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

+ O.M.P. (COMM) 142/2019

***Date of Decision : 8<sup>th</sup> April, 2019***

NATIONAL DISASTER MANAGEMENT AUTHORITY  
& ANR. .... Petitioners

Through: Mr.Jaswinder Singh, Adv.

versus

SHEKHAR PAL SHARMA ..... Respondent

Through: Mr.Mukesh Kumar, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

**I.A. No.4902/2019 (Delay)**

Learned counsel for the petitioner submits that the copy of the Award was received by the petitioner only on 16.01.2019. The petition, even after removing the defects, was re-filed on 01.04.2019, though, it had been originally filed on 11.02.2019.

As the petition has been filed within the period of limitation even after removing the defects, and for the reasons stated in the application the delay in re-filing of the petition is condoned. Application stands allowed.

**O.M.P. (COMM) 142/2019 & I.A. No.4900/2019**

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') has been filed challenging the Arbitral Award dated 11.01.2019 passed by the Sole Arbitrator adjudicating the disputes that had arisen between the parties in relation to the contract for Specialists Services executed between the parties on 21.12.2015.
2. The petitioner had terminated the service of the respondent vide its notice dated 24.05.2018. This was the bone of contention before the Arbitrator with the respondent challenging the validity thereof.
3. The Arbitrator in the Impugned Award has set aside the termination notice, as being not based on correct fact. In reaching this conclusion, the Arbitrator has given the following reason:

*"A. The first point that arises for consideration of this Tribunal to decide is the legality and validity of the Notice of Termination dated 24<sup>th</sup> May, 2018, issued by Respondent No. 2 to the Petitioner. The Clause No. 6.3 in the Contract of Service provides that the work assigned to the employee "in other words till the work is assigned by the employer/Respondent No. 2 to the employee/petitioner and that work assigned is not completed as per directions then the action by the Respondent No. 2 is warranted but in case no work is assigned, can the employee be held responsible for any dereliction of duty and/or deficiency on his part. The dereliction of duty and deficiency will arise only if the work is assigned and not in the absence thereof. I repeatedly enquired from the Respondent No. 2 during the course of argument that the discrepancies which have been pointed in letter dated 13<sup>th</sup>*

*March, 2018 and the time assigned to the Petitioner to complete the work, was any work assigned to the Petitioner. The documents filed on record and relied upon by the Petitioner clearly reveal that the higher authorities had already accepted that out of the three tasks which were the basis for the discrepancies on the part of the Petitioner, two of them had already been completed satisfactorily. Regarding the third, the work was never handed over to the Petitioner and other discrepancies which have been pointed out in letter dated 13<sup>th</sup> March, 2018 those related to Mr. Gaurav Mishra, IT Manager, who was also directed to complete the job but could not complete it and therefore his services were terminated. It is admitted by the Respondent No. 2 that in the whole of the Project for which the services of the Petitioner were deployed under the Contract of Service, there is only one MIS Specialist. and none else and the services of MIS Specialist were required mandatorily. It was also accepted by Respondent No. 2 that if there is no MIS Specialist, the work cannot be further carried out and the Project cannot be completed. It is strange that MIS Specialist that is the Petitioner was working from 2015 and was continuing on the job and the Project was also carried out towards its completion. Accordingly, the Petitioner was doing his job and discharging functions diligently, sincerely and to the satisfaction of the higher authorities which fact is controverted by the Respondents. Their case is that they have been warning and reprimanding the Petitioner from time to time to discipline himself in discharging his duties as MIS Specialist. Be that as it may, one fact is clear that the Petitioner had been working under the Contract of Service from 2015 till February, 2018. In March, 2018 letter dated 13<sup>th</sup> March, 2018 was issued in which the discrepancies had been pointed out and three of the discrepancies were the basis for issuance of Notice of Termination dated 24<sup>th</sup> May, 2018. As I have already held above that two of the tasks were already completed as*

*accepted by the higher authorities of Respondent No. 2 in the documents filed on record. So those could not be the basis for issuance of notice dated 24<sup>th</sup> May, 2018. Regarding the third, it is the case of the Respondent No. 2 itself that the work was yet to be assigned.”*

4. Learned counsel for the petitioner has placed reliance on the Office Orders dated 16.11.2016, 06.04.2017, 27.11.2017, 05.02.2018, 13.03.2018 and 13.04.2018 to contend that the respondent had not only failed to complete the three tasks assigned to him but as has been recorded in the Office Order dated 16.11.2016, had also failed to perform the work within the time granted. He submits that the Arbitrator has completely ignored these documents in holding that the reason for termination of services of the respondent was invalid.

5. I may first note the preliminary objection raised by the counsel for the respondent to the maintainability of the present petition. Drawing specific reference to paragraph 12 of the Impugned Award, learned counsel for the respondent submits that before the Arbitrator the petitioner had placed reliance on various documents, specially the rejoinder filed by the respondent before the Arbitrator. The petitioner has not placed these documents on record, neither has the rejoinder been placed on record. He submits that in view of the order dated 31.10.2018 in OMP (COMM) 454/2018, titled as **NHAI v. Roadways Solution India Private Ltd.**, wherein this Court held that the entire record of the arbitral proceedings has to be filed alongwith the petition under Section 34 of the Act, this petition is infact not maintainable. I find it indeed strange that the documents referred to by the petitioner are found missing in the documents filed with the petition.

6. Even otherwise on merit, I find that the Arbitrator has placed reliance on the fact that in spite of repeated query, the officers of the petitioner could not point out how and in what manner the other works that are mentioned in the Office Order dated 13.03.2018 were assigned to the respondent. The Arbitrator further holds that out of the three tasks mentioned in the Office Order dated 16.11.2016, two had been completed satisfactorily by the respondent. Regarding the third task, the work was never handed over to the respondent. Other discrepancies which had been pointed out in the letter dated 13.02.2018 also relate to the work that had been assigned to one Mr.Gaurav Mishra, IT Manager, whose services had been terminated for non performance of the said work. In the petition filed by the petitioner, it is not asserted that these findings of the Arbitrator are incorrect in any manner. In the course of arguments also, counsel for the petitioner has not drawn my reference to any document which would show that the works which have been mentioned in the Office Order dated 13.03.2018 had infact, been assigned to the respondent.

7. In any case, these being findings of facts determined by the Arbitrator, which I do not find to be completely perverse or contrary to the record, the said findings cannot be interfered with by this Court in exercise of its power under Section 34 of the Act.

8. I therefore, find no merit in the present petition and the same is dismissed, with no order as to cost.

**NAVIN CHAWLA, J**

**APRIL 08, 2019/Arya**