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

\+ FAO(OS) 321/2017 & CM Nos.46205/2017, 46207/2017

% **Date of Decision: 16th February, 2018**

TELECOMMUNICATION CONSULTANTS INDIA LTD ..... Appellant

Through: Mr. Ratan K. Singh with Mr. Nikhilesh Krishnan, Mr. Milind Sharma, Ms. Somya Priyadarshini, Mr. Gaurav and Ms. Sushila, Advs.

versus

IDEB PROJECTS (P) LTD ..... Respondent

Through: Mr. V. Seshagiri, Mr. Adhish Rajvanshi and Mr. Dakshyani Saxena, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This appeal, filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "*the Arbitration Act, 1996*"), assails the order dated 30th August, 2017 by the ld. Single Judge dismissing I.A. No.16401/2015 in OMP No.436/2015.

2. By way of this application, filed under Section 34(3), the appellant had sought condonation of delay of a period of 38 days in filing the objections under Section 34 of the Arbitration Act, 1996 challenging the arbitral award dated 17th March, 2015 by the Sole

Arbitrator.

3. The factual matrix giving rise to the present appeal is in a narrow compass and to the extent necessary, the relevant facts are noted hereinafter.

4. Arbitral proceedings between the parties culminated in the passing of an Award dated 16th March, 2015 in favour of the respondent, who was the claimant before the Arbitral Tribunal. There is no dispute that on the 18th of March, 2015, the Award was received by the appellant. Objections thereto were filed by the appellant under Section 34 of the Arbitration Act, 1996 on the 24th of July, 2015.

5. These objections, which were registered as OMP No.436/2015, were accompanied by an application being I.A. No.16401/2015 seeking condonation of delay. The ground which was pressed by the appellant in support of this application for condonation of delay, was that the period of 90 days for filing the objections expired on 17th June, 2015 when the Court was closed on account of summer vacations.

6. The appellant contended that therefore by virtue of proviso to sub-section(3) of Section 34 of the Arbitration Act, 1996, the appellant was entitled to a further period of 30 days after expiry of the period of three months. As such it was claimed by the appellant that, as the Court was closed for summer vacations on the date of expiry of the limitation, period of 10 days between the 17th June, 2015 (*when the period expired*) and 29th June, 2015 (*when the court reopened*) had to be excluded for the purposes of computation of the limitation. The appellant submitted that as

such, the objections had been validly filed on the 24th of July, 2015 i.e. within the extended period of ninety days.

7. This contention of the appellant was rejected by the ld. Single Judge by the order dated 30th August, 2017, which has been assailed before us by way of the present appeal.

8. We have heard Mr. Ratan K. Singh, ld. counsel for the appellant. The respondent is also represented, who has also been heard.

9. Before dealing with the issues raised before us, we may usefully extract relevant provision of Section 34 (3) of the Arbitration Act, 1996 which reads as follows:

> *"34 Application for setting aside arbitral award. —*
>
> *(1) xxx xxx xxx*
>
> *(2) xxx xxx xxx*
>
> *(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****."*
>
> *(Emphasis by us)*

10. The construction of the limitation prescribed under Section 34(3) of the Arbitration Act, 1996 and the issue as to whether

Section 5 of the Limitation Act, 1963 would apply to an application under Section 34 of the Arbitration and Conciliation Act, 1996 as well as submissions similar to those made on behalf of the appellant, came up for consideration before the Supreme Court in the judgment reported as ***2001 (8) SCC 470 Union of India vs. Popular Construction Co.*** For expediency, we may extract *in extenso* the observations of the Supreme Court on the submissions advanced on behalf of the petitioner before the Supreme Court regarding the permissibility of extension of the prescribed period of limitation under the Arbitration Act, 1996 by application of the provisions of the Limitation Act, 1963. We extract hereunder the illuminating observations of the court hereafter:

> *"8. **Had the proviso to Section 34 merely provided for a period within which the Court could exercise its discretion, that would not have been sufficient to exclude Section 4 to 24 of the Limitation Act** because "**mere provision of a period of limitation** in howsoever peremptory or imperative language **is not sufficient** to **displace the applicability of Section 5**.*
>
> *xxx xxx xxx*
>
> *12. As far **as the language of** Section 34 **of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion** within the meaning of Section 29(2) of the Limitation Act, **and would therefore bar the application of Section 5 of that Act**. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter wholly otiose. No principle of*

interpretation would justify such a result.

