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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**NOTICE OF MOTION NO. 468 OF 2018
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 484 OF 2017**

Schokhi Industrials Pvt. Ltd.,
a company incorporated under the provisions
of the Companies Act, 1956 having its office
at 143, Jolly Maker Chambers Two, 14th Floor,
Nariman Point, Mumbai 400 021.

**... Applicant/
Petitioner**

VERSUS

Maharashtra State Power Generation Co. Ltd.
(MSPGCL) having its registered office at
Store Management Wing, HDIL Towers, A-Wing,
3rd Floor, A.K. Marg, Bandra (E),
Mumbai 400 051.

... Respondent

.....

Mr. Ajit Anekar a/w Mr. Prithvi Aringale i/by M/s. Auris Legal for
the Applicant/Petitioner.

Mr. Amey Jaiswal a/w Mr. Kiran Gandhi i/by M/s. Little & Co. for
the Respondent.

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CORAM : R.D. DHANUKA, J.

DATE : 7th AUGUST, 2019.

-: ORAL JUDGMENT :-

. This matter was heard yesterday by this Court and was dismissed. The matter was mentioned at 5:00 p.m. by the learned Counsel for the applicant for placing the matter for directions on board on the ground that applicant seeks to point out additional

facts. The matter was placed on today's board for directions. Both the Counsel were permitted to re-argue the matter.

2. It is admitted position that the arbitral award passed by the Arbitral Tribunal was dispatched on 2nd May, 2017 and was received by the applicant on 9th May, 2017.

3. Learned Counsel for the applicant tendered a copy of a letter dated 9th May, 2017 addressed to the learned Arbitrator requesting for soft copy of the arbitral award by email to both the parties. In the said letter, the applicant informed the learned Arbitrator that after receipt of the soft copy and after availability of the legal team of the applicant after High Court vacation, the applicant would seek clarification from the learned Arbitrator as may be advised.

4. On 21st June 2017, the applicant made an application before the learned Arbitrator under Section 33 of the Arbitration and Conciliation Act, 1996. One of the ground raised in the said application was that the learned Arbitrator had failed to render a finding on issue no.6, which was unanswered. It was also stated that the award was received by the applicant on 9th May, 2017. This Court had recessed for vacation on the 5th May, 2017 and reopened on 5th June, 2017.

5. The learned Arbitrator by an order dated 18th July, 2017 rejected the said application under Section 33 of the Arbitration and Conciliation Act, 1996 on the ground that there was no substance in the said application. It is held that issue no.6 was already decided and included in arbitration award dated 30th April, 2017. There was

no provision for a soft copy of award, if the hard copy of the award was already provided. The learned Arbitrator rejected the request for condonation of delay as not justified and not reasonable. The applicant lodged this petition on 17th November, 2017 and filed this Notice of Motion *inter-alia* praying for condonation of delay of 30 days in filing Arbitration Petition.

6. Learned Counsel for the applicant submits that in the letter dated 9th May, 2017 addressed to the learned Arbitrator though the applicant had applied for soft copy of the arbitral award, the applicant informed the learned arbitrator that applicant would seek clarification from the learned Arbitrator as may be advised after receipt of the soft copy of the arbitral award and after availability of legal team of the applicant after High Court vacation. He submits that thus the said application was filed within 3 months and 30 days from the date of receipt of order dated 18th July, 2017. He submits that the said application was followed by detailed application dated 21st June, 2017 pointing out various errors for correction including for a clarification that there was no finding rendered by the learned Arbitrator on issue no.6.

7. Leaned Counsel for the applicant submits it is clear that the learned Arbitrator has rejected the application filed by the applicant on merits and not on the ground that the same was made beyond the period of 30 days. No such objection thus can be raised by the respondent at this stage.

8. Learned Counsel for the respondent on the other hand submits that the applicant had not filed any application for clarification, correction or for interpretation of arbitral award within 30 days from the date of the receipt of the signed copy of the arbitral award. The time prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 for impugning arbitral award thus would commence from the date of service of the signed copy of the arbitral award under Section 31(5) of the Arbitration and Conciliation Act, 1996 and not from the date of service of order dated 18th July, 2017 from the learned Arbitrator.

9. It is submitted by the learned Counsel for the respondent that his client had not given any consent for extension of time to file such application under Section 33(1) of the Arbitration and Conciliation Act, 1996.

