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

+ O.M.P. (COMM) 255/2018 & IAs 8342-43-44-45/2018

RAJESHWARI INFRASTRUCTURE LIMITED & ANR.

..... Petitioners

Through: Mr.M.N.Rao, Sr. Adv. with Ms.Promila,
Mr.Thanan Jayan, Advs.

versus

INTEC CAPITAL LIMITED

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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03.07.2018

IA 8343/2018

Exemption allowed subject to all just exceptions.

IA 8344/2018

This is an application seeking condonation of 144 days delay in filing the present petition. The petitioners have challenged the Arbitral Award dated 5th November, 2015 by way of the present petition.

It is submitted by the counsel for the petitioners that before filing of this present petition, the petitioner had challenged the Impugned Award by way of OP No.88/2016 before the High Court of Madras. The High Court vide its order dated 7th November, 2017 dismissed the said petition on the ground of lack of territorial jurisdiction. Thereafter, the present petition has been filed by the

petitioners on 9th April, 2018.

The petitioners apart from claiming the benefit of Section 14 of the Limitation Act, gives the following as a reason for seeking condonation of delay.

“.....Thereafter, the petitioner collected papers from the local Council and also other documents for the purpose of filing the present O.P. before this Hon’ble Court.”

Section 14 of the Limitation Act provides for exclusion of time during which the plaintiff (petitioners herein) has been prosecuting with due diligence another civil proceeding in good faith in a Court which, from defect of jurisdiction or other case of a like nature, is unable to entertain it. Though the complete proceedings and the order of the High Court of Madras are not before this Court, even if it is assumed that the petitioners were indeed prosecuting the petition under Section 34 of the Act before the High Court of Madras with due diligence and in good faith, the maximum period that could be excluded for purposes of calculating the period of limitation would be the period between 6th January, 2016 (when the petition before the High Court of Madras is stated to have been filed) to 7th November, 2017 (when the petition was dismissed).

Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the ‘Act’) prescribes the period of limitation and also limits the jurisdiction of the Court to condone any delay in filing of the petition beyond the period of 30 days from the 3 months period as prescribed. Section 34(3) of the Act is reproduced as

under:-

“(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.”

The Supreme Court in **AnilKumar Jinabhai Patel (D) Thr. Lrs. v. Pravinchandra Jinabhai Patel and Ors.**, 2018 SCC OnLine SC 276 has held that the Court would have no power to condone the delay beyond this period of 30 days after the expiry of three months period.

In view of the above even assuming that the petitioners would be entitled to seek benefit of Section 14 of the Limitation Act, the present petition being beyond a period of 30 days from three months period from the date of receipt of the copy of the Impugned Award by the petitioner, the petition would be barred by limitation and this Court would not have jurisdiction to condone this delay.

The application is accordingly dismissed.

O.M.P. (COMM) 255/2018 & IAs 8342(stay) 8345/2018(delay in re-filing)

In view of the dismissal of the application seeking condonation of delay, no further orders are required to be passed in the present petition.

The petition is accordingly dismissed.

NAVIN CHAWLA, J

JULY 03, 2018
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