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

+ **O.M.P. (COMM) 187/2019 & I.A. 6763/2019**

DIRECTOR-CUM-SECRETARY, DEPARTMENT OF SOCIAL
WELFARE Petitioner

Through: Mr. Prateek K. Chadha, Advocate.

versus

SARVESH SECURITY SERVICES PVT. LTD. Respondent

Through: Ms. Sneha Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
% **08.05.2019**

SANJEEV NARULA, J

I.A. 6761/2019 (seeking condonation of delay of 118 days in re-filing the petition).

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'the Act') has been filed by the Petitioner challenging the award dated 22nd October 2018 passed by the learned Arbitral Tribunal adjudicating the disputes that had arisen between the parties in relation to the Contract dated 30th September 2014, executed pursuant to a tender floated by the Petitioner.

2. It is not in dispute that the copy of the award dated 22nd October 2018 was

received by the Petitioner on the same date and therefore, the period of limitation under Section 34 (3) of the Act would commence from the 23rd October 2018. The petition was filed for the first time on 1st December 2018. It was returned under objections on 4th December 2018. It was then re-filed on 22nd December 2019 and again returned under objections on 5th January 2019. It was re-filed once again after almost 100 days on 15th April 2019 and thereafter on multiple occasions. In the meantime the statutory period of three months and thirty days for filing the present petition, under Section 34 (3) of the Act, expired on 19th February 2019.

3. The said petition, as originally filed did not bear the signatures of the Petitioner. It was also not accompanied with an affidavit of the Petitioner. Moreover, there was no vakalatnama accompanying the Petition authorizing the counsel to sign the petition. Learned counsel for the Petitioner argues that the delay of 118 days is only on account of re-filing and the court should take a liberal view and condone the same. He also relies upon the judgment of the Supreme Court in ***Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd*** decided on 24th October 2016 to contend that section 34(3) of the Act, applies only to initial filing of objections under the Act and has no application to re-filing of the petition. On the other hand, learned counsel for the Respondent has objected to the condonation of delay on the ground that the initial filing is *non est*. She argues that since petition filed on 1st December 2018 did not even bear the signatures of the Petitioner and was also not accompanied by the statement of truth or the vakalatnama of the counsel, it cannot be treated as filing of the Petition. Such filing has no consequence and the period of limitation would commence from the date

when the petition is filed as per law in accordance with the Delhi High Court Rules. In support of her submissions, the learned counsel has relied upon the judgment of the Coordinate Bench of this Court in ***SKS Power Generation (Chhattisgarh) Ltd.*** dated 3rd April 2019 in OMP (Comm) No. 132/2019.

4. The Court has heard the learned counsels for the parties.

5. It is an admitted fact that the petition as originally filed did not have the signatures of the Petitioner. It was also not accompanied with the statement of truth in the form of the affidavit. Besides, as noted above, the vakalatnama in favour of the counsel was also not placed on record. The question therefore is whether such a petition could qualify as a filing in law? This question has been a subject matter of several decisions including the one relied upon by the learned counsel for the Respondent. It has been held that such a petition would not qualify as a filing and the Court has discouraged litigants to file such petitions in order to avoid the rigour of strict provision of limitation as stipulated under Section 34 (3) of the Act.

6. The learned counsel for the Petitioner has tried to distinguish the judgment of ***SKS Power Generation*** (supra) on facts by contending that in the said case, the copy of the award was not placed on record whereas in the present case the award had been filed along with the petition. He also contends that since he is a Panel counsel of the Petitioner, the vakalatnama that he had in his favour for the proceedings before the Arbitral Tribunal should also be deemed to be valid for the purpose of the filing of the present

petition. Both the contentions are unmerited. The petition, as filed before this Court, admittedly, did not have the Vakalatnama. The Vakalatnama was filed on 27th April 2019. Perusal of the said vakalatnama shows that it has been signed on 11th January 2019 and bears the court fees stamps dated 20th February 2019. Therefore, it is clear that for the purpose of filing the present petition, the counsel needed specific authorisation to proceed in the matter. This vakalatnama has been executed after the filing of the present petition. The vakalatnama executed in favour of the counsel for the purposes of the arbitration proceedings is inconsequential for the present petition. Pertinently, the petition is also not accompanied with the said vakalatnama. This contention is now being raised only to somehow overcome the fundamental lacuna in the present case. Just because the counsel is a Panel lawyer, it does not put him in any special category. The power of attorney in his favour had to be specifically issued. The petition has not been filed on the strength of the counsel being a panel lawyer. The other fact mentioned to distinguish the decision in **SKS Power Generation** (supra) is of annexing the copy of the award. To the court this does not render the aforesaid decision inapplicable. The basic requisites for filing the present petition are the signatures of the parties, the affidavits accompanying the petition and the vakalatnama. Merely because an award is also accompanied with the petition does not in any way change the position in law and therefore, the decision of the coordinate Bench of this Court in **SKS Power Generation** (supra) would be squarely applicable to the facts of the present case. Lastly, the learned counsel for the Petitioner has strenuously argued that he had received oral instructions from his client to file the present petition and he being one of the panel lawyers of the Petitioner, is entitled under law to file

the present petition. This submission is also ex-facie devoid of merit for two reasons. Firstly, no such averment has been made in the present application and moreover, such oral instructions would not authorise him to file the present petition contrary to the rules. The Petitioner cannot be given the benefit of the initial filing and the date on which the defects are cured would have to be considered as the date of initial filing.