10. It is admitted fact that the signed copy of the arbitral award was received by the applicant on 9th May, 2017. In so far letter dated 9th May, 2017 relied upon by the learned Counsel for the applicant is concerned, a perusal of the said letter clearly indicates that the applicant has acknowledged receipt of the copy of the arbitral award dated 30th April, 2017 from the learned Arbitrator. The applicant requested for soft copy of the said award by an email to both the parties on their respective Email ID's. The learned Arbitrator was informed that after receipt of the soft copy of the arbitral award and after availability of the legal team of the applicant after High Court vacation, applicant will seek clarification from the learned Arbitrator as may be advised.

11. In my view, the said letter dated 9th May, 2017, cannot be considered as an application under Section 33(1) of the Arbitration and Conciliation Act, 1996. The applicant was already served with a signed copy of the arbitral award by the learned Arbitrator. Under Section 34(3) of the Arbitration and Conciliation Act, 1996, limitation for challenging an arbitral award does not commence from the date of getting soft copy of the arbitral award in addition to hard copy of the signed award from the learned Arbitrator.

12. Under Section 33(1) of the Arbitration and Conciliation Act, 1996, an application for correction and interpretation of an arbitral award or additional award can be made within 30 days from the date of receipt of the arbitral award unless another period of time is agreed upon by the parties. In this case, the respondent did not agree for another period of time for making such application for correction and interpretation of award or for additional award under Section 33(1) of the Arbitration and Conciliation Act, 1996. The learned Arbitrator, thus rightly rejected the said applicant.

13. In my view, even if the learned Arbitrator has rejected the application on merit as sought to be canvassed by the learned Counsel for the applicant, fact remains that such application was not made within the period of limitation prescribed under Section 33(1) of the Arbitration and Conciliation Act, 1996. Under Section 34(3) of the Arbitration and Conciliation Act, 1996, an application for setting aside the arbitral award is not allowed after elapse of three months from the date on which the party making an application, has received the arbitral award or if a request is made under Section 33

of the Arbitration and Conciliation Act, 1996, from the date on which that request is disposed off by the Arbitral Tribunal. In my view, time prescribed under Section 34(3) has to be read with time prescribed in Section 33(1) of the Arbitration and Conciliation Act, 1996. Since, the application filed by the applicant under Section 33(1) itself was not within the time prescribed under the said provision, limitation for filing an arbitration petitioner under Section 34(3) would not commence from the date of disposal of the request made by such party under Section 33(1) but would commence from the date of service of signed copy of the award.

14. In my view, the subsequent application dated 21st June, 2017, which was admittedly beyond the period of 30 days from the date of getting the signed copy of the arbitral award, would not extend the period of limitation. The respondent in this case has admittedly not given any consent for another period of time for making an application under Section 33(1) of the Arbitration and Conciliation Act, 1996.

15. In so far as, the Judgment of the Supreme Court in *Petition for Special Leave to Appeal No. 20195 of 2017*, dated 8th August 2013, in case of *M/s. Ved Prakash Mithal and Sons v/s. Union of India* relied upon by the learned Counsel for the applicant is concerned, it is held by the Hon'ble Supreme Court that “disposal” of an application will be either by allowing or dismissing it. There is no dispute about this proposition of law laid down by the Supreme Court. The question before this Court however is whether the application under Section 33(1) of the Arbitration and Conciliation

Act, 1996 was filed within the time prescribed under Section 33(1) of the Arbitration and Conciliation Act, 1996 or not. There is no provision for condonation of delay in filing of such application under Section 33(1) of the Arbitration and Conciliation Act, 1996. The Judgment of the Hon'ble Surpeme Court in case of *M/s. Ved Prakash Mithal and Sons* (supra) would not assist the case of the applicant.

16. In my view, since the arbitration petition is filed beyond the period of three months from the date of service of a signed copy of the arbitral award, the arbitration petition is barred by limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. The delay in filing the petition is more than 30 days and thus this Court has no power to condone such delay. Notice of Motion is accordingly dismissed. In view of the dismissal of the notice of motion, arbitration petition, which is filed beyond the period of 3 months and not even within the grace period of 30 days, is also dismissed. No order as to costs.

(R.D. DHANUKA, J.)