

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No. 80 of 2017**

1. Bilaspur Municipal Corporation Through Its Commissioner Vikash Bhawan, Near Nehru Chowk Bilaspur District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. Meinhardt Singapore Pvt. Ltd. (India Branch) Having Corporate Office At A-8, Sector-16, Noida 201 301 Uttar Pradesh
2. Chief Executive Officer, State Urban Development Authority, 3rd Floor RDA Building Raipur Chhattisgarh
3. Department Of Urban Administration And Development, Through Secretary Mantralaya, Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh
4. Mayor In Council, Through Mayor Bilaspur Municipal Corporation Vikash Bhawan, Near Nehru Chowk Bilaspur District Bilaspur Chhattisgarh

---- Respondents

For Appellant	:	Shri Kishore Bhaduri and Shri Anumeh Shrivastava, Advocates
For Respondent No.1	:	Shri Sandeep S Tiwari and Shri Amiyakant Tiwari, Advocates
For Respondent No.2	:	Shri B.L. Sahu, Advocate on behalf of Shri AS Kachhawaha, Advocate
For Respondent/State	:	Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra &**Hon'ble Shri Justice Ram Prasanna Sharma****ORDER****Per Prashant Kumar Mishra, J****22/02/2018**

Heard on IA No.01, application for condonation of delay in filing the instant appeal.

2. The instant appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (for short 'the Act of 1996') is barred by 19 days of limitation.

3. The appellant has moved an application for condonation of said delay on the ground that as against order dated 01.9.2017 by which his application under Section 34 of the Act of 1996 was dismissed by the Principal Civil Court of Original Jurisdiction, he preferred writ petition on 13.10.2017 which was heard and reserved for orders on 03.11.2017. Having realized that an appeal is required to be preferred under Section 37 of the Act 1996, the petitioner thereafter moved present appeal on 21.11.2017.

4. Shri Kishore Bhaduri, learned counsel for the appellant, would, thus, argue that the delay in moving the appeal has occurred because the petitioner was *bona fide* pursuing the remedy before this Court under Article 226 of the Constitution of India. He would submit that the Municipal Corporation has suffered an award to the tune of Rs.2,03,51,000/- along with interest @ 9% per annum from the date of award till realization. Therefore, if the appeal is not entertained and heard on merits, the appellant shall suffer huge financial loss. He would refer to the decision rendered by the Supreme Court in **Chief Engineer of BPDP/REO, Ranchi vs. Scoot Wilson Kirpatrick India (P) Ltd.** reported in **2006(13) SCC 622**.

5. Shri Sandeep S Tiwari, Advocate appearing along with Shri Amiyakant Tiwari, counsel for respondent No.1, would oppose the prayer on the submission that the petitioner being a local body was well aware of the period of limitation and the principle that when an appeal is provided under the statute, writ petition is not appropriate remedy, but it chose to prefer the same remedy. It is also argued that order under Section 34 of the Act 1996 being a deemed decree, the same was not open to challenge by way of writ petition, as a decree of the Civil Court has to be assailed by preferring an appeal and not before the writ Court.

6. It will not be out of place to mention here that as against the interim order passed by this Court on 06.12.2017, the respondent had preferred SLP (Civil) No.1340/2018, wherein the Supreme Court passed an order on

16.02.2018, requesting the High Court to dispose of the present arbitration appeal within a span of one month.

7. In view of the order passed by the Supreme Court, we proceeded to hear the matter finally with the consent of learned counsel for the parties.

8. True it is that in the facts and circumstances of the case, when the appellant has moved a writ petition before this Court, he could have preferred an appeal under Section 37 of the Act 1996 simultaneously. However, that is not the only factor on which consideration for condonation of delay should remain confined. The appellant is a local body and has suffered an award to the tune of Rs.2,03,51,000/-, therefore, interest of justice demands that we may apply ourselves to adjudicate the matter further on the submission made by learned counsel for the appellant on other issues. Therefore, we deem it proper to condone the delay of only 19 days in filing the appeal.

9. Accordingly, IA No.01 is allowed and the delay of 19 days in filing the appeal is hereby condoned.

10. When we proceeded to hear learned counsel for the appellant on admission of the appeal, we straightway confronted learned counsel for the appellant on the law laid down by the Supreme Court in the matter of **Union of India vs. Popular Construction Co.** reported in **(2001) 8 SCC 470** as to when an application under Section 34 of the Act 1996 has been dismissed on the ground that the same is barred by limitation having been preferred even after the condonable period of delay, whether it is open to argue the matter on merits of the award.

11. In answer to this query, learned counsel would refer to **Scoot Wilson Kirpatrick India (P) Ltd.** (supra) and argue that it is open for this Court to hear this appeal on the ground as to whether the Court below should have condoned the delay or not.

12. Learned counsel for the respondent would also agree that this appeal against the impugned order would be maintainable only to the extent as to whether the order refusing condonation of delay is proper or not.

13. Despite the above, the appellant has the most difficult hurdle to cross inasmuch as under Section 34 (3) of the Act 1996. An application for setting aside the award has to be preferred within 90 days with the proviso allowing the District Court to condone the delay in moving the application by another 30 days, however, the application has been filed beyond the period of 120 days and the District Court has no power to condone the delay of more than 30 days.

14. The law in this regard is settled that if the Court or authority has been conferred jurisdiction to condone the delay up to a certain period and the proceedings have been filed after the expiry of said condonable period of delay, the application itself is not entertainable. [See : **Singh Enterprises Vs. Commissioner of Central Excise, Jamshedpur & Ors.** reported in **2008 (221) ELT 163 (SC)**].

15. In view of the above settled legal position, the appellant having admittedly preferred an application under Section 34 of the Act 1996 after 120 days, the Court below was fully within its power to refuse to condone the delay.

16. If the order passed by the Court below is justified on this ground, the law laid down by the Supreme Court in the matter of **Popular Construction** (supra) would squarely apply to this case inasmuch as when application under Section 34 of Act 1996 has been dismissed on the ground of delay, an application under Section 37 of the Act 1996 is not maintainable for hearing on merits.

17. For the foregoing, the appeal under Section 37 of the Act 1996 deserves to be and is hereby dismissed.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Ram Prasanna Sharma)
Judge