

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: July 24, 2020

+ O.M.P.(COMM) 434/2020, I.A. 5553/2020

NIRMAL SINGH

..... Petitioner

Through: Mr. Sanjiv Anand, Mr. Arush Khanna
and Ms. Shreya Singh, Advs.

versus

HORIZON CREST INDIA REAL ESTATE AND
ORS.

..... Respondents

Through: Mr. Ciccu Mukhopadhaya, Sr. Adv.
with Mr. Saurav Agrawal, Mr. Rajat
Taimni, Mr. Madhav Misra, Mr. Ribhu
Garg, Mr. Akash Ray and Mr. V.K.
Misra, Advs. for R-1 to R-6
Ms. Shivambika Sinha and Ms.
Neelambika Singh, Advs. for R-27
Mr. Rishi Kapoor, Mr. Abhay Kaushik
and Mr. Satish Rai, Advs. for R-8, R-
11 to R-15, R-17, R-19 to R-21, R-23
to R-26, R-31, R-38 & R-39

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J (ORAL)

**I.A. 5553/2020 (under Order 34(3) of the Arbitration and
Conciliation Act, 1996 read with Section 151 CPC**

1. Vide this order I shall dispose of the aforesaid application
filed by the petitioner under Section 34 (3) of the Arbitration and

Conciliation Act, 1996 ('Act of 1996', for short) read with Section 151 CPC seeking condonation of delay, if any. The prayers made in the application are the following:

"It is therefore, most respectfully prayed before this Hon'ble Court may graciously be pleased to:

- (i) pass an Order condoning the delay of 1 day in filing of the present petition in the event, this Hon'ble Court observes that there has been such delay; or*
- (ii) pass an Order condoning the delay of 23 days or 17 days in filing of the present petition in the event, this Hon'ble Court observes that there has been such delay; or*
- (iii) pass such other/further order(s) as this Hon'ble Court may deem it and proper in the interest of justice."*

2. It may be stated here that on June 30, 2020 when this petition was listed for hearing, Mr. Saurav Agrawal, learned counsel for the respondent Nos.1 to 6 took a preliminary objection with regard to the maintainability of the petition on the ground that the petition is barred by limitation. It is subsequent thereof that this application has been filed by the petitioner seeking condonation of delay.

3. It is the case of the petitioner and so contended by Mr. Sanjiv Anand, that the copy of the impugned award dated July 02, 2019 was received by the petitioner on July 11, 2019. Thereafter, the petitioner, on August 01, 2019 filed an application under section 33(1) of the Act of 1996 before the Arbitral Tribunal seeking correction of the award within the prescribed period of 30 days of receipt of the award. Pursuant thereto on November 20, 2019, the Arbitral Tribunal had heard the counsels

for parties and closed the proceedings without passing a formal order deciding the petitioner's application.

4. It was only on November 26, 2019 that the petitioner came to know about the disposal of the application vide an email received from the Arbitral Tribunal.

5. So, it is his submission that the period of limitation for filing petition under Section 34 of the Act of 1996 need to be calculated from November 27, 2019, i.e. from the next date of receipt of the order dismissing the application under Section 33(1) of the Act of 1996. He contended, even though the period of limitation of three months would expire on February 26, 2020 the petitioner filed the petition much before that date, on February 22, 2020.

6. Mr. Anand by conceding to the fact that the petition filed on February 22, 2020 was not a complete petition, however stated that the petition was signed by the petitioner, his Advocate and was accompanied by an affidavit duly sworn and attested, and also by a Vakalatnama duly signed by the petitioner. He stated that the reason for the petitioner not filing the complete petition on February 22, 2020 was because of the fact that the petitioner, who had initially participated in the arbitration proceedings, had stopped appearing after which he was proceeded *ex-parte*, did not have access to the entire / relevant record of the arbitration. It was only on February 21, 2020, when respondent No. 27 herein i.e. Moonlight Propbuild Private Limited, served a copy of the petition under Section 34 of the Act of 1996, upon the petitioner, that the petitioner got access to the relevant record.

