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

+ **ARB.P. 791/2016**

DAIRY CHEM CORPORATION

..... Petitioner

Through: Mr. Virender Tarun with Mr. Chirag
Mahalwal, Advs

versus

HIMALYA INTERNATIONAL LTD

..... Respondent

Through: Mr. Ankit Parhar with Mr. Aviral
Dhirendra, Advs

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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04.02.2019

I.A. No. 1609/2019 (Exemption)

1. Allowed, subject to just exceptions.

I.A. No. 1608/2019 (against the order dated 22.11.2018 passed by the learned Arbitrator)

2. The captioned interlocutory application has been filed in a disposed of Arbitration petition. The Arbitration petition was disposed of on 20.01.2017.

3. Via this application, challenge is laid to an order dated 22.11.2018 passed by the learned Arbitrator.

4. The applicant is aggrieved, in effect, by the direction issued by the learned Arbitrator whereby the Statement Of Defence ('SOD') filed by the non-applicant has been taken on record after 1/ ½ years.

5. It is the applicant's case that under the rules governing the arbitration proceedings carried out under the aegis of Delhi International Arbitration

Centre ('DIAC'), delay can be condoned for a maximum period of 60 days.

6. To my mind, apart from the fact, such an application could not have been preferred in a disposed of Arbitration petition and that too under Section 34 read with section 9(3) of the Arbitration and Conciliation Act, 1996. Furthermore, even in merits the application seems to be misconceived, at least, at this stage.

7. A perusal of the order passed by the learned Arbitrator would show that he has allowed the non-applicant, to place on record, its statement of defence as the earlier statement of defence was not taken on record by the centre, in view of the fact that it had been filed belatedly.

8. Learned Arbitrator appears to have permitted taking on record the non-applicant's SOD, as otherwise, it would virtually have no defence available on record.

9. As to the reason why the learned Arbitrator permitted filing of a fresh SOD, appears to rest on the circumstance that the erstwhile Advocate had not acted with due alacrity and thereby compromised interest of his client i.e. the non-applicant.

10. Learned Arbitrator has thus taken on record the fresh SOD, subject to payment of cost of Rs. 5000/- by the non-applicant.

11. Furthermore, the learned Arbitrator has taken a view that time prescribed in the rules is directory in nature and not mandatory.

12. In my opinion, these are matters, which can be tested once the award is passed and not at this stage.

13. Furthermore, I am sure the learned Arbitrator will take into account

the aspects with respect to admissions, if any, having been made in the previous SOD and limitation, if any, which, may have expired, would bar the prosecution of counter claims which are, I am told, incorporated in the fresh SOD.

14. The application is, accordingly, disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

FEBRUARY 04, 2019

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