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

+ **FAO(OS) (COMM) 196/2017 & C.M.No.41072/2017 (delay)**

BABU JAGJIVAN RAM MEMORIAL HOSPITAL..... Appellant
Through **Mr. Devesh Singh, Advocate.**

versus

M/S GORKHA SECURITY SERVICES Respondent
Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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14.11.2017

This intra-Court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('the Act') impugns order dated 7th March, 2017, whereby petition/objections filed by the appellant under Section 34 of the Act were held to be barred by limitation.

2. The appeal, which goes into as many as 18 typed pages, challenges and questions the award dated 23rd May, 2016 on merits. The impugned order does not examine the objections under Section 34 on merits, as they were filed belatedly, beyond the time of 90 days stipulated in the Act and also beyond the further period of 30 days.

3. The award dated 23rd May, 2016 was served on the counsel for the appellant on 23rd May, 2016. The petition/objections under Section 34 of the Act were filed on 6th March, 2017, after a period of 192 days. The delay beyond 30 days cannot be condoned in view of the mandate and provisions of the Section 34(3) which reads:

"34 (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

4. The Supreme Court in ***State of Maharashtra v. Hindustan Construction Co. Ltd.*** (2010) 4 SCC 518, emphasised the mandatory nature of the outer time provided in the proviso to Section 34(3) and held that an application for setting aside an arbitral award under Section 34 of the Act has to be made within the time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter. Delay thereafter cannot be condoned.

5. The present appeal is also belated and delayed by 150 days and an application seeking condonation of delay has been filed. However, as we do not find any merit in the present appeal, we are not inclined to issue notice in the application seeking condonation of delay.

6. The application seeking condonation of delay is dismissed and as a sequitur, the appeal would be also treated as dismissed.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

NOVEMBER 14, 2017

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