7. Mr. Anand stated that the Registry of this Court for the first time marked the defects in the petition on February 24, 2020. The petitioner had 30 days time to remove the defects and refile the same. According to his calculation, the time would have expired for re-filing the petition on March 26, 2020. But much before that on March 19, 2020, a copy of the petition was served upon the respondents No.1 to 6 through email and refiled the same on March 21, 2020 comprising of 497 pages

8. He stated as the Court functioning was restricted / suspended w.e.f. March 16, 2020, the Registry could not scrutinize the refiled petition to point out defects nor the counsel for the petitioner could pursue with the Registry for removing other defects, if any. This position continued till April 15, 2020 and even thereafter, when only urgent matters were being listed.

9. He stated that it was only when respondents No.1 to 6 got the petition under Section 9 listed for hearing on May 20, 2020 being OMP (I) (COMM) 217 of 2019, during the hearing of that petition, that the Registry was directed to list the Section 34 petition filed by the petitioner along with the other Petitions under Section 34 of the Act of 1996, arising out of the impugned award, on June 29, 2020.

10. Mr. Anand stated that the petitioner took all the necessary steps to get the petition listed on June 29, 2020, which included service of the complete set of the petition, as re-filed on March 21, 2020, on the respondent Nos. 1-6, vide email sent on June 8, 2020. This statement he states can be corroborated by the same size of the uploaded files in the emails dated March 21, 2020 and

June 8, 2020.

11. He also stated that on June 18, 2020 an email along with the mentioning application was sent to the Registry of this Court with a request of getting the Petition, which had been filed on February 22, 2020 bearing Diary No. 269005/2020, listed on June 29, 2020

12. According to Mr. Anand, on not having received any intimation from the Registry, the petitioner's Counsel called up the Registry to enquire about the listing of the Petition; who was informed that all filing shall be done through the e-filing system after registering on the system as per the latest circular/office note and that no filing shall be accepted through email.

13. He stated that on June 23, 2020, in terms of the revised rules for listing/filing, a mentioning application for urgent listing was uploaded on the website following the revised e-filing procedure. Thereafter a text message confirming the said filing was received by the Counsel for the Petitioner, wherein a new Diary No. 471013/2020 was given by the Registry to the same Petition filed on February 22, 2020.

14. He submitted that thereafter, the request for urgent listing was accepted and accordingly a copy of the petition as uploaded on March 21, 2020 was uploaded through e-filing as well and sent to the email of the concerned personnel being sunildhc1983@gmail.com along with a request to list the matter.

15. It was submitted that on June 26, 2020 defects were marked in the filing, for which intimation was received by the Petitioner from the Registry. Thereafter the counsel for the

Petitioner called up the Registry to clarify that the said Petition had already received a Diary number on February, 2020 after which the defects had already been cured and the same had been re-filed vide same diary number on March 21, 2020.

16. Mr. Anand stated that the counsel for the Petitioner then served all the respondents once again and a proof of service was uploaded on the e-filing portal and it was on June 27, 2020, that the Petitioner was informed by the Registry that the matter was passed for hearing on June 30, 2020

17. According to Mr. Anand, as per the order of March 23, 2020 in *Suo Moto* petition (Civil) No.3/2020 the Supreme Court had ordered that period of limitation with respect to various proceedings / applications, etc. irrespective of the limitation prescribed under the General Law or Special Laws, whether condonable or not, stood extended w.e.f. March 15, 2020 till further orders to be passed by the Supreme Court.

18. He stated that the period from March 15, 2020 till date is not to be counted and that even, the time to cure the defects and re-filing stood extended and is still continuing.

