

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.2335 OF 2019

IN

COMMERCIAL ARBITRATION PETITION (L) NO.1107 OF 2019

Saptasatij Metatech Pvt. Ltd.	...	Applicant
In the matter between:		
Saptasatij Metatech Pvt. Ltd.	...	Petitioner
Vs.		
Uttam Galva Steels Ltd. and another	...	Respondents

ALONG WITH

NOTICE OF MOTION (L) NO.2234 OF 2019

IN

COMMERCIAL ARBITRATION PETITION (L) NO.1107 OF 2019

Mr. Vasant D. Raut for Applicant / Petitioner.
Ms Smiti Tewari a/w. Ms Rasika Gothankar i/b. M/s. Khaitan Legal
Associates for Respondent No.1.

CORAM : UJJAL BHUYAN, J.

DATE : JANUARY 07, 2020

P.C. :

This notice of motion is sought for by the applicant - petitioner for condoning the delay of 1 year 9 months in filing the related petition under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly 'the Act' hereinafter).

2. Be it stated that the applicant as the petitioner has filed the related petition under Section 34 of the Act questioning the legality and correctness of the award dated 20.12.2017 passed by the sole arbitrator.

3. Learned counsel for the applicant submits that there was no agreement or any document referring the dispute between the parties to arbitration. In other words, there was non-compliance to Section 7 of the

Act. In such circumstances, the arbitration proceeding was without jurisdiction; an award passed without jurisdiction is a nullity; the same can be challenged at any point of time and at any stage. Sub-section (3) of Section 34 would not be applicable in such a case. In support of his submissions, learned counsel for the petitioner has placed reliance on the following decisions:

- a. 2017 (1) Mh.L.J. 36, *Vimal Kishor Shah Vs. Jayesh Dinesh Shah*; &
- b. (1990) 1 SCC 193, *Sushil Kumar Mehta Vs. Gobind Ram Bohra*.

4. On the other hand, Ms Tewari, learned counsel for respondent No.1 submits that there is no provision for condonation of delay in instituting a challenge to an arbitral award under Section 34 beyond the time limit as specified under sub-section (3) thereof. She further submits that applicant had filed an application before the arbitrator under Section 16 of the Act questioning the competence of the arbitral tribunal. However, the arbitral tribunal decided the issue of jurisdiction and proceeded with the arbitral proceeding. Therefore, the notice of motion should be rejected and the related petition be dismissed as time-barred. In support of her contention, she has placed reliance on a decision of the Supreme Court in *Simplex Infrastructure Limited Vs. Union of India*, (2019) 2 SCC 455.

5. Submissions made by learned Counsel for the parties have been considered; also perused the materials on record.

6. It is not in dispute that the related arbitral award has been challenged by the applicant under Section 34 of the Act. The grounds for setting aside the arbitral award are provided in sub-section (2) of Section 34. Sub-section (3) provides the period of limitation. It says that an application for setting aside an arbitral award may not be made after three months have lapsed from the date on which the party making that application had received the arbitral award or, in case of a request under Section 33 then a period of three months from the date on which the

request was disposed of by the tribunal.

7. As per the proviso, if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 3 months, it may entertain the application within a further period of 30 days but not thereafter.

8. The limitation period provided under sub-section (3) of Section 34 of the Act was examined by the Supreme Court in *Simplex Infrastructure Limited (supra)*. That was a case where delay of 514 days in filing the application under Section 34 was condoned by the High Court. Even after applying Section 14 of the Limitation Act, 1963, it was found that the application under Section 34 of the Act was still barred by limitation by 131 days. After referring to Section 34 of the Act, more particularly sub-section (3) thereof, Supreme Court held thus,

9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section 3 of Section 34, would not be an application "in accordance with" that sub-section. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words "but not thereafter" in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of upto thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay."

9. It was further held 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."

10. Thus from the above it is evident that by use of the expression 'but not thereafter' in sub-section (3) of Section 34, the Legislature has made it abundantly clear that the limitation for filing an application under Section 34 is 3 months which is extendable by a further period of 30 days provided the applicant makes out sufficient cause to explain the delay. No further time beyond the aforesaid period of 30 days can be granted. Supreme Court held that this was a clear statutory mandate and the High Court by condoning the delay had breached the same.

11. Insofar contention of learned counsel for the applicant that the award passed is a nullity and therefore can be assailed at any point of time, Court is of the view that in the face of clear statutory mandate, such a ground is not available to the applicant to assail an arbitral award beyond the statutory period as extendable by the proviso. The decisions relied upon by learned counsel for the applicant are not authorities to support the proposition that notwithstanding the period of limitation prescribed under sub-section (3) of Section 34, an award passed without jurisdiction can be challenged at any point of time. Therefore, those decisions are not applicable to the facts of the present case.

12. For the reasons stated above, notice of motion as sought for is declined. The same is accordingly dismissed.

13. In view of the order passed in the notice of motion, the related commercial arbitration petition is dismissed as being time barred.

14. Connected notice of motion is also disposed of accordingly.

(UJJAL BHUYAN, J.)

Minal Parab