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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 194/2018 and IA Nos. 6108/2018, 6109/2018, 6110/2018 & 6111/2018**

INDIA TOURISM DEVELOPMENT
CORPORATION LTD

..... Petitioner

Through: Mr Ujjawal K. Jha, Advocate.

versus

RAJIV KUMAR SAXENA

..... Respondent

Through: Mr Sanyat Lodha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.05.2018

1. The petitioner (hereafter 'ITDC') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act') impugning an arbitral award dated 14.08.2017 (hereafter 'the impugned award') delivered by the Arbitral Tribunal comprising of a Sole Arbitrator. The impugned award was delivered in the context of the disputes that have arisen between the parties in relation to a contract for supply of furniture for DDA Mega Housing Project, Behind Pocket D-6 and Pocket D-6, Vasant Kunj, New Delhi (For Commonwealth Games 2010) (Tender no.III) (Work Order No. GM Engg./CWG/VK-HIG(Addl.)/10 dated 04.06.2010). The impugned award was delivered on 14.08.2017, partially accepting the claims raised by the respondent.

2. ITDC claims that it had received the said award "*on or about 14.08.2017*". An application (IA no.6109/2018) has been filed by ITDC

seeking condonation of delay of 29 days in filing the present petition. The only explanation provided for the delay is that the entire file was voluminous and after it was reviewed, the concerned officer took a decision as to the points on which the impugned award was to be admitted and on the points on which it was to be challenged. It is claimed that the matter was, thereafter, entrusted to the counsel who had prepared the petition on 30.11.2017.

3. In terms of Proviso to Section 34(3) of the Act, the court may entertain an application under Section 34 of the Act within a further period of thirty days from the expiry of three months of the receipt of the award if it is satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months as prescribed under Section 34(3) of the Act. In view of the explanations provided by ITDC (in IA No. 6109/2018), it is not possible to accept that ITDC was precluded by sufficient cause from filing the present petition under Section 34 of the Act within the time prescribed. A mere bald statement – that the concerned officers of ITDC took time to review the award as it was voluminous – is clearly not persuasive for this Court to accept as a sufficient cause preventing the petitioner from filing the petition within time. Further, the application for condonation of delay is also bereft of any particulars. However, the matter does not end there as the petition, as filed, was defective.

4. It is seen that the petition was filed on 12.12.2017, which was on the 28th day after expiry of the period of three months from the receipt of the impugned award. The petition was not paginated, it was neither

accompanied by a list of dates nor supported by a statement of truth in the form of affidavit. In addition, no court fee was paid and there were several other defects. Accordingly, the petition was returned on 13.12.2017. It was, thereafter, re- filed on 13.04.2018, that is, after a delay of over four months. The petition continued to have defects and was returned on three occasions thereafter – 18.04.2018, 21.04.2018 and 27.04.2018– on account of certain defects. It was finally re-filed on 01.05.2018 and was listed before this Court today, that is, on 04.05.2018.

5. The explanations provided for the delay in re-filing, in the application seeking condonation of such delay, are fourfold. First, it is stated that the annexures were voluminous and, consequently, took time to trace the file which could be done only in the second week of January, 2018. Thus, ITDC took more than one month to trace the annexures after the petition was filed. Second, it is stated that the clerk at the office of the advocate had kept the file which got mixed up with some other file and the counsel could not trace the same in the chamber. Third, it is stated that the mother of the clerk of the counsel had become sick so he had to go Sultanpur (Uttar Pradesh) where he also fell sick and resumed only in the last week of January, 2018 and it is only, thereafter, efforts to locate the file were undertaken. Lastly, it is stated that the concerned officer of ITDC was suspended and was arrested by CBI and, therefore, was not available to look into the file and to sign the necessary documents. The Deputy Manager took charge on 28.02.2018 and, therefore, the petition was re-filed, thereafter.

6. This explanation has also been provided in respect of three other petitions which have been filed by ITDC and listed today. As is noticed

above, there is no explanation as to the delay in re-filing after 28.02.2018. The aforesaid explanation has been rejected by this Court in order passed today in ***Indian Tourism Development Corporation Ltd. V. Rajiv Kumar Saxena: O.M.P. (Comm) 192/2018***. For the reasons stated therein, this Court is not persuaded to accept the aforesaid explanations.

7. In ***Delhi Development Authority v. Durga Construction Co.: 2013 (139) DRJ 133***, this Court had held that it has jurisdiction to condone the delay in re-filing even though it is re-filed after the expiry of the period of three months and a further period of thirty days; however, given the legislative intent, a liberal approach in condoning such delay could not be warranted. The legislative intent of fixing a time span of three months (and a further period of thirty days) would be frustrated if such inordinate delays are condoned. In the present case, the delay in re-filing itself exceeds the maximum period available for filing of the petition.

8. In ***Government of NCT of Delhi & Ors. v. YD Builders & Hotels Pvt. Ltd: (2017) 186 PLR 45***, this Court had also held that in terms of Rule 5(3) of Chapter I of Volume V of the Delhi High Court Rules, the filing beyond the period specified would be considered as a fresh filing. Although, this Rule has not been strictly applied as noticed by the Supreme Court in ***Northern Railway v. M/s Pioneer Publicity Corp. Pvt. Ltd: (2017) 11 SCC 234***, the observations made by the Court in this regard are relevant:-

“..... If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would

amount to re-filing.”

9. In the present case, the first re-filing was done more than four months after the petition was returned as being defective and there was no extension granted for such re-filing. Even if it is accepted that the said Rule is not to be strictly applied, as noticed above, this Court is unable to countenance the delay of almost five months in re-filing the petition. In view of the above, the applications for condonation of delay in filing and re-filing (IA Nos. 6109/2018 & 6111/2018) are, accordingly, rejected.

10. In view of the above, it is not necessary to examine the merits of the contentions advanced by the learned counsel for the petitioner to assail the impugned award but this Court considers it apposite to do so.

11. ITDC has challenged the impugned award to the limited extent of the award of ₹46,42,816/- in respect of the cost of material which was lying outside the custody of ITDC. It is contended by ITDC that since the said material was not supplied to ITDC, the respondent’s claim in regard to the said material could not be allowed.

12. ITDC’s challenge on a similar ground in respect of a similar award was considered by this Court in OMP (COMM.) 192/2018 and was rejected. The learned counsel appearing for the petitioner concurs that the order passed today in that case would be determinative of the issue in this matter as well. Thus, for the reasons stated in the order passed today in OMP (Comm) 192/2016, ITDC’s challenge to the award, in respect to furniture lying outside the custody of ITDC, is rejected.

13. In view of the above, the petition is dismissed on the ground of delay as well as on merits. The pending applications are also disposed of.

VIBHU BAKHRU, J

MAY 04, 2018
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