

\$~8

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

+ **FAO(OS) (COMM) 297/2019 & C.M. APPLs.46331-46333/2019**

NEW DELHI MUNICIPAL COUNCIL Appellant
Through: Mr.Harsh Peechara, ASC with Mr.
Ashish Tiwari, Advocate

versus

V3S INFRATECH LTDRespondent
Through: None

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **22.10.2019**

1. The appellant/NDMC is aggrieved by the judgment dated 22.11.2017, passed by the learned Single Judge dismissing a petition filed by it under Section 34 of the Arbitration and Conciliation Act, 1996 whereunder, a challenge was laid to an Arbitral Award dated 16.06.2017, passed by the Sole Arbitrator. In the said petition, the challenge to the Award was confined to the findings returned by the Sole Arbitrator in respect of Issues No. 11 & 15, which was turned down. Accompanying the present appeal are two applications for seeking condonation of delay of 12 days in filing and 59 days in re-filing the appeal (C.M. APPLs.46331/2019 & 46333/2019). However, Mr.Peechara, learned counsel for the appellant/NDMC fairly states that the delay in filing is of a much longer period of 417 days.
2. The impugned judgment having been rendered on 22.11.2017, an appeal could have been preferred under Section 37 of the Arbitration and

Conciliation Act, 1996 within 60 days i.e. on or before 21.01.2018. However, the present appeal was presented in the Registry for the first time on 14.03.2019 and the same was returned under objections from time to time. If the period of delay is computed after excluding 60 days reckoned from 22.11.2017, there is a delay of 417 days. However, if the period of limitation is computed from 22.11.2017, then, the delay would be of 477 days.

3. The explanation offered in the application for seeking condonation of delay is that after the impugned judgment came to be passed, the matter was placed before the Council for a decision on 14.05.2019, but the said meeting was postponed. On 28.05.2018, the Council constituted a Committee to examine the matter. The Committee recommended that the Arbitral Award be accepted. However, the Council disagreed with the recommendation made by the Committee and directed that an inquiry be conducted by the CVO and the Chief Engineer (Electrical) whereafter, the Council directed that an appeal be filed. Though there is no date mentioned in the application as to when such a recommendation was made by the Council, learned counsel for the appellant states that it was sometime in the end of January, 2019.

4. It is further stated by learned counsel that the vigilance inquiry is still pending and before the present appeal came to be filed, the entire awarded amount has already been paid to the respondents/decreed holder in the execution proceedings filed by it [O.M.P.(ENF.)(COMM).165/2018]. A perusal of the order dated 04.02.2019, passed by the learned Single Judge in the captioned execution petition reveals that the appellant/Judgment Debtor had produced demand drafts for a sum of Rs.3,35,74,148/-, which were

permitted to be deposited in the course of the day and the respondent/Decree Holder was permitted to withdraw the said amount subject to giving an undertaking that in the event the appellant/Judgment Debtor succeeds in the appellate proceedings, then the said amount would be returned alongwith simple interest @ 9% *per annum*. The respondent/Decree Holder had also filed an affidavit in compliance of the order dated 04.02.2019, which was taken on record. Copies of the orders dated 04.02.2019 and 25.02.2019 are handed over and taken on record. It is noteworthy that the appellant did not apply for a certified copy of the impugned judgment. What has been filed with the appeal as Annexure A-1, is only a copy of the impugned judgment downloaded from the website of the Delhi High Court.

5. The period for filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996, if computed from the date of passing of the impugned judgment, would have admittedly expired on 21.01.2018. The application for condonation of delay does not mention any steps taken by the appellant/NDMC right from 22nd November, 2017 upto 14.05.2018, for filing an appeal. Even a certified copy of the judgment was not applied for. The first date mentioned in para 3 of the application is 14.05.2018, when it is stated that the Council had met, but the said meeting was postponed only to be held next on 28.05.2018. By 14.05.2019, almost six months had already expired. Despite the fact that the appellant/NDMC has a full-fledged legal department, which is well aware of the consequences of non-filing of an appeal and the fact that the limitation was running, no concrete steps were taken to file an appeal. Instead, the application states that the Council constituted a Committee to examine the matter and the recommendation made by the Committee of accepting the Arbitral Award, was also turned

down. Thereafter, the Council directed that an inquiry be conducted by the CVO.

