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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO 222/2018, CM APPL. 19970/2018, CM APPL. 19971/2018**

**JANTA AYURVEDIC AUSHADHI PRATISHAN & ORS**

..... Appellants

Through: Mr. Vishal Sinha, Advocate.

Versus

**CHEMIMPEX HOLDING PVT LTD & ORS**

..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**16.05.2018**

The appellant's application under section 34 of the Arbitration and Conciliation Act, 1996 challenging the Arbitral Award of Rs. 1,71,61,583/- dated 13.01.2017 on the ground that they have no notice of the Arbitral Proceedings. The application under section 34 of the Act was dismissed on the ground that it was not filed within a prescribed time. The impugned order *inter alia* held as under:-

*“4. I have considered the submissions and perused the judicial record. It is observed that the award was passed on 13.01.2017 but, the present application u/s 34 of the Arbitration and Conciliation Act, has been filed on 12.10.2017. There is nothing in the plaint showing as to when the petitioners had received the copy of the award or when the petitioners came to know about passing of the Award in question; the pleadings in the petition are vague; the petitioners have not moved any application seeking condonation of delay; no request in the plaint has been made to condone the delay.*

*(a) The provisions u/s 34 (3) of the Arbitration and*

*Conciliation Act, 1996 requires that the application for setting aside the Arbitral Award, be made within three months from the date on which, the party (who is moving the petition), had received the Arbitral Award or the same may be filed even after the lapse of the aforesaid period within a period of thirty days if, the court is satisfied that the applicant was prevented by sufficient cause from making the aforesaid application within the aforesaid period of three months. It is apparent from the judicial record that the petition has been filed after the lapse of about nine months from the date of the award; no observation can be made as to where the copy of award was received to the petitioners as the same has not been disclosed in the petition; the onus was on the petitioners to show that they were prevented by sufficient cause to institute the aforesaid petition within the aforesaid stipulated period as per law but, the petitioners have neither pleaded condonation of delay in the plaint nor have moved any separate application in this regard.*

*(b) As per case law titled as Northern Railway v. M/s. Pioneer Publicity Corporation Pvt. Ltd. & Ann, FAO (OS) 436/2015, South Delhi Municipal Corporation v. Gagan Sahni, FAO (OS) No. 291/2013 and State of West Bengal & Ors. v. Associated Contractors, CA No. 4808/13 cited by Ld. Counsel for the respondents, it is apparent that compliance of section 34 (3) of the aforesaid Act, is mandatory but, as the petitioners have not discharged their onus on this aspect therefore, it seems that the application cannot be entertained as barred by limitation therefore, the other grounds taken by the petitioners to challenge the aforesaid award cannot be considered hence, the petition is dismissed with the aforesaid observations and disposed of accordingly.*

The appellant has handed over a copy of the application under section 34 of the Act. The Court finds that there is no averment as to when the copy of the Arbitral Award was delivered to him, so as to compute the statutory period for filing the section 34 application. The application is short of

relevant and pertinent particulars. Furthermore, there is no application for condonation of delay. The learned counsel for the appellant states that the period of limitation will start from the date he received the signed copy of the Award. However, in the absence of any averment in the section 34 application, as to when he received a copy of the award, the presumption would be that he received it on the date mentioned in it i.e. 13.01.2017. Therefore, the limitation would be calculated from that day. In view of the above, the impugned order cannot be faulted. There is no reason to interfere with it. The appeal lacks merit. Accordingly, it is dismissed.

**NAJMI WAZIRI, J.**

**MAY 16, 2018**

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