19. Alternatively, he argued that even if the period of limitation commenced from November 21, 2019, a day after the petitioner's Section 33(1) application was disposed of i.e. on November 20, 2019; even then the period of limitation would have expired on February 20, 2020. Hence, there was a *bona fide* delay of one day in filing the petition even though the petitioner had been legally advised that the date of the disposal of his Section 33(1) application is to be construed as November 26,

2019 and not as November 20, 2019. Further, the petitioner was handicapped in filing the petition for want of complete arbitral record which he came to possess only on February 21, 2020.

20. So, it was his submission that there is no delay in filing the petition and even if it were to be assumed that the present petition is time barred; in the event that the petition is construed to be filed on March 21, 2020 and if the commencement date of limitation period is taken from November 20, 2020 in which case he prayed that the period of delay of 23 days should be condoned and in fact the date of commencement of limitation period is taken to be from November 27, 2020, then the period of delay of 17 days may be condoned for the reasons stated above. In support of his submissions Mr. Anand has relied upon the following judgments:

- (i) ***State of Arunachal Pradesh v. Damani Construction Co. (2007) 10 SCC 742;***
- (ii) ***M/s. Prakash Atlanta JV v. National Highways Authority of India, 2016 SCC Online Del 743;***
- (iii) ***Collector of Central Excise Madras v. M/s. M.M. Rubber and Co. Tamil Nadu, 1992 Supp (1) SCC 471;***
- (iv) ***Bachhittar Singh v. State of Punjab & Anr., AIR 1963 SC 395;***
- (v) ***Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and Another, (1962) 1 SCR 676;***
- (vi) ***Bipsomasz Bipun Trading Sa. v. Bharat Electronics Ltd. (2012) 6 SCC 384;***
- (vii) ***State of Maharashtra & Ors. v. ARK Builder Pvt. Ltd. (2011) 4 SCC 616;***

- (viii) *Ved Prakash Mithal & Sons. v. Union of India 2018 SCC OnLine SC 3181; and*
- (ix) *Oil and Natural Gas Corporation Ltd. v. Joint Venture of Si Rama Engineering Enterprises (SREE) & M/s Megha Engineering & Infrastructure Limited (MEIL), 2019 SCC OnLine Del 10456.*

21. On the other hand, Mr. Ciccu Mukhopadhaya, learned Senior Counsel appearing for the respondent Nos.1 to 6 would submit that the plea of Mr. Anand that the limitation period would only commence after the decision of the Arbitral Tribunal in an application under Section 33 (1) of Act of 1996 is totally misconceived. According to him, the application under Section 33 (1) was itself not maintainable, inasmuch as the applicant/petitioner had in effect sought review of the award on merits, and not typographical / clerical errors; as it had raised issues which had not been raised earlier before the Tribunal. That apart, on the plea of Mr. Anand that the petitioner had filed a petition on February 22, 2020 vide diary No.269005/2020 is also misconceived, inasmuch as a petition must be complete in all respects i.e. it should have been duly signed supported by affidavits of the parties, statement of truth and duly signed Vakalatnama. Unfortunately, the respondents were served for the first time on March 19, 2020 with only 56 pages having no documents nor having mentioned the Vakalatnama in the index bearing a date of March 17, 2020.

22. That apart, even the affidavit filed along with the petition is dated February 22, 2020 while deposing the correctness of the

petition drawn on March 17, 2020. According to Mr. Mukhopadhaya, it is to be questioned whether in fact there was an affidavit in support of the petition actually filed. In this regard he had relied upon the judgment of the Coordinate Bench of this Court in the case of *ONGC v. Joint Venture of Sai Ram Engineering Enterprises, 2019 SCC OnLine Del 10456* wherein it was held by this Court that a Petition accompanied by a pre dated affidavit will be deemed to be unsupported by an affidavit.

23. Mr. Mukhopadhaya also stated that even the statement of truth and court fee receipt were executed on March 21, 2020, and hence all prior filings were without them and therefore deemed to be non-est in terms of the judgment as referred wherein three factors were set out, and absence of any one of them would result in the filing of the petition as being non-est. The statement of truth being separate from an affidavit, the same cannot cover for the absence of an affidavit.

