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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. (COMM) 195/2018 and IA Nos. 6112/2018, 6113/2018, 6114/2018 & 6115/2018**

INDIA TOURISM DEVELOPMENT
CORPORATION LTD

..... Petitioner

Through: Mr Ujjawal K. Jha, Advocate.

versus

AZTEC SHIVA HANDICRAFTS

..... Respondent

Through: Mr Sanyat Lodha, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.05.2018

VIBHU BAKHRU, J

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 (hereafter 'the Arbitral Tribunal').

2. 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. The impugned award was delivered on 14.08.2017, partially accepting the claims raised by the respondent.

3. ITDC claims that it had received the said award “*on or about 22.08.2017*”. An application (IA no.6113/2018) 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 16.12.2017.

4. 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. 6113/2018), 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. It is, thus, difficult for this Court to accept the same 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.

5. It is seen that the petition was filed on 20.12.2017, 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 correct names of the parties nor supported by a statement of truth in the form of affidavit. In addition, there were several other defects. Accordingly, the petition was returned on 22.12.2017. It was, thereafter, re-filed on 13.04.2018, that is, after a delay of about 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.

6. The explanations provided for the delay in re-filing, in the application (IA No. 6115/2018) 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 office 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 the 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.

7. 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 explanations have been considered and 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.

8. 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.

9. 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, 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.”

10. 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. 6113/2018 & 6115/2018) are rejected.

11. Having stated above, this Court also considers it apposite to examine the petition on merits as well.

12. Mr Jha, the learned counsel appearing for ITDC has restricted the challenge to the impugned award only to the extent of the award of (i) ₹31,85,309/- on account of difference in the quantity of furniture taken by the Respondent and the quantity claimed by ITDC; (ii) ₹20,95,532/- against the supply and installation of furniture of MIG Flat; (iii) ₹28,92,468/- against the supply and installation of Twin Bed with head boards; and (iv) interest at the rate of 10% from the date of raising the bill till the date of payment on account of outstanding dues.

13. The contract awarded to ITDC relates to furniture that was required to be supplied to furnish the flats required for hosting guests for the Common

Wealth Games, 2010, which were being organized in New Delhi at the material time. For procuring the furniture required, ITDC issued a Notice Inviting Tenders (NIT) for “Supplying Furniture for DDA Mega Housing Project, Behind Pocket D-6 and Pocket – D6 Vasant Kunj, New Delhi (For Commonwealth Games 2010)”.

14. In terms of the aforesaid NIT, tenders were invited for LIG Flats, MIG Flats, HIG Flats, Akshardham Scheme-I and Akshardham Scheme-II (referred to as Tender No. I to V respectively). The petitioner submitted its bids pursuant to the aforesaid NIT. The controversy involved in the present case relates to the contract for supply of furniture entered into pursuant to the aforesaid NIT. It was the respondent’s case that it had taken steps for ensuring that the supply was within the time specified in the contract and it started delivering the furniture from the first week of July, 2010.

15. Mr Jha, the learned counsel appearing for ITDC has restricted the challenge the impugned to the extent that the Arbitral Tribunal has awarded a sum ₹10,53,536/- to the respondent on account of the discrepancy in the quantity of the furniture supplied. Mr Jha submitted that the quantity of the furniture claimed to have been supplied by the respondent was in excess of the quantity as calculated by ITDC. However, the Arbitral Tribunal erred in not accepting the records of ITDC and has awarded the claim in favour of the respondent.

16. A perusal of the impugned award indicates that the respondent had produced irrefutable evidence – by way of extracts of Measurement Book (MD) – in support of the quantity supplied to ITDC. The Arbitral Tribunal

noted that the respondent had submitted details of MB, which was duly signed by the site engineer of ITDC in support of its contention that the entire quantity as mentioned in the bills was received at site by ITDC. On the other hand, ITDC had produced calculation sheets which did not bear the signature of the respondent. In view of the above, the Arbitral Tribunal accepted the claim regarding the quantities made by the respondent.

17. The relevant extract of the impugned award regarding the claim in difference of quantities is set out below:-

“26. (a) Difference in quantity of taken by the Respondent and the quantity claimed by the Claimant

The Claimant has submitted a chart in his Written Submissions and during his Oral Arguments which shows that there are discrepancies by the Respondent in noting the number of quantities of several supply orders such as seater sofa, dining table, dinning chair & bed. It is seen that with the 4th and final running bill submitted by the Claimants, they had also submitted the Details or the Measurement Book (MB) and this has been duly signed by the Site Engineer of the respondents which categorically shows that the entire quantity mentioned in the bills has actually been supplied and received at the site by the respondents. These bills and the MB have been filed by the Claimants and are at pages 189 - 211 of their Claim Statement and the supporting documents. Therefore, it is seen that the quantity supplied by the Claimants has been duly verified by the Engineer of the respondent as well. On the contrary, it is not known as to how the calculations have been done by the respondents and their calculations do not have the signatures or the acceptance of the respondents and no authentic document has been produced to substantiate the same by them. Therefore, the additional quantities of the above stated items should be added to the total quantity of the final bill of the Respondent. Therefore, I decide that the Claimant is entitled to recover Rs.10,53,536/-

from the Respondent.”

18. Mr Jha is unable to dispute that the respondent had provided details of the MB, which was duly signed by the site engineer. In the circumstances, the contention that the respondent’s claim has been accepted without evidence is unmerited.

19. This Court finds no infirmity with the decision of the Arbitral tribunal; at any rate, no interference with the impugned award is warranted under Section 34 of the Act, on this count.

20. The petition is, accordingly, dismissed both on account of delay as well as merits. All pending applications are also disposed of.

May 04, 2018

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VIBHU BAKHRU, J

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