

\$~15

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

+ O.M.P. (COMM) 332/2018 & IA No. 10261 & 10263/2018

UNION OF INDIA

..... Petitioner

Through: Mr.Ashok Singh & Mr.Rakesh
Kumar, Advs.

versus

PARNIKA COMMERCIAL & ESTATES PVT. LTD Respondent

Through: Mr.Uday Singh Chauhan, proxy
counsel.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

%

27.09.2018

IA No. 10262/2018

1. This is an application seeking condonation of delay of 689 days in filing of the present petition.
2. The petitioner by way of the petition challenges the Arbitral Award dated 11.08.2016 passed by the Arbitral Tribunal consisting of three Arbitrators. It is not denied by the counsel for the petitioner that the copy of the Award was received by the petitioner on 18.08.2016.
3. The petitioner thereafter filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') before the Court of District and Session Judge (Central), Tis Hazari Court, New Delhi being Arbt. No. 20/17. This petition was filed on 11.11.2016.
4. The Additional District Judge vide order dated 04.05.2018, held that the petition was not maintainable before that Court and passed the following order:-

“The specified value of the present commercial dispute is clearly beyond one crore rupees.

In terms of section 10 of the Act, the application under section

34, Arbitration and Conciliation Act, 1996 ought to have been filed before the Commercial Court and not before this Court. This court is not a commercial court as defined in the Act.

At this stage, Sh. Sanjay Chawla submits that liberty be given to petitioner to file the application under section 34, Arbitration and Conciliation Act, 1996 before the appropriate Bench of Hon'ble Delhi High Court. The petitioner Union of India may file the application under section 34 Arbitration and Conciliation Act, 1996 afresh as per the law of the land.

This file be consigned to record room. Copy of this order be given dasti."

5. Taking benefits of the liberty granted by the Additional District Judge, the present petition was filed before this Court on 18.07.2018.
6. On being confronted with the fact that even if the petitioner is given full benefit under Section 14 of the Limitation Act, 1963, the petition would still be barred by Law of Limitation and in view of Proviso to sub-section 3 of Section 34, the delay being even beyond the period of thirty days as prescribed therein, cannot be condoned, the learned counsel for the petitioner submits that as this would be a delay in refiling of the petition therefore, Proviso to sub-section 3 of Section 34 would not be applicable. He places reliance on the judgment of the Supreme Court in ***Northern Railway v. M/s Pioneer Publicity Corp. Pvt. Ltd.***, 2018 (1) RAJ 395 (SC).
7. I am unable to agree with the said submission of the learned counsel for the petitioner. This is not the case of refiling of the petition. This is a case of fresh filing of the petition and on the date of the filing of the petition itself there was a delay beyond the period prescribed in Section 34 (3) of the Act.
8. The learned counsel for the petitioner further places reliance on the judgment of the Supreme Court in ***National Projects Constructions***

Corporation Limited v. M/s Bundela Bandhu Constructions Company, AIR 2007 Delhi 202 (DB), to contend that the principle analogous to Rules 10 and 10A of Order VII of the Code of Civil Procedure, 1908 would be applicable to the facts of the present case and therefore, this Court would have the power to condone the delay.

9. In the present case, however, the provisions of Order VII Rules 10 and 10A would have no application, as this is a fresh petition filed by the petitioner after withdrawing the same from the Court of the Additional District Judge. This Court vide its order dated 04.09.2018 in *Union of India v. Hind Terminal Private Limited* being FAO(OS)(COMM) 204/2018, has held that when a fresh petition is filed before this Court after the same has been redrafted and the petitioner has not taken recourse to the benefit of sub rule 2 of Order VII, Rule 10A of the Code of Civil Procedure, 1908 by moving an application before the Court of Additional District Judge, it will not be entitled to seek the benefit of the provisions of Order VII Rule 10A of the Code of Civil Procedure, 1908.

10. As even after giving the benefit of the provision of Section 14 of the Limitation Act to the petitioner, the present petition would still be barred by a period beyond thirty days as prescribed in the Proviso to Section 34 (3) of the Act, the delay cannot be condoned.

11. The application is therefore dismissed. Consequently the application seeking stay and the main petition are also dismissed, with no order as to cost.

NAVIN CHAWLA, J

SEPTEMBER 27, 2018/rv