this Court has jurisdiction to condone delay in re-filing, such jurisdiction cannot be exercised liberally and the discretion to condone delay must be exercised keeping in view the legislative intent of restricting the period for filing an application under Section 34 of the Act to three months.

10. In the circumstances, the application is dismissed.

O.M.P. (COMM) 167/2017 and IA No. 4031/2017

11. In view of the above order, the present petition and the application are also dismissed.

12. The Registry is directed to place a copy of this order in the file pertaining to Ex. P. No. 315/2014.

MARCH 30, 2017
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VIBHU BAKHRU, J