24. That apart, he stated that even the Vakalatnama shows the date of February 20, 2020 but contains certain smudging with respect to the date of signing. Had this Vakalatnama been executed on February 20, 2020, then it would have formed part of the index of the petition that is claimed to have been filed on March 21, 2020 and served on the respondent Nos.1 to 6 on March 19, 2020. There is an obvious ante-dating of the Vakalatnama.

25. Mr. Mukhopadhaya submitted, that the plea of Mr. Anand that the filing of the petition got delayed as the petitioner did not have the complete record and could access the same only

on February 21, 2020, is also false, as respondent no. 27, Moonlight Propbuild Private Limited, had served the petition in November 2019 and several hearings had taken place since then with the petitioner being in attendance. That apart, he stated that the case history from the website of this Court and list of defects as on February 22, 2020 shows several defects like power of Attorney / petition not signed, no affidavit, no attestation of documents. Even the petition served on March 19, 2020 had only 56 pages with the ante-dated affidavit, having no annexures, no Statement of Truth and no Vakalatnama. In contrast to the 56 pages served on March 19, 2020 the present petition is 64+458 pages. In this regard, he has relied upon the judgment of this Court in the case of ***Sravanthi Infratech Private Limited v. Greens Power Equipment (China) Co. Ltd. 2016 SCC OnLine Del 5645***, wherein according to him, this Court had criticized the practice of increasing the petition substantially under the guise of re-filing and also for the proposition that condonation application has to be filed within 120 days and along with petition otherwise, the same is invalid.

26. It was also his submission, that in any event the filing done on February 22, 2020 was beyond the three months period. He also stated that the filing on February 22, 2020 was not a filing at all. At best, the date of filing can be treated as March 21, 2020 when the necessary requisites were fulfilled. Reliance was placed on ***Steel Stripes Wheels Ltd. v. Tata AIG General Insurance Co. Ltd. , OMP (COMM) 507/2019*** to contend that the date on which the petition is properly filed is to be treated as

the date of fresh filing. The relevant paragraph reads as under:

“21. The log information and the defect sheet indicate that most of the vital defects were cleared by the petitioner only on 20.11.2019 when the petition was re-filed. Thus, it is on this date, the petition can be treated to have been properly filed and since this is the date which has to be reckoned as the date of fresh filing, the petition being filed beyond 120 days is barred by limitation under Section 34(3) of the Act. It has been held by the Supreme Court in the case of Simplex Infrastructure Limited vs. Union of India 2019 (2) SCC 455, that the Court has no power to condone the delay in filing the petition under Section 34(3) of the Act beyond a period of 120 days.”

He also pointed out the case history and list of defects as on June 23, 2020, to show that re-filing was after three months and Registry therefore treated this as fresh filing (diary No.471013/2020) when the petition was filed with documents, Vakalatnama, statement of truth etc. He also relied upon the following judgments:

- (i) ***Arunachal Pradesh v. Damani Construction (2007) 10 SCC 742***, to contend, no benefit can be taken of under Section 33 order if application is in the nature of review.
- (ii) ***Prakash Atlanta JV v. NHAI 2016 SCC OnLine Del 743***, to contend, limitation starts from date of order, not date of receipt.
- (iii) ***Assam Water Supply Board v. Subhash Project (2012) 2 SCC 624***, to contend, no advantage of order dated March 15, 2020 of the Supreme Court can be taken since closure of court was after prescribed period of 90 days.
- (iv) ***DDA v. Durga Construction 2013 SCC OnLine Del 4451***, to contend, filings with fundamental defects and

hopelessly inadequate are non-est.

- (v) ***OIC v. Air India 2019 OnLine Del 11634 and SKS Power Generation (Chhattisgarh) Ltd. v. ISC Projects Pvt. Ltd. OMP (COMM) 132/2019***, to contend, filing with lesser pages, no signed affidavit and Statement of Truth, without award and annexures, no vakalatnama and Court fee are non-est and invalid.

