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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 489/2015 & IA No. 19896/2015

UNION OF INDIA & ORS

..... Petitioners

Through: Mr Joydeep Mazumdar and Mr Debojyoti
Bhattacharya, Advs.

versus

J. SONS COMPANY LTD. J/V NARENDRA ENGINEERS

..... Respondent

Through: Mr Raman Kapoor, Sr. Adv. with Mr F.
Hasan, Advs.

CORAM: JUSTICE S.MURALIDHAR

ORDER

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25.01.2017

**IA No.19897/2015 (delay of 25 days in filing the petition) and IA
No.19898/2015 (delay of 148 days in re-filing the petition)**

1. These two applications have been filed by the Petitioner, Union of India. IA No.19897/2015 seeks condonation of delay of 25 days in filing of the main petition i.e., OMP No.489/2015 under Section 34 of the Arbitration & Conciliation Act, 1996 ('Act') challenging the Award dated 19th November, 2014 passed by the Arbitral Tribunal ('ÁT') by a majority of 2:1, and IA No.19898/2015 is an application seeking condonation of delay of 148 days in re-filing of the petition.

2. The facts relevant for deciding these two applications are that an Award was passed on 19th November, 2014 by a majority of 2:1. In paragraph 3 of

IA No.19897/2016 it is averred that the Award was received by the Petitioners on 1st December, 2014 and that the petition under Section 34 was filed on 26th March, 2015.

3. In seeking to explain the delay of 25 days in filing of the petition, it is stated that even as of date, a signed copy of the Award has not been received by the Petitioners. To make good this plea, an affidavit has been filed of Mr. Manoj Sharma, Deputy Chief Engineer dated 25th March, 2015 stating that he had deputed the Chief Office Superintendent along with a letter dated 16th May, 2015 to the Presiding Arbitrator with the request that he should be supplied with the signed copy of the Award. It is stated that the Presiding Arbitrator refused to entertain the officer and also did not provide a signed copy of the Award. It is reiterated in the affidavit that the Petitioners do not yet have a signed copy of the Award.

4. The Petitioners could have justified their not filing a petition at all on the ground that the limitation for the purposes of Section 34 (3) does not commence till a signed copy of the Award is received as explained by the Supreme Court in ***Benarsi Krishna Committee v. Karmyogi Shelters (P) Ltd. (2012) 9 SCC 496***. However, the fact remains that the non-availability of the signed copy of the Award did not really come in the way of the Petitioners filing the present petition. At one stage they did decide to challenge the impugned Award, possibly aware of the consequences of not doing so. For that purpose, the Petitioners reckoned 1st December, 2014, the date on which they purportedly received a copy of the Award as the point for limitation.

5. Having opted to challenge the Award without waiting for the signed copy, the course open to the Petitioners would have been to file an application seeking exemption from filing the signed copy of the Award and offering in the said application the explanation that they have not yet received a signed copy of the Award. It is further significant that till date, no such application has been filed seeking exemption from filing a signed copy of the Award. Nevertheless, since the Petitioner claims not to have received a signed copy of the Award till date, the delay of 25 days in filing the petition is condoned. I.A. No. 19897 of 2015 is allowed.

6. Now, turning to the delay in re-filing the petition. The petition was checked by the Registry of the Court on 23rd March 2015 itself. The defects were reported on 27th March, 2015. One defect was that the petition was "barred by limitation". Further it was pointed out that "In heading of the petition date of award is mentioned 27.05.2014 whereas in the prayer and plaint date of award is 19.11.2014." The other defects as noted at S. Nos. 16, 101, 102, 103, 107, 110, 130 and 137 were also notified.

7. The 'log information' provided to the Court by the Registry shows that the petition was thereafter refiled only on 19th September, 2015 is short of six months after the initial filing. In other words, for over a period of nearly six months after the defects were first notified, the Petitioners did not choose not to take steps to rectify them and re-file the petition. The delay in re-filing was 148 days.

