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

Date of decision: 2nd May, 2018

+ O.M.P. (COMM) 412/2017 & IAs 13658/2017, 14720/2017

PROMINENT TOURS & TRAVEL PVT. LTD.&ORS..... Petitioners
Through: Mr.Varun Singh, Mr.Gaurav and
Ms.Pranati Bhatnagar, Advs.

versus

KOTAK MAHINDRA BANK LIMITED Respondent
Through: Mr.Arun Aggarwal, Ms.Jyoti Gautam,
Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

IA 14720/2017(delay)

1. This is an application seeking condonation of 203 days' delay in re-filing of the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') challenging the Arbitral Award dated 13th January, 2017.
2. The petition was filed on 20th April, 2017 and was returned under objections on 21st April, 2017. It was refiled only on 10th November, 2017. On further defects being pointed out by the registry, it was returned again on 13th November, 2017. It was again refiled on 14th November, 2017, however, as all defects had not been removed, it was again returned with objections on 15th November, 2017. It was again refiled on 17th November,

2017. It was finally refiled on 18th 2017 and was registered on 18th November, 2017. In this manner there was in all a delay of 182 days in re-filing of the petition.

3. The two reasons given for the delay in re-filing of the petition are the pendency of Writ Petition No.4066/2017 before the High Court of Judicature at Bombay challenging an order of the Debt Recovery Appellate Tribunal, Mumbai challenging proceedings initiated by the Respondent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ('SARFAESI Act') and the orders passed therein whereunder the petitioners have deposited a sum of Rs.1.10 crores with the Registry of the High Court of Judicature at Bombay. Counsel for the petitioners submits that the delay in re-filing occurred because the petitioners were busy in arranging for the amount of Rs.1.10 crores to be deposited in terms of the order dated 12th April, 2017 passed by the High Court of Judicature at Bombay. The petitioners further assert that the petitioners had also submitted a proposal for One Time Settlement with the respondent on 3rd October, 2017 followed by the letter dated 21st October, 2017, which was rejected by the respondent only on 3rd November, 2017.

4. The second ground urged by the petitioners is that the petitioner no.3 is 70 years old and is not maintaining good health. It is further asserted that the elder brother of the petitioner no.3 had passed away on 30th October, 2017, which caused further delay in re-filing of the petition.

5. I have considered the grounds urged by the petitioner for seeking condonation of delay in re-filing of the petition, however, do not find them as sufficient to condone the inordinate delay.

6. As far as the first reason with respect to pendency of the petition before the High Court of Judicature at Bombay is concerned, it would in fact show that the petitioners are aware of their legal rights and remedies and have been availing of the same before the Court of appropriate jurisdiction. Merely because a writ petition is filed against a particular action of the respondent in one Court, it would not justify the delay in re-filing of the present petition in this Court. The petitioners are not laymen who may not understand the difference between the two litigations that have been filed and their respective scope and would rather consider one of such litigations to be otiose or something which is not to be prosecuted any further. In my opinion, the above cannot be a ground for total abandoning of the present petition after filing the same. Clearly, the petitioners were not interested in pursuing the present petition for almost seven months and suddenly woke up after their proposal for One Time Settlement was rejected by the respondent.

7. As far as the second contention is concerned, I may only emphasize that there are in all five petitioners in the present petition. Petitioner nos.1 and 2 are incorporated companies and; petitioner no.5 is being represented through petitioner nos.3 and 4. Admittedly, the petitioners were pursuing their writ petition before the High Court of Judicature at Bombay. If the said litigation could be pursued, there is no reason to accept the explanation offered by the petitioners that due to ill-health or passing away of the brother of petitioner no.3, the present litigation could not be pursued by the petitioners.

8. Equally, submission of the proposal for One Time Settlement with the respondent and / or rejection thereof by the respondent has no bearing on re-filing of the present petition.

9. Section 34(3) of the Act, though strictly not applicable to a case of re-filing of the petition, would certainly have to be kept in mind while considering the reasons submitted by the petitioners for seeking condonation of delay in re-filing of the petition. As held by this Court in ***Delhi Transco Ltd. & Anr. vs. Hythro Engineers Pvt. Ltd.*** 2012 SCC OnLine Del 3557, if the delay in re-filing is such as to go well and substantially beyond the period of three months and 30 days, the matter would require a close scrutiny and adoption of more stringent norms while considering the application for condonation of delay in re-filing, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted otherwise by the Courts in the matters of condonation of delay in other cases, would in such cases not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred.

10. In the present case, the explanation being offered by the petitioners for almost seven months' delay in re-filing the petition, is certainly not reasonable or sufficient.

11. Counsel for the petitioners has placed reliance on the judgment of the Supreme Court in ***Northern Railway vs. Pioneer Publicity Corporation Pvt. Ltd.*** (2017) 11 SCC 234 to contend that Section 34 (3) of the Act has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. As observed earlier, this is the correct proposition of law, however, in the peculiar facts of the present case, would not be of any assistance to the petitioners. In ***Pioneer Publicity*** (supra), the Supreme Court found that the petitioner therein had offered an

explanation for the delay after the extensions. In the present case, however, I do not find the explanation given by the petitioner to be sufficient or reasonable.

12. Counsel for the petitioners has further relied upon the order dated 7th August, 2014 of the Supreme Court in Mahanagar Telephone Nigam Ltd. vs. M/s Prakash & Company, Civil Appeal No.7598-7599/2014, wherein the Supreme Court had condoned the delay of 233 days in re-filing the application under Section 34 of the Act, subject to the condition that the appellant therein deposits the entire awarded amount.

13. Though not initially inclined, I had given a similar offer to the counsel for the petitioners. Counsel for the petitioners submits that he has no instructions to make any commitment in this regard. I may also note that by the order dated 19th March, 2018, the parties were referred to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of an amicable settlement. Even this endeavour has failed.

14. In view of the above, I see no reason for condoning the delay in re-filing of the petition. The application is accordingly dismissed with no order as to costs.

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As the delay in re-filing of the petition has not been condoned, the application and the petition are dismissed.

NAVIN CHAWLA, J

**MAY 02, 2018
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