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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.423 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1058 OF 2017
WITH
NOTICE OF MOTION NO. 129 OF 2018
IN
ARBITRATION PETITION (LODGING) NO. 25 OF 2018
WITH
NOTICE OF MOTION NO. 422 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1059 OF 2017
WITH
NOTICE OF MOTION NO.426 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1057 OF 2017
WITH
NOTICE OF MOTION NO. 429 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1025 OF 2017
WITH
NOTICE OF MOTION NO. 430 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1026 OF 2017
WITH
NOTICE OF MOTION NO. 432 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1061 OF 2017
WITH
NOTICE OF MOTION NO.433 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.1027 OF 2017
WITH
NOTICE OF MOTION NO.436 OF 2018
IN
ARBITRATION PETITION (LODGING) NO.26 OF 2018

Bharat Sanchar Nigam Limited

...Applicant

IN THE MATTER BETWEEN :

Bharat Sanchar Nigam Limited

...Petitioner

V/s.

Unity Telecom Infrastructure Ltd.

...Respondent

Ms.Disha Karambar - Mulgaonkar with Ms.Priya Rita and Mr.Omkar Dalvi i/b M/s.Disha Karambar & Associates for the Applicant / Petitioner in all the Notices of Motion and the Arbitration Petitions.

Mr.Ramesh Ramamurthy for the Respondents in all; the Notices of Motion and the Arbitration Petitions.

CORAM : R.D. DHANUKA, J.
DATE : 20TH AUGUST, 2019.

ORAL JUDGMENT :-

1. By consent of parties, these notices of motion which are for condonation of delay of various periods in filing the arbitration petitions under section 34 of the Arbitration & Conciliation Act, 1996 were heard together and are disposed off by a common order.

2. According to the applicant, there was delay of about 29 days in filing Arbitration Petition (Lodging) Nos.1025 of 2017, 1026 of 2017 and 1027 of 2017.

3. According to the applicant, there is delay of more than 30 days beyond the period of three months in the other arbitration petitions.

4. The admitted fact is that the impugned arbitral award was rendered by the learned arbitrator on 3rd August, 2017. In paragraph 18 of the affidavit in support of the notice of motion, it is averred by the applicant that the learned arbitrator telephonically called Shri T.K. Joseph, Divisional Engineer, OFC Project Division, Mumbai and informed that the award was ready and requested to send somebody

for collecting the award. An officer from the office of Divisional Engineer, OFC Project Division, Mumbai went to the learned arbitrator's office and the learned arbitrator handed over the award of all the nine cases to him. The copies of the award was collected on 3rd August, 2017 by the said office bearer of the Divisional Engineer.

5. Learned counsel appearing for the applicant invited my attention to the documents i.e. internal notings of the applicant annexed at Exhibit "A" to the affidavit in rejoinder and would submit that the copy of the award was produced before the Chief General manager only on 10th August, 2017 who was the respondent in the arbitral proceedings. He thereafter obtained an opinion from the advocates appearing for the applicant before the learned arbitrator and after obtaining such opinion, lodged the Arbitration Petition (Lodging) Nos.1025 of 2017, 1026 of 2017 and 1027 of 2017 on 7th December, 2017. It is submitted by the learned counsel for the applicant that since the Chief General Manager was the respondent in the arbitral proceedings, copy of the award served upon the staff member of the applicant on 3rd August, 2017 would not commence the period of limitation prescribed under section 34(3) of the Arbitration & Conciliation Act, 1996. She submits that in the Arbitration Petition (Lodging) Nos.1025 of 2017, 1026 of 2017 and 1027 of 2017 since the copy of the award was received by the office of the Chief General Manager only on 10th August, 2017, the period of limitation would commence from 11th August, 2017 and not from 3rd August, 2017. **M/s. Himachal Techno Engineers & Anr.** and

also the judgment of the Supreme Court in case of ***Union of India vs. Tecco Trichy Engineers & Contractors*** which judgment was adverted to by the Supreme Court in the judgment in case of ***State of Himachal Pradesh & Anr.*** (supra) delivered on 26th July, 2010 in Civil Appeal No.5998 of 2010.

6. Mr.Ramamurthy, learned counsel for the respondent on the other hand submits that the documents annexed at Exhibit "A" to the affidavit in rejoinder filed by the applicant itself would indicate that Shri T.K. Joseph, DET, OFC (P) and Shri A.S. Sundaram DET Panjim were authorized on behalf of CGM WTP to represent the case before the learned arbitrator. Both the officers were all through out present in the arbitral proceedings in which the learned arbitrator observed that the representative of the Chief General Manager has not only attended the proceedings but also filed various pleadings before the learned arbitrator including the counter claim and the written statement.

