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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 127/2019 & CM APPL. 26170/2019**
UNION OF INDIA Appellant
Through Ms. Nidhi Mohan Prashar and Mr.
Shakya Sen, Advocates

versus

M/S ENARCH CONSULTANTS PVT LTD Respondent
Through Mr. Anil, Advocate

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **28.05.2019**

1. The appellant/ Union of India is aggrieved by an order dated 6th March, 2019 passed by the learned Single in OMP (COMM) 34/2019 filed by it against the Award dated 24th August, 2018. Vide order dated 6th March, 2019, the learned Single Judge dismissed the petition of the Union of India under Section 34 of the Arbitration and Conciliation Act, 1996 (in short the Act) on the ground that the same is barred by limitation.
2. The brief relevant facts for a decision on the aspect of limitation, that forms the basis of passing the impugned order is that the Award dated 24th August, 2018 was received by the appellant/ Union of India on 27th August, 2018. The period of three months provided under Section 34(3) of the Act for filing a petition for setting aside the Award, if reckoned from 27th August, 2018 would have expired on 27th November, 2018. However, the petition

was filed by the appellant/ Union of India only on 7th January, 2019. Accompanying the said petition was an application under Section 5 read with Section 4 of the Limitation Act praying *inter alia* for condonation of delay of 30 days on the ground that there were multiple conferences between the counsel and the officers of the appellant/ UOI and it took time for them to decide the next course of action.

3. Relying on the proviso to sub-section (3) of Section 34 of the Act that postulates that if the Court is satisfied that the applicant was prevented for sufficient cause from making an application within a period of three months, it may entertain an application within a further period of 30 days, the appellant/petitioner prayed for inclusion of 30 days for calculating the period of limitation and stated that if that is done, then the last date for filing the petition would have been 28th December, 2018 and not 28th November, 2018.

4. It is pertinent to note that in December 2018, the High Court had closed for the winter vacations on 22nd December, 2018 and reopened only on 7th January, 2019. However, the Registry of the High Court had opened two days earlier thereto, on 5th January, 2019. Since the appellant/UOI filed the petition only on 7th January, 2019 and filed the affidavits in support of the petition and the application two days later, on 9th January, 2019, learned Single Judge rightly relied on the decision of the Supreme Court in the case of ***“Asaam Urban Water Supply and Sewerage Board vs. Subhash Projects and Marketing Limited”***, reported as **(2012) 2 SCC 624**, and opined that the expression “*prescribed period*” that finds mention in Section 4 of the Limitation Act, 1963 would mean the period of limitation under Section 34(3) of the Arbitration and Conciliation Act and that would add up to a period of

three months and no benefit of the additional period of 30 days over and above the period of 3 months could be granted on the basis of the proviso to sub-section (3) of the Section 34 of the Act.

5. The decision of the Supreme Court in the captioned case is clear and unequivocal. It has been categorically held in the following paras that :

“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.”

6. We do not find any error in the finding of the learned Single Judge that Section 4 of the Limitation Act would come to the aid of a party to file a suit, appeal or application after the Court reopens only if the prescribed period, i.e., the period of limitation were to fall during the period when the Court is closed.

7. Accordingly, the present appeal is dismissed as being devoid of merits alongwith the pending application.

HIMA KOHLI, J

TALWANT SINGH, J

MAY 28, 2019/rr