27. Having heard the learned counsel for the parties, the first issue which arises for consideration in this case is whether the petitioner was required to file the petition challenging the award within the prescribed time under Section 34(3) of the Act of 1996 or await the order in an application filed under Section 33 (1) of the Act of 1996.

28. There is no dispute that the petitioner had filed an application under Section 33 (1) of the Act of 1996 on August 1, 2019. The prayer in the application was that the errors in Para 74 and 141 of the arbitral award be corrected. In Paras 74 and 141, the Arbitral Tribunal has stated as under:

“74. The Tribunal will decide the Issue 5 and Issue 7 together because these overlap and have common points involved. While the Claimant sought several reliefs in the Statement of Claim it has restricted its prayer in final arguments to claiming damages for the diminution in value or losses caused to the Annexure 2B Properties due to various acts and omissions which has adversely affected the value of the Annexure 2B properties. Claimants have not pursued their relief of lifting the corporate veil between the 3C Group and the LG respondents (namely Respondent Nos. 16, 22, 23, 24 and 38). Accordingly in view of Clause 21 of the Binding Settlement Agreement the reference to the Respondents in this section excludes the LG Respondents.

141. The claimant is entitled to damages from the Respondents (not however the LG Respondents as defined in the Award) in the sum of Rs.4,795,079,144”

29. The plea of the petitioner in the application is that when the plea of lifting of corporate veil has not been pursued by respondent nos. 1 to 6 against LG, in view of Clause 21 of the binding settlement agreement, the same should also include the petitioner herein. This according to Mr. Anand was a clerical / accidental slip in the award which needed correction. I am not in agreement with the submission of Mr. Anand. Section 33(1) of the Act of 1996 clearly stipulate correction of computation errors or any clerical or typographical errors. Surely conclusions in Paras 74 and 141 of the award by the Arbitral Tribunal cannot be construed as clerical errors. It is the conclusion of the Arbitral Tribunal on issues no. 5 and 7, fastening the liability on respondents (other than LG) which includes the petitioner herein. In fact, the Arbitral Tribunal in the order dated November 20, 2019 is also of the view that accepting the application of the petitioner would entail substantial changes in the finding which would amount to review of the award. Mr. Mukhopadhaya is right in submitting that under the garb of seeking correction of errors, the petitioner in effect had sought review of the award. It is a case of clever drafting as the counsel who had drafted it, surely knew the difference, in seeking the review of award and correction of errors in the award. That is the reason, he instead of making a prayer for review, made it for correction of errors; which is untenable. In the facts, the period of limitation for

filing petition under Section 34 must be counted from the date of receipt of the award on July 11, 2019. Mr. Mukhopadhyaya is also justified in relying on the Judgment of the Supreme Court in the case of ***State of Arunachal Pradesh v. Damani Construction Co.*** (*supra*) wherein the Supreme Court in Para 6 to 10 has held as under:

“6. We have heard learned counsel for the parties and perused the record. Learned counsel for the appellant tried to persuade us that in fact the cause of action has arisen to the appellant on 10.4.2004 when the letter was received from the arbitrator and therefore, the appellant was entitled to count the period of limitation from the date of receipt of the letter from the arbitrator and if the limitation was to start from 10.4.2004 then the appellant has a right to move an application for setting aside of the award under section 34 of the Act within three months and the extended period of one month and the appellant having filed the application on 6.8.2004, therefore, it was within time. The submission of learned counsel for the appellant is totally misconceived and it cannot be accepted. A perusal of the interim award passed by the arbitrator clearly shows that it was final to the extent of the claims decided therein and it may be relevant to refer to the concluding portion of the award which reads as under:

" I further direct that the awarded amount is indicated above along with the interest, wherever shown till the date of interim award amounting to Rs.65,52,878.00 (Rupees Sixty five lakhs fifty two thousand Eight hundred seventy eight only), shall be paid by the Respondents to the Claimant within 60 days from the date of the award, failing which a simple interest on the unpaid amount @ 18% (Eighteen percent) per annum shall be payable to the Claimant by the respondents after 60 days of this interim award."

