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

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Date of decision: 02.12.2019

+ O.M.P. (COMM) 503/2019

BHARAT SANCHAR NIGAM LTD

..... Petitioner

Through: Mr. D.S. Mahendru, Advocate

versus

M/S VINDHYA TELELINKS PVT LTD

..... Respondent

Through: Mr. Abhishek Sharma & Mr.Narendra
M. Sharma, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. 16876/2019

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

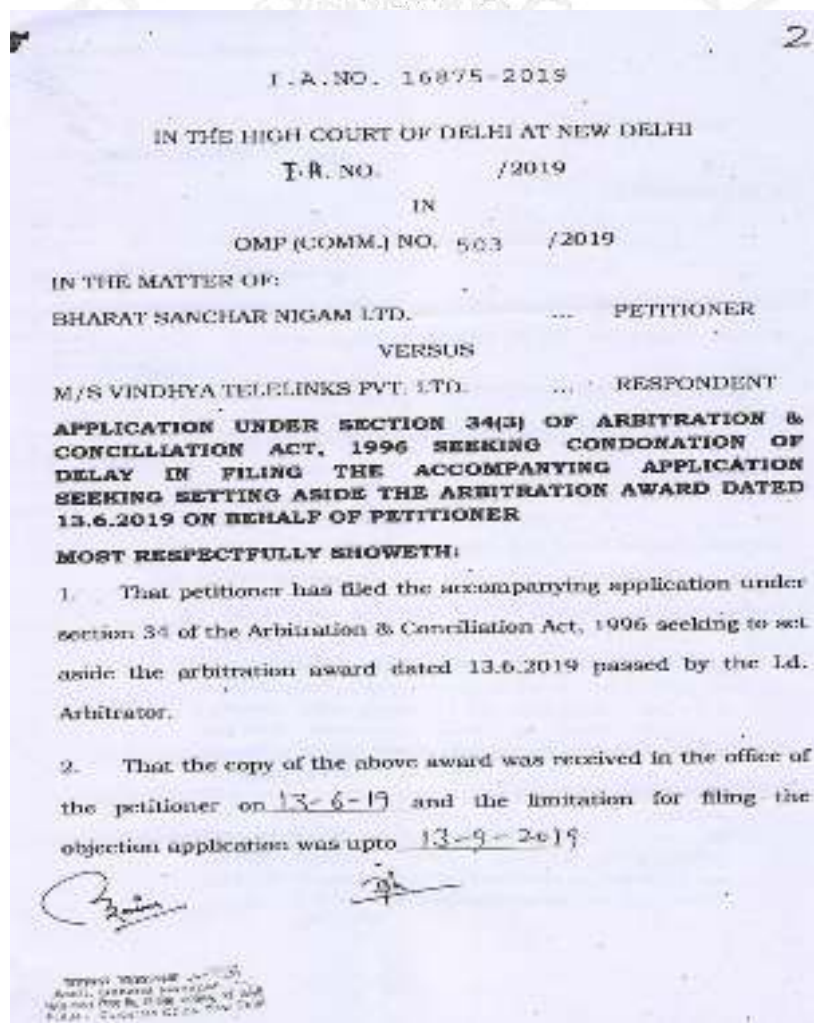
I.A. 16875 (delay in filing)

1. The present application has been filed seeking condonation of delay of 26 days in filing the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') for setting aside the award dated 13th June, 2019 passed by the Sole Arbitrator.

2. A perusal of the application shows that the application only contains a narrative that the delay was on account of administrative exigencies, including detailed deliberations. It is further averred that the final approval

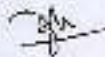
for filing the objections was granted on 01.10.2019 and the file was forwarded to the counsel for drafting of the petition.

