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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 26th October, 2018

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O.M.P. (COMM) 191/2016

NATIONAL TECHNICAL RESEARCH ORGANIZATION (NTRO)

..... Petitioner

Through: Mr.Ruchir Mishra & Mr.Mukesh Kr.
Tiwari, Advs.

versus

TELECOMMUNICATIONS CONSULTANTES INDIA LIMITED
(TCIL) Respondent

Through: Mr.P.K. Bansal & Ms.Anjali Bablani,
Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed by the petitioner challenging the Arbitral Award dated 06.03.2014 and the order dated 22.01.2015 passed by the Sole Arbitrator on an application filed by the petitioner under Section 33 of the Arbitration and Conciliation Act, 1996.
2. The learned counsel for the respondent has raised a primary objection on the maintainability of the present petition on the ground of it being barred by Law of Limitation as provided in Section 34(3) of the Act. He submits that the period of delay being beyond thirty days from the expiry of three months of the receipt of the Award, cannot be condoned by this Court.

3. On the other hand, the learned counsel for the petitioner submits that the Arbitral Award dated 06.03.2014 (received on 10.03.2014) had been challenged by the petitioner by filing a petition under Section 34 of the Act being OMP 974/2014. The said petition was filed on 01.07.2014, which was within the period of limitation as provided under Section 34(3) of the Act. In the meantime, the petitioner has also filed an application under Section 33 of the Act before the Arbitrator seeking clarification of the interest awarded by the Arbitrator in the Impugned Award. Such application was filed on 19.05.2014. As the said application was pending adjudication before the Arbitrator, on 20.08.2014 the counsel appearing for the petitioner prayed for permission to withdraw the petition under Section 34 of the Act with liberty to challenge the Award after the disposal of the application under Section 33 of the Act by the Arbitrator. This Court by its order dated 20.08.2014 granted permission to the petitioner to withdraw the said petition with liberty as prayed for. The application under Section 33 of the Act was disposed of by the Arbitrator vide order dated 22.01.2015 and the present petition was filed on 11.05.2015, that is, within the period of limitation as prescribed under Section 34(3) of the Act. He submits that in view of the above chronology of events, the present petition was within the period of limitation.
4. Learned counsel for the respondent placing reliance on the judgments of this Court in *Union of India v. Saboo Minerals Pvt. Ltd.*, 2003(3) R.A.J. 354(Del) and *S.P.S. Rana v. MTNL & Ors.*, 2010(5) R.A.J. 66(Del), submits that the application filed by the petitioner under

Section 33 of the Act was infact no application in the eyes of law inasmuch as it had been filed beyond the period of thirty days from the receipt of the Arbitral Award. He submits that the petitioner would therefore, not be entitled to claim the extension of period of limitation on the basis of the pendency of the said application. As far as the order dated 20.08.2014 is concerned, the learned counsel for the respondent submits that the said order has been passed on the submissions of the counsel appearing for the petitioner and therefore, the petitioner cannot take any advantage of the same.

5. I have considered the submissions made by the counsels for the parties. Section 33 of the Act provides for either party to the arbitration proceedings to file an application before the Arbitral Tribunal seeking correction of any computation errors, any clerical or typographical errors or for interpretation of the Arbitral Award on a specific point. Such application, however, has to be filed within a period of thirty days from the receipt of the Arbitral Award.
6. Section 34(3) of the Act prescribes the period of limitation for filing of a petition under Section 34 of the Act challenging the Arbitral Award and reads as under:-

“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.”

7. This Court in ***S.P.S Rana*** (Supra) considered the effect of an application under Section 33 of the Act being filed beyond the period of thirty days on the period of limitation under Section 34(3) of the Act and held as under:-

“6. The first question which arises for consideration is, whether the time of 30 days provided under Section 33(1) of the Act, in the absence of any agreement between the parties of any other time, is extendable.

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9. Section 33 of the Act does not use the words "but not thereafter". However, the period of 30 days is subject to "unless another period of time has been agreed upon by the parties". In our view the said expression has to be read in the same manner as the expression "but not thereafter" was interpreted in M/s Popular Construction Co. (supra). Also, Section 32 inter alia provides for termination of the arbitral proceedings by the final award. Section 32 (3) lays down that the mandate of the Arbitral Tribunal shall terminate with the termination of the arbitral proceedings, subject inter alia to Section 33. It will thus be seen that unless a case is covered by Section 33, the mandate of the Arbitral Tribunal is terminated. Thus, unless an application/petition under Section 33(1) of the Act is preferred within 30 days of the making of the award, the mandate of the Arbitral Tribunal terminates. Once the mandate of the Arbitral Tribunal terminates, it is not possible to file the application / petition under Section 33 of the Act.

10..... One of the main purposes for the re- enactment of the arbitration law was to allow adjudication of disputes by arbitration expeditiously. Seen in this light, it will be found that the period of 30 days provided for preferring the application under Section 33 of the Act is not extendable inasmuch as unless the application is so preferred, there is

no Arbitrator thereafter. We find that the same conclusion has been reached in UOI vs. Saboo Minerals Pvt. Ltd., 106 (2003) DLT 92 and in Ircon International Ltd. vs. Budhraja Mining & Constructions Ltd. MANU/DE/8647/2007 by Single Judges of this Court.

11. That being the position, the petition purportedly preferred by the petitioner under Section 33 of the Act was in fact no petition. Thus the order dated 18th December, 2007 of the Arbitrator holding the petition under Section 33 preferred after 30 days to be not maintainable and the Arbitrator having become functus officio cannot be said to have disposed of the said application. The said order has to be read as an order only intimating that the application did not lie, the Arbitrator having become functus officio. The petitioner is thus not entitled to the benefit of the part of Section 34(3) providing for commencement of the period of three months for applying for setting aside of the order from the date of disposal of the application under Section 33; as such disposal has to be on an application preferred within 30 days provided under Section 33 (1) of the Act. If the application under Section 33 is preferred after 30 days, the order of the Arbitral Tribunal to the effect that it cannot entertain the application, being functus officio, is not a "disposal" from which a fresh period of limitation would accrue. If such an interpretation were to be given, it will easily permit the unscrupulous litigants to, notwithstanding the expiry of the period of three months prescribed under Section 34(3) apply for setting aside of the award at any stage by merely prior thereto filing a application under Section 33 of the Act."

8. Applying the ratio of the above judgment to the facts of the present case, it has to be held that the application filed by the petitioner under Section 33 of the Act, being filed beyond the period of thirty days from the receipt of the copy of the Award, was no application in the eyes of law and therefore, the petitioner was not entitled to seek the

benefit of extension of period of limitation under Section 34(3) of the Act on the basis of pendency of such application before the Arbitrator. Once this period is excluded, the delay in filing of the present petition would be beyond the period of thirty days from the expiry of three months from the day of receipt of the Arbitral Award by the petitioner and such delay cannot be condoned by this Court.

9. As far as the order dated 20.08.2014 is concerned, the same was passed on the basis of submission made by the counsel for the petitioner that an application under Section 33 of the Act is pending before the Arbitrator and the petition filed is premature. This clearly was a submission made in ignorance of the law.
10. This order, however, cannot be read as extending the period of limitation for filing of the petition, being passed on a self invitation by the petitioner and without apprising the Court that the application under Section 33 of the Act had not been filed within thirty days of receipt of the Arbitral Award.
11. In view of the above, the present petition is dismissed on the ground of limitation, leaving it open to the petitioner to seek such other remedy as may be open to it in law.

NAVIN CHAWLA, J

OCTOBER 26, 2018/rv