7. Therefore, this interim award which did not mince any word and determined the amount after discussing the claims in detail and finally calculated the amount under each of the claims. Therefore, there was no confusion in this award. It was absolutely thoughtlessness on the part of the appellant to have written a letter after six months i.e. on 2.4.2004 seeking review of the interim award to the following effect:

" While submitting the request for review the case, it is also requested that your honour may kindly consider (sic.) the following points regarding mode of payments, if at all, the payment is to be made, as the award given by your honour is for the interim payment.

(a) Whether payment is to be made directly to M/s. Damani Construction Co. or through honourable court.

(b) In case, the payment is to be made directly to M/s.Damani Construction Co., an equivalent Bank Guarantee Bond from any Nationalized Bank shall be required from the Contractor since it will be an interim payment and final verdict awaited.

Submitted for your kind consideration please."

8. Firstly, the letter had been designed not strictly under section 33 of the Act because under Section 33 of the Act a party can seek certain correction in computation of errors, or clerical or typographical errors or any other errors of a similar nature occurring in the award with notice to the other party or if agreed between the parties, a party may request the arbitral tribunal to give an interpretation of a specific point or part of the award. This application which was moved by the appellant does not come within any of the criteria falling under Section 33(1) of

the Act. It was designed as if the appellant was seeking review of the award. Since the Tribunal had no power of review on merit, therefore, the application moved by the appellant was wholly misconceived. Secondly, it was prayed whether the payment was to be made directly to the respondent or through the Court or that the respondent might be asked to furnish Bank guarantee from a nationalized Bank as it was an interim award, till final verdict was awaited. Both these prayers in this case were not within the scope of Section 33. Neither review was maintainable nor the prayer which had been made in the application had anything to do with Section 33 of the Act. The prayer was with regard to the mode of payment. When this application does not come within the purview of Section 33 of the Act, the application was totally misconceived and accordingly the arbitrator by communication dated 10.4.2004 replied to the following effect.

" However, for your benefit I may mention here that as per the scheme of the Act of 1996, the issues/ claims that have been adjudicated by the interim award dated 12.10.2003 are final and the same issues cannot be gone into once again at the time of passing the final award."

9. Therefore, the reply given by the arbitrator does not give any fresh cause of action to the appellant so as to move an application under Section 34 (3) of the Act. In fact, when the award dated 12.10.2003 was passed the only option with the appellant was either to have moved an application under Section 34 within three months as required under sub-section (3) of Section 34 or within the extended period of another 30 days. But in stead of that a totally misconceived application was filed and there too the prayer was for review and with regard to mode of payment. The question of review was totally misconceived as there is no such provision in the Act for review of the award by the

arbitrator and the clarification sought for as to the mode of payment is not contemplated under Section 33 of the Act. Therefore, in this background, the application was totally misconceived and the reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under Section 34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10.4.2004.

10. Thus, in this background, the view taken by learned Single Judge appears to be justified and there is no ground to interfere in this appeal. Consequently, there is no merit in both the appeals and the same are dismissed with no order as to costs.”

(emphasis
supplied)

30. I may also refer to the Judgment in the case of **M/s. Prakash Atlanta JV (Supra)**, wherein in Para 17, the Division Bench of this Court has held as under:

“17. Now, if a party has received an award and there are errors of computation, clerical, typographical or of the kind brought to the notice of the Arbitral Tribunal, the reasoning of the award is made known to the parties in the award itself. The errors would only result In such corrections being made which do not impact the reasoning in the award and thus the argument that unless the award is corrected a party cannot form an opinion concerning the merits of the award has no legs to stand on any reason.”