*13. Apart from the language, **'express exclusion' may follow from the scheme and object of the special or local law.** "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be **open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation**".*

*14. Here the **history and scheme of the 1996 Act** support the **conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act**. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process". This objective has found expression in **Section 5 of the Act** which prescribes the extent of judicial intervention in no uncertain terms:*

> *"**5. Extent of judicial intervention**. - Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, **no judicial authority shall intervene except where so provided in this Part.**"*

> *xxx xxx xxx*

*16. Furthermore, Section **34(1)** itself provides that recourse to a court against an arbitral award may be made only by an **application for setting aside** such award "**in accordance with**" sub Section 2 and **sub Section 3**. Sub Section 2 relates to grounds for setting aside an award and is not relevant for our purposes. **But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an***

application "in accordance with" that sub section. Consequently by virtue of Section 34 (1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired......the award shall be enforced *and the Code of Civil Procedure, 1908 in the same manner as if it were a decree of a court". This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the award and upon the judgment so pronounced a decree shall follow".* ***Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the Court.*** *"*

(Emphasis supplied)

11. It is, therefore, well-settled that there can be no extension of limitation for filing objections to an arbitral award beyond the specific prescription of Section 34(3) as well as the proviso thereto. Also Section 5 of the Limitation Act has no applicability and there can be no condonation of delay in filing objections thereunder.

12. Mr. Ratan K. Singh, ld. counsel for the appellant has contended that this judgment does not completely decide the issue pressed in the present case. Placing reliance upon the pronouncement of the Supreme Court in another judgment reported as ***2012 (2) SCC 624 Assam Urban Water Supply & Sewerage Board vs. M/s. Subash Projects and Marketing Ltd.***, it is contended that the period of limitation in this case was extended by

application of Section 4 of the Limitation Act, 1963. In that case, the Arbitral Award had been received by the appellant on 26th August, 2003. The period of three months from the date of receipt of the arbitral award by the appellants expired on 26th November, 2003. The District Court had Christmas vacation for the period from 25th December, 2003 to 1st January, 2004. The extended period of 30 days (*as permitted by the proviso to Section 34(3))* expired on 26th December, 2003 when the court was closed. The objections were filed on the 2nd of January, 2004 when the court reopened. In these circumstances, the appellants had sought applicability of Section 4 of the Limitation Act, 1963 contending that the period of limitation prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 would stand extended upto the reopening of the court.

13. We may extract Section 4 of the Limitation Act, 1963 hereunder to facilitate appreciation of the judicial pronouncement hereunder:

> "***4. Expiry of prescribed period when court is closed.*** *– Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens."*

14. It was in light of the above fact in ***Assam Urban Water Supply & Sewerage Board*** that the extended period limitation of 30 days *(by virtue of the proviso to sub-section (3) of Section 34 of the Arbitration Act, 1996)* had expired during the period of the court vacation, coupled with the fact that the objections were filed

immediately after reopening of the Court, that it was held that the applicant was entitled to the benefit under Section 4 of the Limitation Act, 1963.

15. Section 34(3) of the enactment prescribes that an application for setting aside an arbitral award cannot be made "*after three months have elapsed from the date on which the party making that application had received the arbitral award*".

16. The Supreme Court in ***Popular Construction's case*** has declared that the "*time limit prescribed under Section 34 to challenge the award is absolute and unextendable by court under Section 5 of the Limitation Act.*"

17. Let us examine the factual position in the present case. It is an admitted position that the period of 90 days from the date of the receipt of the award expired on the 17th of June, 2015. The appellant had filed the objections only on 24th July, 2015.

