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

% **Date of decision: 20.11.2019**

+ O.M.P. (COMM) 351/2017

THE SECRETARY/CHIEF COMMISSIONER TRANSPORT
DEPARTMENT Petitioner

Through Mr. D. Rajeshwar Rao and
Mr. Chirag Mittal, Advocates.

versus

M/S GAURAV ENTERPRISES, THROUGH ITS PARTNER

..... Respondent

Through Mr. Tarkeshwar Nath,
Advocate.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

I.A. No. 10928/2017 (delay)

1. The present application has been filed seeking condonation of delay of 17 days in filing the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') for setting aside the award dated 6th May, 2017 passed by the Sole Arbitrator.

2. A perusal of the application shows that the application only contains a narrative of the facts of the case on merits, and the proceedings during the Arbitration Proceedings. It is further averred

that the Impugned Award is bad in law. Para 10 only contains an averment that the petitioner will suffer irreparable loss, if the delay in filing the petition, which has occurred on account of administrative problems, is not condoned. Para 10 is reproduced as under:-

“10. That the petitioner will suffer irreparable loss if the delay in filing the accompanying original Main Petition for set aside of the award dated 06.05.2017 in arbitration titled as "M/s. Gaurav Enterprises Vs. Govt. of NCT of Delhi", passed by ld. Sole Arbitrator Smt. Rita Kumar is condone due to the administrative delay for filing the present petition.”

3. The log information by the Registry indicates that the delay in filing the petition is 18 days. The said calculation has been arrived at by deducting a period of 3 months which is the statutory limitation period out of the 108 days which the petitioner took to file the petition.

4. 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.

5. 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.”

6. 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’.

7. 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. Not even a whisper has been made in the application explaining even the delay of 18 days taken to file the petition, after the expiry of 3 months. Para 10 as extracted above shows that the only ground given is that the petitioner will suffer irreparable loss. Administrative delay has been mentioned in a subtle manner, but what was the administrative difficulty is not stated.

8. 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.”

9. 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.

10. The delay of 18 days is unexplained and cannot be condoned. The limitation period under Section 34(3) of the Act is strict and inflexible.

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

O.M.P. (COMM) 351/2017 and I.A. No. 10926/2017 (Stay)

12. 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 stay.

JYOTI SINGH, J

NOVEMBER 20, 2019

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