7. It is also noteworthy that the application seeking condonation of delay is even otherwise bereft of merits. The application seeking condonation of delay reads as under:-

“2. It may be stated here that the impugned award was passed on 22nd October, 2018. As such the time period prescribed for challenging the award under Section 34(3) of the Arbitration and Conciliation Act, 1996, being three months lapsed on January 20th 2019. However, the Petitioner had filed the accompanying petition before the Ld. Registry of this Hon'ble Court on December 04th, 2018, through diary no. 500529 of 2018, in respect of which objections were notified to the Petitioner on December 04th 2018.

3. Meanwhile, the authorized signatory and director of the Petitioner Company suffered from grave illness wherein his mobility was severely restricted and he was advised complete bed-rest. As such, the counsel for the Petitioner was unable to complete his instructions in respect of the accompanying petition, more so, in respect of the extent of challenge of the arbitral award to be made was still under deliberation with the authorized signatory and director of the Petitioner company.

4. It may be stated here that the 30 days' time period as prescribed under the Hon'ble High Court rules for re-filing the accompanying petition was to lapse on February 02, 2019.

However, the Ld. Registry of this Hon'ble Court was not functioning on account of the Hon'ble Court rising for the winter-spell. Be that as it may, in an endeavor to remove the defects as pointed out.

5. Thereafter it was only on January 8, 2018 that the Counsel for the Petitioner was apprised by the Ld. Registry through email, in respect of defects which were again marked in the accompanying petition.

6. Consequently, the Counsel for the petitioner proceeded with all earnestness to seek to remove all the deficiencies pointed out by the Ld. Registry and it was only by January 19, 2018, that the instructions for the Counsel for the Petitioner stood complete and as such the accompanying petition has been filed with all earnestness.

7. The accompanying petition seeks to challenge an arbitral award which has been passed not only in contravention of the terms of the contract between the parties, but also, contrary to provision of law. As such, balance of convenience and prima facie case exist in favor of the Petitioner on merits and consequently the present application seeking to condone a delay of 118 days in re-filing the accompanying petition is liable to be allowed in the interest of justice.”

8. In para 3, the ground of illness of the authorised signatory and Director of the Petitioner has been raised. However, there is no such document placed on record in support of such plea. Further, in para 4, a vague plea has been raised regarding the non-functioning of the High Court's Registry on account of winter spell. This averment is completely baseless and untenable and would not, in any way, advance the period of limitation in the present case.

9. Pertinently even on the date of re-filing, i.e. after the expiry of the

statutory period of three months and thirty days, the Petition was not accompanied by the affidavits of the Petitioner or the vakalatnama. The vakalatnama of the Petitioner is filed on 27th April 2019 and the affidavits have been filed on 2nd May 2019, which is beyond the expiry of the period of limitation. The conduct of the applicant does not show that he acted with due diligence and dispatch or that the delay was on account of reasons beyond his control and could not have been avoided despite all possible efforts by the applicant. In the present case there has been a delay of 118 days in re-filing. This period of delay itself beyond the statutory period of three months provided for filing the petition. Thus the petition is ex-facie, beyond the statutory period of three months and thirty days prescribed under Section 34(3) of the Act. Such a delay in re-filing cannot be permitted to frustrate the object of the Act. This view is also supported by the decision of this court in FAO (OS) 485-86/2011, dated 7th November 2013, ***DDA v. M/s Durga Construction Co., M/s Competent Placement Services v. Delhi Transport Corporation: 2011(2) R.A.J. 347 (Del), The Executive Engineers v. Shree Ram Construction & Co.: 2011 (2) R.A.J. 152 (Del) and Ashok Kumar Parmar v. D.C. Sankhla: 1995 RLR 85.***

10. The initial filing was a deliberate attempt to stop the period of limitation from running. Thereafter, the Petitioner did not take any steps to have the vakalatnama and the affidavits filed in the Court within the period prescribed under Section 34 (3) of the Act. The re-filing done was to keep the matter alive without curing the defects leading to the gross delay. For the foregoing reasons, it is clear that the present application seeking condonation of delay for re-filing cannot be allowed.

11. Accordingly, the application is dismissed.

O.M.P. (COMM) 187/2019

12. In view of the above reasoning and dismissal of the application for condonation of delay, the petition and the pending applications also stand dismissed with no order as to costs.

MAY 08, 2019

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SANJEEV NARULA, J