7. Learned counsel invited my attention to page no.49 of the affidavit in rejoinder and would submit that in the said document, it is clearly admitted that that the said two officers were authorized on behalf of the Chief General Manager to represent the case before the learned arbitrator. The SDE (Legal) who had collected the copy of the award from the learned arbitrator was authorized to receive the said copy of the award and had acknowledged the copy of the award on 4th August, 2017. The said officer thereafter prepared a report in

respect of each of the award and put up the case for further comment of the Deputy General Manager and thereafter the Chief General Manager on 10th August, 2017. It is submitted by the learned counsel that the time taken by authorized officer, who collected the award from the learned arbitrator for preparing a report and for receiving the comments from the Deputy General Manager and thereafter by the Chief General Manager on 9th August, 2017 and 10th August, 2017 respectively would not extend the period of limitation prescribed under section 34(3) of the Arbitration Act.

8. Learned counsel for the respondent distinguished the judgment of the Supreme Court in case of **State of Himachal Pradesh & Anr.** (supra) and in case of **Union of India** (supra) and would submit that in this case the copy of award was received by an employee on the non-working day of the applicant, but was collected by the authorized person on behalf of the applicant. The expression “party” described in section 31(5) of the Arbitration Act would include the authorized person. Learned counsel placed reliance on the judgment of the Supreme Court in case of **Simplex Infrastructure Limited v. Union of India, (2019) 2 SCC 455** and in particular paragraphs 20 and 21 and would submit that the Supreme Court had distinguished the judgment of the Supreme Court in case of **Union of India vs. Tecco Trichy Engineers & Contractors** (supra) relied upon by the learned counsel for the applicant.

9. A perusal of the affidavit in support filed by the applicant clearly indicates that the award was delivered on 3rd August, 2017.

On 3rd August, 2017 itself the learned arbitrator had informed Shri T.K. Joseph, Divisional Engineer that the award was ready and requested him to send somebody to collect the award. A perusal of Exhibit "A" to the affidavit in rejoinder filed by the applicant clearly indicates that Shri T.K. Joseph, DET, OFC (P) and Shri A.S. Sundaram DET Panjim were authorized on behalf of CGM WTP to defend and represent the case before the learned arbitrator. It is not in dispute that both the officers had been representing the Chief General Manager all through out and had also filed the pleadings on behalf of the Chief General Manager.

10. It is not in dispute that the arbitral award was collected by the SDE (Legal) from the office of the arbitrator who was authorized to collect the said award on 3rd August, 2017. The matter thereafter was referred to the Deputy General Manager (P & A) for his comment and thereafter sent to the Chief General Manager on 10th August, 2017. The Chief General Manager instructed to obtain a legal opinion. It is thus clear that the said SDE (Legal), who collected the award from the learned arbitrator did not submit a copy of the said award with the office of the Chief General Manager on 3rd August, 2017 but served a copy thereof along with his comments only on 10th August, 2017. In my view, the time taken by SDE (Legal) in preparing his comments in each of the award for seven days and thereafter forwarding the award to the office of the Deputy General Manager on 9th August, 2017 and thereafter to the office of Chief General Manager on 10th August, 2017 would not extend the period of limitation prescribed under section 34(3) of the Arbitration &

Conciliation Act, 1996. The judgment of the Supreme Court in case of **State of Himachal Pradesh & Anr.** (supra) and in case of **Union of India vs. Tecco Trichy Engineers & Contractors** (supra) relied upon by the learned counsel for the applicant is clearly distinguishable in the facts of this case. In this case, a copy of the award was not served on any non-working day but was personally collected by the authorized representative of the applicant from the office of the learned arbitrator. It is not the case of the applicant in the affidavit in support of the notice of motion or in affidavit in rejoinder that the said person was not authorized to collect the award from the learned arbitrator. The applicant being a Government Undertaking acts through the authorized officers.

11. Supreme Court in case of **Simplex Infrastructure Limited** (supra) has distinguished the judgment of the Supreme Court in case of **Union of India vs. Tecco Trichy Engineers & Contractors** (supra). The said judgment would clearly apply to the facts of this case. I am respectfully bound by the said judgment.

12. This Court has no power to condone delay beyond 30 days after expiry of the period of limitation prescribed under section 34(3) of the Act.

13. I therefore, pass the following order :-

a). All the above notices of motion are dismissed.

b). In view of dismissal of the notices of motion, seeking condonation of delay in filing the arbitration petitions, all the above arbitration petitions are also dismissed. There shall be no order as to costs.

(R.D. DHANUKA, J.)