3. It is averred that the counsel had drafted the objections and sent the draft to the corporate office of the petitioner on or about 20.09.2019. Thereafter, certain changes/amendments were proposed and the same were carried out. The draft was sent to the counsel on 30.09.2019. It is stated that the final draft was sent by the counsel on 09.09.2019 and the application was finally filed on 10.10.2019. Application for condonation of delay in filing the petition, filed by petitioner is scanned and placed as under:-

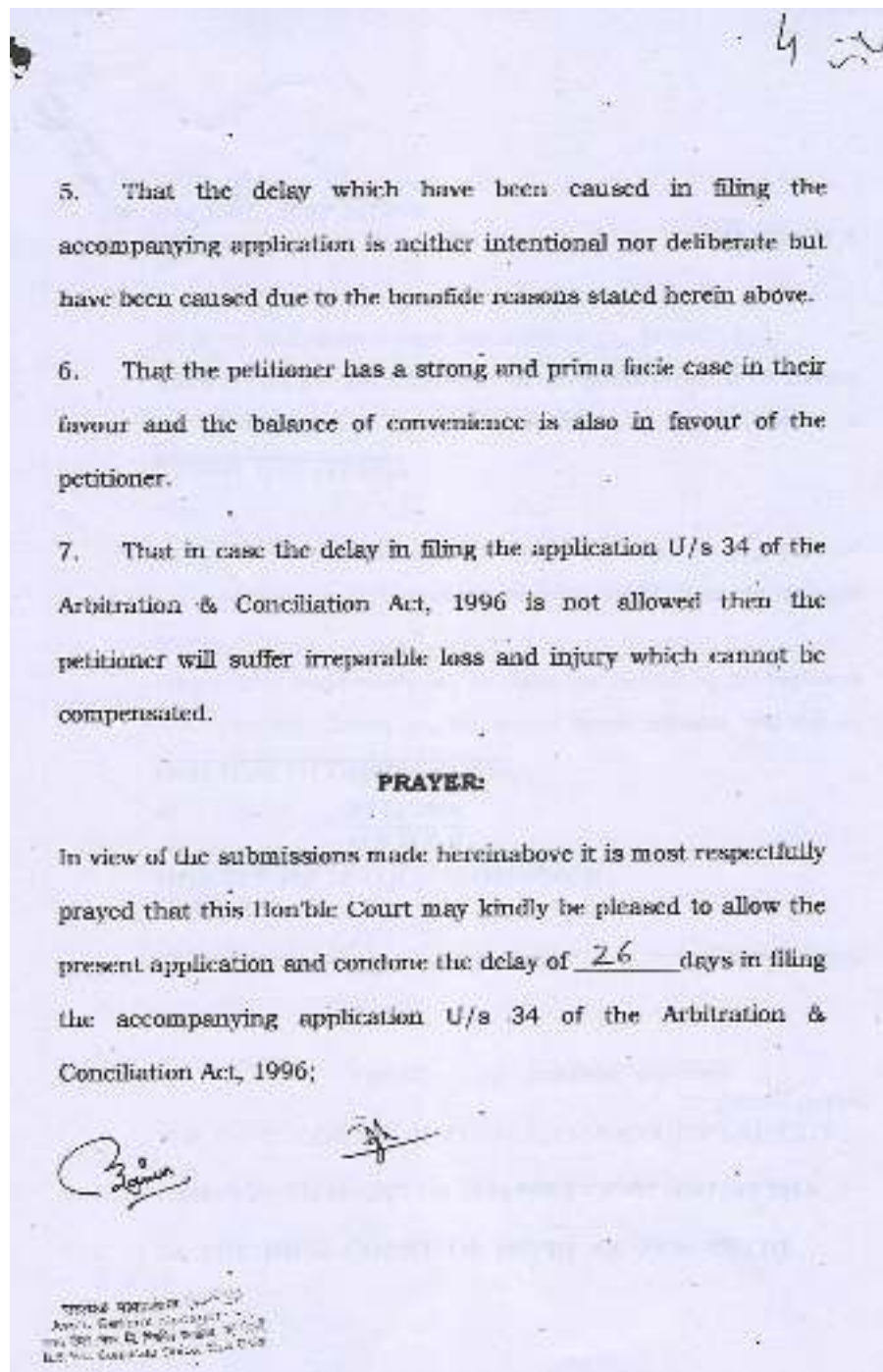


3. That the objection application U/s 34 of the Arbitration & Conciliation Act, 1996 could not be filed in this Hon'ble Court within the period of three months due to some un-avoidable administrative exigencies which included detailed deliberations on the award, seeking opinion from the legal department and seeking approval of the competent authority for filing the application. The final approval for filing the objection application was granted on 1-10-2019. Thereafter the file of the above case was forwarded to the counsel for BSNL for drafting the application.

