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

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Judgment delivered on: 10.01.2018

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FAO 14/2018 & C.M.Nos.906-09/2018

UTKARSH APPARELS & ANR. Appellants

Through: Mr. Jai Gupta, Advocate.

Versus

WINNOSME TEXTILES INDUSTRIES LTD & ANR....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns an arbitration Award dated 17.02.2015 as well as the order dated 06.07.2017 by the learned Additional Sessions Judge, South District, Saket Courts, New Delhi, passed in ARB No.283/2017, dismissing the appellants' objections under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') on the ground of it being barred by limitation. The period for filing a challenge under section 34 of the Act is three months from the date of the Award. The appellants had participated in the arbitration proceedings on a few dates and subsequently voluntarily abandoned it, hence, they were proceeded *ex parte*. For arriving at this conclusion, the impugned order dated 06.07.2017 records:

"6. I have carefully considered the rival submissions. In the understanding of the Court, the application seeking

condonation of delay in filing the present objection petition deserves to be declined, for the following reasons.

7. It is admitted by the petitioner that he was proceeded against ex-parte, not because he was never duly served but since he could not pay the arbitral tribunal's fees. It is thus a case where the petitioner left the arbitration proceedings of his own volition (whatever may have been the reasons for the same but the decision not to appear before the arbitral tribunal was a deliberate and conscious one). This brings us to the question whether any indulgence should be granted in such a case where a party having asserted its right to go in for arbitration, itself opts out of the same after participation and then claims that it was never served with a copy of the arbitral award? In the understanding of the Court, such a conduct cannot be endorsed. Even if the petitioner had decided not to participate in the proceedings before the arbitral tribunal, it was vitally interested in the arbitration proceedings, having contested its right to go in for arbitration right till the Honble Supreme Court. Hence, it should have at least kept a watch on the said proceedings. The conduct of petitioner shows complete lack of seriousness on its part in so far as the arbitration proceedings are concerned. Further, there is no reason to believe that despite appearance having been put in on its behalf before the Honble High Court of Shimla on 29.11.2016, the petitioner received the copy of 'Award' only on 15.12.2016. There is no reasonable explanation coming forth for the time consumed between 29th November till 15th December 2016. The lack of due diligence on the part of the petitioner is stark. The Learned Counsel for the petitioner also could not contradict the assertion of the respondent that the petitioner never informed the arbitral tribunal of the change of its address. In fact, petitioner has very cleverly sidestepped the issue of address on which the 'Award' was supposed to be sent. It is a matter of record that while opposing the claim of the respondent before the arbitral tribunal, one of the partners of the Petitioner, Sh. Rajender Pahwa gave his affidavit which mentions the same address of Dhadari Khurd, G.T. Road,

Ludhiana, Punjab on which the copy of the award was sent. Still, assuming the best in favour of the petitioner, it was on 29.11.2016 when appearance was put in on behalf of the petitioner before the executing court at Shimla that it can be safely presumed that Petitioner received a copy of the award sought to be impugned at least constructively. The Court is not inclined to believe that the counsel of the petitioner took another 10 days to procure the Award on 09.12.2016 and then transmitted the same to the petitioner on 13.12.2006. As worked out from 30.11.2016, the present petition was not preferred within 3 months as laid down in section 34 (3) of the Act of 1996. It is important to highlight that the period mentioned in the said section, for filing objections against the Award is 3 months and not 90 days. Reliance in this regard is being placed on judgment passed by the Honble Supreme Court of India in State of Himachal Pradesh and Another vs. M/s Himachal Techno Engineers and Another, Civil Appeal no. 5998 of 2010. It is only after the expiry of 3 months that a period of 30 days has been mentioned in Section 34 (3) within which the objections can be filed. However, the Petitioner conveniently allowed this period of 3 months to pass which lapsed on 27th February 2017. A perusal of the application seeking condonation of delay shows that not even a single reasonable explanation has been given regarding the delay in preferring the objections. A plain reading of section 34 (3) of the Act of 1996 would show that before seeking condonation of delay beyond the period of 3 months, the petitioner has to first satisfy the Court of the reasons for not preferring the objections within the said period of 3 months. As is patent from the pleadings of the petitioner, no reason has been given for not filing the objections against the 'Award' after the same came to its knowledge on 29.11.2016. Going a step further, even if 09.12.2016 is accepted as the date on which the 'Award' can be said to have been in the constructive knowledge and possession of the petitioner, the period of 3 months would start to run from 10.12.2016 and end on 9th March 2017. No reason has been pleaded or cited by the petitioner for keeping quiet till 10th March 2017. In fact, with

the main petition, even application for seeking condonation of delay had not been filed.

9. As already expressed above, this was the best assumption in favour of the petitioner even though a copy of the 'Award' was sent to it by post on the address in the records of the arbitration tribunal. Technically 10.03.2015 is the date when the petitioner should be ascribed the knowledge of the Award in question i.e. when the award sent to it by post was returned unserved, keeping in view that petitioner has not placed any document to show that the change in address was ever communicated to the arbitral tribunal.

10. In the understanding of the Court, in the peculiar facts of the case wherein the arbitral proceedings were consciously abandoned by the petitioner, the Petitioner must explain each days delay but has failed to do so. It has neither given reasons for not preferring the objection petition within the period of 3 months nor explained the period of delay beyond the period of 3 months. Consequently, the application seeking condonation of delay in moving the present petition is declined and as a result thereof, the main petition is also dismissed being beyond the prescribed period of limitation. File be consigned to the record room after necessary compliance.”

2. A delay of even one day has to be explained by the appellant as a just and sufficient cause for condonation. For the appellant to merely claim that it took time for the copy of the Award to be sent by the counsel in Shimla to the appellants' address is not sufficient since the Court has already taken into consideration that the address of the partner, Sh. Rajender Pahwa, as per his affidavit, is Dhadari Khurd, G.T. Road, Ludhiana, Punjab. The impugned order has carefully considered the consequences of both the relevant dates of knowledge of the Award: if it was 29.11.2014-the day when appearance was entered on its behalf before the executing court in

Shimla, then the three months period would expire on 02.07.2015; and if 09.12.2014 is the day on which the award was procured, then the limitation period would expire on 10.03.2015. The objection was not filed within either of the said periods. Since there has been no explanation as to how the period of three months was used, and the fact that the appellant abandoned the arbitration proceedings voluntarily, the only logical inference would be that the appellant was not serious about either the proceedings or its outcome. This casualness seems to have extended beyond the three months period provided under section 34 of the Act and there is no reasonable cause or justification for condoning this delay. Hence the impugned order concluded as it did. It cannot be faulted.

3. In the circumstances, the delay is not sufficiently explained. Hence, this Court does not find any ground for condoning the delay nor any reason to interfere with the impugned order.

4. Accordingly, the appeal, alongwith pending applications, stands dismissed.

JANUARY 10, 2018

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NAJMI WAZIRI, J.