6. Merely, because a vigilance inquiry was initiated in the matter would hardly be a ground to condone the delay. Even when the appeal was filed by the appellant/NDMC on 14.03.2019, we are told that the vigilance proceedings were continuing. That being the position, the explanation offered for non-filing of the appeal due to pendency of the vigilance inquiry, would hardly cut any ice. Quite apparently, the present appeal is patently belated and no just or sufficient cause has been shown by appellant/NDMC for condoning a delay of 477 days, if reckoned from 22.11.2017, and 417 days, after excluding 60 days computed from 22.11.2017, in filing of the accompanying appeal.

7. Even otherwise, having perused the impugned order dated 22.11.2017, wherein the reasons for deciding Issue No.11 relating to the claim of the respondent/decreed holder for release/payment of retention money and Issue No.15 relating to the claim of the respondent/decreed holder for interest on delay in paying the sum of Rs.10,90,36,978/- with interest, have been discussed, we find that the learned Single Judge has extensively examined the relevant clauses of the contract governing the parties and its effect and thereafter, has also gone through the findings returned by the learned Sole Arbitrator and held that Clause 29(i) of the Agreement relied on by the appellant/NDMC, has no application to the facts of the case, as for application of the said Clause, the appellant/NDMC was required to demonstrate that there was a claim for a particular amount against the respondent/decreed holder and the Engineer-in-charge of the NDMC had decided to withhold or retain the said sum, in whole or in part, from the

security amount deposited by the respondent/decreed holder, till finalization or adjudication of the said claim.

8. In the absence of any order passed by the appellant/NDMC retaining the security deposit against any of its claim, the learned Single Judge has rightly held that there was no good reason for the Court to differ with the view expressed by the learned Sole Arbitrator. Similarly, the amount awarded in favour of the respondent in respect of Issue No.15, i.e. interest on delayed admitted payment, has been upheld and the plea taken by the appellant/NDMC that the delay in releasing the amount had occurred due to an inquiry that was initiated by the CVC in the contract, which was completed only in July, 2014 and that the payment was released after six months, on 24.12.2014, was turned down by the learned Single Judge.

9. Reliance placed on Clause 29(ii) of the Agreement was also found to be misplaced for the reason that the said Clause empowered appellant/NDMC to cause an audit/technical examination of the works and final bill of the respondent/decreed holder to be made after the payment of the final bill and if the said audit/technical examination showed that any sum had been over-paid in respect of any work, then, the respondent/decreed holder was liable to refund the extent of over payment and the appellant/NDMC was entitled to recover the same from it in accordance with law.

10. In the instant case, admittedly, there was no audit/technical examination of the works directed by the appellant/NDMC. In such circumstances, the appellant/NDMC could not have invoked Clause 29(ii) of the Agreement. The scope of a vigilance inquiry being entirely different from an audit/technical examination of the works, the learned Single Judge

was justified in observing that there is no merit in the objection taken by the appellant/NDMC regarding grant of interest in favour of the respondent/decreed holder. We may note that though the respondent/decreed holder had claimed interest @18% on the delayed payment, which the Sole Arbitrator had felt was reasonable, but keeping in mind the fact that the appellant/NDMC was a public body, the interest granted in favour of the respondent/decreed holder was reduced to 12% *per annum* for the period between 18.12.2012 to 24.12.2014. In view of the aforesaid facts and circumstances, we do not see any reason, warranting interference in the impugned judgment, even on merits.

11. In view of the aforesaid discussion, the present appeal is dismissed, alongwith all the pending applications, as being hopelessly barred by delay and laches that have not been satisfactorily explained and also on the ground that no interference is warranted on merits.

(HIMA KOHLI)
JUDGE

(ASHA MENON)
JUDGE

OCTOBER 22, 2019/s/MK