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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 378/2017 & IAs 12257-58, 12260/2017
M/S JAIPURIA BUILDCON PVT. LTD. & ORS. Petitioners
Through: Mr.Abhinav Agnihotri, Adv.

versus

M/S CAPARO FINANCIAL SOLUTIONS LTD. Respondent
Through: Mr.Vaibhav Mishra, Adv.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **27.04.2018**

IA 12258/2017

IA 12260/2017

IA No.12258/2017 has been filed by the petitioner praying for condonation of 22 days delay in 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 8th February, 2017. The application avers that the copy of the Award dated 8th February, 2017 was received by the petitioners only on 26th April, 2017.

It is noted that barring an assertion in this regard, no document in the form of an envelope or any other postal proof has been placed by the petitioner on record. It is not even averred as to how the copy of the Award was received by the petitioners. In normal circumstance, I would have taken the assertion made by the petitioners on the face value, however, in the present case, it is noted that the Impugned Award has been passed ex-parte against the petitioners. The Arbitrator in the Impugned Award has noted as

under:-

18. On the other hand, the notice dated 04.08-2015 was sent through speed post for service upon the Parties. The next date was fixed as 19-08.2015. On 19.08.2015 Sh. Rajesh Kumar Advocate appeared for all the four respondents and also appeared on 16-09-2015, 14-10-2015 and 27-11-2015 but none appeared on behalf of respondents on 05-01-2016 nor reply was filed nor arbitration fees was deposited on behalf of respondents, all respondents were proceeded ex parte on 05.01.2016. Even notice along with copy of ex parte order was sent to respondents and their counsel but despite service none appeared on behalf of respondents on subsequent dates except clerk Sh. Manish of the counsel Sh. Rajesh Kumar appeared on behalf respondents on 25-05-2016, 05-07-2016, 26-08-2016, 06-10-2016 and 21-12-2016. However, Sh. Rajesh Kumar Adv. for all respondents also appeared later on 13-01-2017. Even no application was moved to set aside ex parte order nor reply was filed nor arbitration fees was deposited on behalf of respondents. Even the counsel for respondents did not participate in the arbitration proceedings on other dates of hearings. Under these circumstances, the undersigned has proceeded further in the absence of respondents or their counsel.”

In the petition, the only ground taken with respect to the appearance of the petitioners is contained in paragraph 8(h) of the same, which is reproduced hereinbelow:-

“8(h). Because, in para 18 of the impugned award Ld. Arbitrator has observed that the counsel of petitioners Sh. Rajesh Kumar marked his presence and thereafter failed to appear in the arbitration proceedings. It is respectfully submitted that Ld. Arbitrator failed to follow that in absence of any power of attorney with the representative no appearance can be recorded. It is respectfully submitted the aforesaid submission finds the basis on the fact that no document empowering Sh. Rajesh Kumar has been supplied by the Ld.

Arbitrator while seeking the entire record of the proceedings. It is stated that in the aforesaid situation it cannot be said that parties are being represented in the proceedings. It is stated that requirement of judicial mind is to issue another process of notice to the parties concerned and grant them an opportunity to represent themselves in the proceedings. However, in the present case the proceeding seems to be conducted in haste manner and at the convenience of the respondent and resulted in impugned order which is based on surmise and conjectures, therefore liable to be set aside.”

A reading of the above would show that the petitioners do not state that Mr.Rajesh Kumar was not authorized by the petitioners to appear before the Sole Arbitrator. This itself shows the callous manner with which the petitioners proceeded even before the Arbitrator.

Another important factor in this case is that even after filing of the petition, there was a further delay of 98 days committed by the petitioners in re-filing of the same after removing the office objections.

IA No.12260/2017 has been filed by the petitioners seeking condonantion of delay in re-filing. The only assertion made in the application to justify this delay is contained in paragraphs 3 and 4 thereof, which are reproduced hereinbelow:-

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“3. That removal of the objections was entrusted to the clerk namely Shivam Shrivastav of the counsel. The objections were removed and the petition was re-filed. However, still some more objections were raised by the registry and the petition was taken back for the purpose of re-filing.

4. Once again, the clerk was assigned the duty to remove

the objections and to get the petition cleared. However the clerk erred in getting the objection removed in a timely manner and unfortunately the counsel also could not keep himself updated with the status of the removal of the objections.”

A perusal of the Log Information regarding filing of the petition and the re-filing thereof again speaks volumes of the casual manner in which the entire exercise was being undertaken by the petitioners. The petition was originally filed without signatures on the petition or the Affidavit and without Vakalatnama or even a copy of the Impugned Award. Even thereafter almost five months have been taken to remove even the basic office objections.

Section 34(3) of the Act provides that an application seeking setting aside an Arbitral Award can be filed only within a period of three months from the date of receipt of the Arbitral Award. The delay in filing of such an application can be condoned by the Court only if it is satisfied that the applicant was prevented by sufficient cause from making the application within the said period, however, delay of more than 30 days cannot be condoned by the Court. It may be true that provisions of Section 34(3) of the Act restricting the power of the Court to condone the delay may not strictly apply in case of an applicant seeking condonation in re-filing of the petition, however, in my opinion, the same would have a bearing while the Court is considering the reasons given by the applicant for seeking such condonation of delay.

In the present case, as noted above, I find no sufficient reason for condoning the delay in filing of the petition and/or in re-filing of

the same by the petitioner.

The applications are accordingly dismissed with no order as to costs.

O.M.P. (COMM) 378/2017 & IA (stay)

As the delay in filing and re-filing of the petition has not been condoned by this Court, the application and the petition shall stand dismissed.

NAVIN CHAWLA, J

APRIL 27, 2018
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