8. In the second application i.e., IA No.19898/2015, the explanation for the

inordinate delay of 148 days in re-filing is given just one paragraph 3 which reads thus:

"That as the above Petition was filed based on a photocopy of the impugned award, the Petitioners requested to the Arbitrator to kindly send a copy of the signed Award, in terms of the expressed provision of Section 31 (5) of the Arbitration and Conciliation Act, 1996, so that the same may be filed before this Hon'ble Court. However, all such efforts of the Petitioners went futile. Petitioners respectfully states that in this manner a considerable time was lost in curing the defects raised by the Registry of this Hon'ble Court and re-file the above Petition before the Registry of this Hon'ble Court. Further delay was caused due to long summer vacations."

9. The above explanation is in two parts. The first is concerned with the time taken by the Petitioner to obtain a signed copy of the Award. As is seen hereinbefore, this issue was no longer relevant as far as re-filing of the present petition is concerned. The second part of explanation is simply that "considerable time was lost in curing the defects raised by the Registry". No valid explanation is offered for the delay of nearly six months for curing the defects and re-filing the petition.

10. The Court here is concerned with the delay in filing and re-filing a petition under Section 34 of the Act which lays down strict time limits. The legislative intent is that beyond 120 days from the date of receipt of the signed copy of the Award, even the Court has no discretion to condone the delay. This discretion cannot be exercised in manner that defeats the very purpose of Section 34 (3) of the Act. The Division Bench of this Court in ***Delhi Development Authority v. M/s Durga Construction Co. 2013 (139) DRJ 133***, after reviewing the case law till then observed *inter alia* that while the Court would have the jurisdiction to condone the delay, the approach in

exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. It was further observed in the same decision that the delay in re-filing cannot be permitted to frustrated, which is the object of the Act i.e., the arbitration proceedings should be concluded expeditiously.

11. Following the decision in *Delhi Development Authority v. M/s Durga Construction Co.* (*supra*) in *Green Valley CGHS Ltd. v. M/s Gurcharan Singh* [decision dated 7th April, 2016 in OMP No.238/2015], this Court on the facts of the case noted that the application for delay in re-filing the petition did not contain "any valid reasons."

12. The present case appears to be no different. As already noticed in the application seeking condonation of delay in re-filing of the petition, the principal reason has been the inability to obtain a signed copy of the Award, which reason as already noted, is not at all relevant in view of the facts in the present petition. After obtaining a signed copy of the Award, the Petitioner was expected to act diligently in curing the defects and ought to have re-filed the petition within a period of 30 days in terms of the applicable rules and, in any event, with a proper explanation for the delay beyond 30 days in re-filing. There is, in fact, no explanation whatsoever, let alone any explanation for every day's delay.

13. At this stage, learned counsel for the Petitioners sought liberty to file a

better affidavit for explaining the delay. In this context, it requires to be noted that the application for condonation of delay in re-filing is dated 19th September, 2015 whereas the affidavit in support of such application is dated 22nd July, 2015. One possible inference is that the Petitioner was in a position to re-file the petition around the date of the affidavit i.e., 22nd July, 2015 and yet chose to wait till 19th September, 2015 to file the application. The other possible explanation is offered by Mr Raman Kapoor, learned senior counsel for the Respondent. He draws the attention of the Court to the fact that on 19th August, 2015 an order was passed by this Court in Execution Petition No. 124/2015 attaching the properties of the Petitioners which included its bank account. Further, the appeal filed by the Petitioner against that order being EFA(OS) No. 38/2015 was dismissed by the Division Bench of this Court on 18th September, 2015. On the very next date the petition was re-filed. This is apart from the fact that the application dated 19th September, 2015 could not have been supported by the affidavit sworn two months earlier.

14. All this goes to show that the Petitioner was not really serious about re-filing the petition after curing the defects till the circumstances compelled it to act. This lethargic approach of the Petitioner certainly cannot be accepted. The Court, therefore, is not granting any further indulgence to the Petitioner to file a better affidavit. There was sufficient time from 19th September, 2015 till the date the prayer for that purpose.

15. Since no reasons have been given for condoning the inordinate delay of 148 days in re-filing the petition, the Court dismisses I.A. No. 19898/2015.

16. However, the net result is that in view of the dismissal of I.A. No.19898/2015, O.M.P. 489/2015 and the pending application also stand dismissed.

S.MURALIDHAR, J

JANUARY 25, 2017

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