31. From the above also it is clear, that, the prayer made in the application had the effect on the merit of the findings, given by the learned Arbitral Tribunal, which cannot be construed as correction of errors. The application as such was not

maintainable. If this plea of Mr. Anand is to be accepted then, every losing party shall on the pretext of seeking correction of error, shall challenge the findings in the award on merit in order to buy time, which should be discouraged.

32. In view of my above conclusion, the plea of Mr. Anand that the petitioner had received the order on the application under Section 33 (1) of the Act only on November 26, 2019 and the limitation of three months shall start from November 27, 2019 is liable to be rejected. Even otherwise, the submission of Mr. Anand that the filing having been made on February 22, 2020, i.e., within three months from November 27, 2019 and as such within limitation is concerned, I find that same was also not a proper filing. In fact, Mr. Anand has conceded to this aspect. Mr. Anand has stated that the petition filed was signed by the petitioner, his Advocate; was accompanied by an affidavit which was duly sworn and attested; and also had Vakalatnama signed by the petitioner, but from the log information kept by the Registry, it is revealed that only 66 pages were filed, neither the award nor any application or documents were filed, which clearly demonstrate that the filing was not a proper filing of the petition. In this regard, I may reproduce Para 14 of the Judgment of the Coordinate Bench of this Court in the case of ***Sravanthi Infratech Private Limited (Supra)***:

“14. Having considered the submissions of the learned counsel for the parties, the Court is of the view that although the number of days delay in filing the petition was 17 days, even if the date of receipt is taken as 24th March, 2015 as claimed by the Petitioner what was filed could not be considered as a

petition. What was filed was a petition without a vakalatnama, without an affidavit, without signature of the party on the petition. These are fatal defects and what was filed on 10th July, 2015 can hardly be considered a proper filing of the petition with there being no documents, no vakalatnama, no application for condonation of delay, no affidavit, no authority.”

Further on February 24, 2020, the case was marked as defective and sent for refiling. As per Mr. Anand, the complete / proper refiling was done on March 21, 2020 without any objection. Assuming so, it is clear that the proper filing of the petition was made only on March 21, 2020 which was beyond 3 months from November 27, 2019. So, having not filed the same within three months, the petitioner has to explain as to why he could not file the petition within the period of limitation, i.e., of three months. It is only when sufficient cause is shown, that the period of limitation of three months can be extended for a further period of 30 days, otherwise not. The reason given by the petitioner and so contended by Mr. Anand was that since the petitioner had stopped appearing before the Arbitral Tribunal and was proceeded ex-parte, he was not in possession of the entire record and it was only on February 21, 2020, when respondent no. 27 namely M/s. Moonlight Propbuild Private Limited had served a copy of the petition under Section 34 of the Act of 1996 upon the petitioner, that he could access the arbitral record. I am not impressed by this explanation given. It is a conceded case of the petitioner that it received the order on the application filed under Section 33 (1) of the Act of 1996 on November 26, 2020.

Surely on receipt of the same, it was clear to the petitioner that the liability has been fastened upon him in the award. It is expected from a person of normal prudence that he shall take steps for challenging the award by collecting the relevant record at the earliest. No explanation is forthcoming, as to what steps he has taken to collect the record after November 27, 2019. In fact I note, the petitioner was represented in OMP (I) COMM 217/2019, a petition filed by respondent No. 1 to 6 herein, since July 2019. The plea urged by Mr. Anand is like saying, that the petitioner had foreseen in November 2019 that respondent No. 27 i.e. Moonlight Propbuild Private Limited shall challenge the award, wherein he shall serve a copy of the petition including the arbitral record on him in February 2020, when on receipt of the same he shall file his petition. The explanation has to be considered for only to be rejected. As no other explanation given for not filing the petition between November, 2019 and February, 2020, the only explanation given is farce/not bonafide, cannot be accepted.