18. It is to be noted that in the year 2015, after summer vacations, the Court reopened on 29th June, 2015.

19. So far as the extended period of 30 days under the proviso to Section 34(3) of the Arbitration Act, 1996 is concerned, even this period expired on or about 17th July, 2015. The appellant still did not file the objections under Section 34 of the Arbitration Act, 1996 on or before such date. The objections were filed only on 24th July, 2015. Clearly the reliance on the pronouncement of the Supreme Court in ***Assam Urban Water Supply & Sewerage Board (supra)*** is completely misplaced.

20. Lastly, placing reliance on the pronouncement of the Supreme Court in the judgment reported at ***(2008) 7 SCC 169***

<u>Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department and Ors.</u>, it is submitted by Mr. Ratan K. Singh, ld. counsel for the appellant that as the period of 90 days after receipt of the arbitral award came to an end during the summer vacation, the extended period of 30 days under the proviso to Section 34(3) would commence after the reopening of the Court on 29th June, 2015. According to Mr. Ratan K. Singh, ld. counsel for the appellant, consequently this period ended only on or about the 29th of July, 2015. It is, therefore, contended that the objections, which were file on 24th July, 2015, have to be treated as having been filed within the period of limitation.

21. Unfortunately, this submission has to be noted only for the sake of rejection. In ***Consolidated Engineering Enterprises***, the Supreme Court has expressly ruled that even if sufficient cause is shown for it, the Court has no discretion at all to extend the limitation beyond the 30 days prescribed in the proviso to Section 34(3) of the Arbitration Act, 1996.

22. The judgment in ***Consolidated Engineering Enterprises*** rested on a plea set up under Section 14 of the Limitation Act, 1963. There was no occasion for the Court to consider a plea for extension of time under Section 4 of the Limitation Act, 1963 as prescribed in the present case. There is no parity with the facts of the said case and the factual narration in the present case.

23. In para 10 of ***Consolidated Engineering Enterprises***, the court categorically noted that so far as the period for making an application for setting aside an arbitral award is concerned, sub-section 3 of Section 34 read with the proviso thereto made it

abundantly clear that the application for setting aside the award will have to be made within three months. It has further been observed that the *"**period** can further be extended, on sufficient cause being shown, by another period of 30 days but not thereafter. It means that as far as application for setting aside the award is concerned, the period of limitation prescribed is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the court*". The Supreme Court further considered that in view of Section 29(2) of the Limitation Act, "***when any special statute prescribes certain period of limitation as well as the provision for extension** up to specified time limit on sufficient cause being shown then the period of limitation prescribed under the special law will prevail and to that extent period of the Limitation Act shall stand excluded as the intention of the Legislature in enacting sub-section 3 of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period **can be further extended by a sufficient cause being shown for a period of 30 days but not thereafter***".

24. This court is of the opinion that the provisions of Section 5 of the Limitation Act, 1963 would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded in view of the provisions of Section 29(2) of the Limitation Act. This view was reinforced in para 32 of the pronouncement which we may extract hereunder :

> *"32. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application*

for setting aside an award as ***three months from the date on which the applicant has received the arbitral award****. The proviso thereto vests in the court,* ***discretion to extend the period*** *of* ***limitation by a further period not exceeding thirty days*** *if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "****but not thereafter****" in the proviso makes it clear that* ***even if a sufficient cause*** *is* ***made out for a longer extension, the extension cannot be beyond thirty days.*** *The purpose of proviso to Section 34(3) of AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It* ***vests a discretion in a court*** *to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to Sub-section 3 of Section 34 of the AC Act* ***places a limit on the period of extension of the period of limitation****. Thus the proviso to Sub-section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act."*

(Emphasis by us)

25. A bare reading of the above would show that the court has unequivocally declared that so far as the period of limitation for filing objections to arbitral award under Section 34 is concerned, the period is of 90 days and not more. So far as the period under the proviso to sub-section 3 of Section 34 is concerned, the same is a period of "*extension*".