4. That the counsel for BSNL drafted the objections and sent the same to the Corporate Office of BSNL on or about 20th Sept 2019. After going through the same certain changes/amendments were proposed to be carried out in the said objections for which the draft was returned to the counsel on or about 30th Sept 2019. The final draft was sent by the counsel to the BSNL on 9th Sept 2019 and the application U/s 34 of the Act has been filed in this Hon'ble Court on 10-10-2019 i.e. before the expiry of 30 days period.



Special Representative of
Asst. General Manager (Legal)
for the Asst. Genl. Mgr. BSNL
B.S.N.L. Corporate Office, New Delhi



4. The log information by the Registry indicates that the delay in filing the petition is 29 days. The said calculation has been arrived at by deducting a period of 3 months which is the statutory limitation period out of the 119 days which the petitioner took to file the petition.

5. Section 34(3) of the Act provides a limitation period of three months for filing the objection against the award, after a signed copy of the same is received by the party. Proviso to Section 34 (3) of the Act provides an extended period of 30 days within which objections can be filed and the Court has the discretion to condone the delay within this period. This is, however, with a rider that the objector would have to show a “sufficient cause” which prevented the objector from filing the petition within the 3 months period as envisaged in Section 34(3) of the Act. A combined reading of the substantive section and the proviso thereto, leaves no manner of doubt that the total period available to an objector is 120 days and beyond the outer limit of 120 days, the Court has no power to condone the delay of even one day.

6. The Supreme Court in the case of ***Simplex Infrastructure Ltd. V. Union of India (UOI), 2019 (2) SCC 455*** has clearly held that the Court has no power or discretion to condone the delay beyond the period of 120 days. Relevant portion of the judgment reads as under:-

“18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.”

7. Thus, it is no longer *res integra* that proviso to Section 34(3) of the Act gives a discretion to the Court to condone the delay only if the petition is filed within the extended 30 days and that too subject to a clear caveat that the petitioner should be able to show ‘sufficient cause’.

8. The present application which has been filed seeking condonation of delay clearly reveals that no effort has been made by the petitioner worth a mention to set out any grounds which prevented the petitioner from approaching this Court within the limitation period of 3 months. The application is not clear as to when the petitioner gave the final approval for filing the objections. It is further not clear as to when the draft was prepared and sent to the office of the petitioner and when was the final draft given by the counsel. Para 7 shows that the only ground given is that the petitioner will suffer irreparable loss. Administrative delay has been mentioned in para 3, but what was the administrative difficulty is not clearly explained.

9. Be that as it may, the Apex Court in ***Simplex*** (*supra*) has held that administrative delay would not be a valid ground to condone the delay beyond the period prescribed under Section 34(3) of the Act. Relevant portion of the judgement reads as under:-

“20... It is an admitted position that on 27 October 2014, the arbitrator made an award in favour of the Appellant and on 31 October 2014, the Union of India received a copy of the award. One of the reasons stated by the Respondent for delay in filing an application Under Section 34 of the 1996 Act was that the departmental office was located at Port Blair, Andaman and it was a time-consuming process for obtaining permission from the circle office at Chennai. Administrative difficulties would

not be a valid reason to condone a delay above and beyond the statutory prescribed period Under Section 34 of the 1996 Act.”

10. Since the petitioner has not set out any ground in the application on which the delay can be condoned, leave alone ‘sufficient cause’ as required under proviso to Section 34(3) of the Act, the present application only deserves to be dismissed.

11. The delay of 26 days is unexplained and cannot be condoned. The limitation period under Section 34(3) of the Act is strict and inflexible.

12. The application has no merit and is hereby dismissed.

O.M.P. (COMM) 503/2019 & 16877/2019 (delay in refiling)

13. Since the application for condonation of delay has been dismissed, for the reasons stated above, the present petition is dismissed along with the pending application for delay in re-filing.

DECEMBER 02, 2019
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JYOTI SINGH, J