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

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Date of Decision: 6.3.2019

+ **O.M.P. (COMM) 34/2019**

UNION OF INDIA (MINISTRY OF HEALTH &
FAMILY WELFARE)

..... Petitioner

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, Adv.

versus

ENARCH CONSULTANTS PVT. LIMITED Respondent

Through: Mr. Anil Seth with Mr. Udit Seth,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER (ORAL)

I.A. No.987/2019

1. Allowed, subject to just exceptions.

OMP(COMM) No.34/2019 & I.A. No.986/2019

2. Notice has not been issued as yet in the captioned petition.

2.1 Mr. Seth, who, appears on advance notice on behalf of the respondent raises a preliminary objection. Mr. Seth submits that the petition is barred by limitation.

3. What is not disputed by the counsel for parties qua the captioned petition are the following facts: Firstly, the award dated 24.8.2018, was received by the petitioner on 27.8.2018. Consequently, the period of limitation of three (3) months provided under Section 34(3) of the

Arbitration and Conciliation Act, 1996 (hereafter referred to as ‘1996 Act’) would end on 27.11.2018.

(ii) Secondly, the court vacations for the term ending in December, 2018 commenced on 23.12.2018. The Registry of this Court reopened on 5.1.2019, while the Court commenced its working on 7.1.2019.

(iii) Thirdly, the captioned petition was filed with the Registry of this Court on 7.1.2019. The affidavit in support of the petition and applications was filed on 9.1.2019.

4. Mr. Seth, according to me, rightly relies upon the judgment of the Supreme Court rendered in *Assam Urban Water Supply and Sewerage Board vs. Subash Projects and Marketing Limited*, (2012) 2 SCC 624 to contend that the petitioner cannot take advantage of the proviso to Section 34(3) of the 1996 Act to claim that the petition was filed within the period of limitation.

5. It is Mr. Seth’s contention based on the aforementioned judgment that since the Court vacations had commenced after expiry of the “prescribed period”, which is the period of limitation of three months provided under Section 34(3) of the 1996 Act, the petitioner cannot take recourse to the period of 30 days provided in the proviso to Section 34(3) of the 1996 Act for extension of limitation.

6. As alluded to above, the contention of Mr. Seth is correct. The Supreme Court in the *Assam Urban Water Supply and Sewerage Board* case has rendered the decision on the very same lines. For the sake of

convenience, the relevant observations of the Supreme Court are extracted hereafter:

“10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on 26-8-2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on 26-11-2003. The District Court had Christmas vacation for the period from 25-12-2003 to 1-1-2004. On reopening of the court i.e. on 2-1-2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get the benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts?

12. Section 4 of the 1963 Act reads as under:

“4.Expiry of prescribed period when court is closed.—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.—A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above section enables a party to institute a suit, prefer an appeal or make an application on the day the court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines:

“2. (j) ‘period of limitation’ [which] means the period of limitation prescribed for any suit, appeal or application by the Schedule, and ‘prescribed period’ means the period of limitation computed in accordance with the provisions of this Act;”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside an arbitral award is three months. The period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not the “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, the “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

10. As would be evident upon reading the aforementioned observations, the Supreme Court has held that Section 4 of the Limitation Act, 1963 would come to an aid of the party to enable it to file a suit, appeal or application after the Court reopens only if the prescribed period, that is, the period of limitation were to fall within the period when the Court is closed. The Court has held that the expression “prescribed period” which finds

mention in Section 4 of the Limitation Act, 1963 would mean the period of limitation provided under Section 34(3), which is the period of three (3) months and not the 30 days period beyond the period of three (3) adverted to in the proviso to Subsection (3) of Section 34 of the 1996 Act.

11. In these circumstances, the petition will have to be dismissed. It is ordered accordingly.

12. The pending application, having been rendered infructuous, is, consequently, closed.

RAJIV SHAKDHER, J

MARCH 06, 2019/pmc