26. Consequently, so far as Section 4 of the Limitation Act is concerned, such period of limitation in the present case expired on

the 17th of June 2015. If the appellant wanted to take benefit of the extended period of 30 days, as stipulated in the proviso to sub-section 3 of Section 34, the said period would commence on the date when the period of limitation came to an end i.e. from the 17th of June 2015. It is not disputed that the extended period came to an end on or around 17th July, 2015 and not thereafter. The Supreme Court has clearly declared in para 32 of ***Consolidated Engineering Enterprises*** that proviso to sub-section 3 of Section 34 of the Act places a limit on the period of extension of the period of limitation. Such extension commences from the date of the expiry of the period of 90 days in terms of Section 34(3) of the Act. Section 4 of the Limitation Act would have no application to further extend the period of extension of 30 days stipulated in Section 34 of the Arbitration Act.

27. It is quite clear that the extended period cannot be treated as part of the period of limitation inasmuch as the discretion is vested on the court whether to accept the explanation for the delay by showing sufficient cause for the same.

28. It is also to be noted that Section 4 refers to "*prescribed period for any suit, appeal and application*" expiring on a day when the court is closed. The prescribed period for filing the application by virtue of Section 34(3) of the Arbitration and Conciliation Act is 90 days and nothing beyond. Section 4 has no application to extending the period for filing the objections to a party. It does not have an impact of extending the period of extension granted under the proviso thereto, to a party beyond 30 days.

29. The view we have taken is supported by a Division Bench pronouncement of this court reported at ***(2011) 176 DLT 77, Union of India v. Microwave Communication Ltd.*** In this case, the appellant had received an arbitral award dated 13th February, 2004 on 23rd February, 2004. The period of three months for filing the application for setting aside the award expired on the 24th of May 2004. The period of extension of 30 days by virtue of proviso to Section 34(3), if there was sufficient cause expired on 23rd June, 2004. As per the notification issued by this court, the court was closed for summer vacations from 28th May to 3rd July 2004. The notification further stated that for the purposes of limitation, the court re-opened on the 5th of July 2004. In this judgement the court noted the object of Section 4 of the Limitation Act and the power of the court in para 8 of the judgment in the following terms:

> *"8. **Section 4 of the Limitation Act has been enacted not to enlarge the period of limitation** but on the maxim "lex non cogit ad impossibilia" . When any party is prevented from doing a thing in Court on a particular day not by his own act but by the act of the Court he/she is entitled to do at the first available opportunity. As stated above, Section 4 does not enlarge the period of limitation but it only enables the party to file any suit, application, etc. on the reopening day of the Court if the Court is closed on a day when limitation expires. For instance, an Award is received by a party, say, on 28th of February. **As per provision of Section 34(3) of the A and C Act, the objections can be filed upto 29th of May and if there is sufficient cause for condonation of delay then upto 28th of June of that year**. The Courts are closed from 28th May to Ist of July. Any party aggrieved by the Award would be **deprived to challenge the same not only in the extended period of 30 days but also in the initial period of three months as the initial period of three months and the extended period of 30 days as prescribed***

under Section 34 Sub-section (3) of the A and C Act expired on 29th May and 28th June respectively when the Courts were closed."

(Emphasis by us)

Thus, it was because both the period of limitation under Section 34(3) as well as the extended period of 30 days expired; that the court was closed for summer vacations, that the court accepted the filing of the objections on the date of re-opening of the court. Clearly, the submission before us that if the period of limitation expired during vacations, the period of 30 days would have to be calculated from the date when the courts reopen is completely misconceived. The applicability of Section 4 of the Limitation Act cannot be interpreted to enlarge the extension of 30 days permitted by proviso to Section 34(3) of the Arbitration Act, 1996.

30. In view of the above discussion, we are unable to agree with the submissions made on behalf of the appellant.

The appeal is accordingly dismissed.

31. Pursuant to our order dated 21st December, 2017, an amount of Rs.2,33,22,834/- stands deposited in the present appeal and the same has been kept in a FDR. The Registry is directed to release the said amount of the FD receipt with accruals thereon in favour of the respondent.

32. The appellant is directed to furnish the basis on which the said amount was deposited in the Registry after giving an advance copy thereof to the respondent. In case there is any dispute with regard to the calculation of the amount, it shall be open for the

respondent to take appropriate steps in accordance with law with regard to the recovery of the deficiency, if any.

In view of the dismissal of the appeal, all pending applications stand dismissed as well.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

FEBRUARY 16, 2018/pmc