33. So, it is clear that the petitioner has not given any sufficient cause for not filing the proper petition within 3 months, even assuming the cause of action arose on November 27, 2019. Even the plea of Mr. Anand about serving the complete copy of the petition dated March 17, 2020 on respondent nos. 1 to 6 on March 19, 2020, is not acceptable as the petition was with affidavits sworn and attested on February 22, 2020 (i.e. before the date of the petition) with statement of truth dated March 2, 2020 which also pre-dates the petition. The same shall mean that when

the affidavit / statement of truth were signed, the petition had not been prepared. Further the application for condonation of delay was filed on July 10, 2020, after three months and 30 days have expired. In this regard, I may refer to the Judgment of the Coordinate Bench of this Court in the case of ***Oil and Natural Gas Corporation Ltd. (supra)***, wherein in Para 44, it is held as under:

“44. This in my view is the minimum threshold that should be crossed before the petition is filed and can be treated as a petition in the eyes of law. The rationale behind insisting on these fundamental compliances to be observed while filing a petition, is not far to seek. Vakalatnama is an authority which authorizes an Advocate to act on behalf of a party as a power of attorney and to carry out certain acts on his behalf. Therefore, the vakalatnama is the first step and a precursor to the preparation of a petition. The Statement of Truth accompanying a petition or an application is sworn by the deponent who states on oath that the contents of the accompanying petition have been drafted under his instructions and are true and correct to his knowledge or belief. Surely, this affidavit must be signed after the petition is made and the attestation must also be done on the affidavit when the petition is filed. This is also a requirement under the Commercial Courts Act, 2015. The petition needs to be signed by the Advocate as well as the party before the same is filed as this would indicate that both have read the petition and there is authenticity attached to the pages filed in the Registry. If these basic documents are not annexed or the signatures as required are absent, one can only term the documents which are filed as a ‘bunch of papers’ and not a petition.”

(emphasis supplied)

34. During the course of his submissions, Mr. Anand would rely upon the order passed by the Hon’ble Supreme Court on

March 21, 2020 in Suo Moto Petition (Civil) No. 3/2020, wherein the Hon'ble Supreme Court had ordered that period of limitation with respect to various proceedings / application etc. irrespective of limitation prescribed under the general law or special law whether condonable or not shall stand extended w.e.f March 20, 2020 till further orders to be passed by the Hon'ble Supreme Court. This plea of Mr. Anand is also not appealing, in the facts and, in view of my conclusion above. The plea is clearly an afterthought; inasmuch as it is the petitioner's own case that a proper and complete petition in all respect was filed on March 21, 2020. In other words, that despite the order of the Hon'ble Supreme Court the petitioner had taken all steps to ensure a proper filing of the petition on March 21, 2020 which according to this court was not a proper filing that too beyond three months without sufficient cause. The order of the Hon'ble Supreme Court shall not advance the case of the Petitioner seeking condonation of delay in filing the Petition. In this regard, I may reproduce Para 19 of the Judgment of the Coordinate Bench of this Court in the case of ***Sravanthi Infratech Private Limited (Supra)***:

“19. The Court is not expected to mechanically condone the delay in filing the petition in terms of the proviso to Section 34(3) of the Act. It can only be upon the Petitioner satisfying that the delay was for bona fide reasons can the Court proceed to condone the delay. In the present case the court is unable to be persuaded to hold that the delay in filing and re-filing the petition was for bona fide reasons”

35. In so far as the Judgments relied upon by Mr. Anand are concerned, in the case of ***Raja Harish Chandraraj Singh***

(*Supra*), the facts were that the appeals arose out of two writ petitions filed by the appellant therein against the respondents i.e. the Deputy Land Acquisition Officer and another in the Allahabad High Court. Both raised a question of limitation, the decision of which depended upon the determination of the scope and effect of the provisions of the proviso to Section 18 of the Land Acquisition Act 1894. The appellant was aggrieved by the acquisition and the compensation awarded thereof. The appellant then filed an application under Section 18 of the Land Acquisition Act 1894 requiring that matter be referred for the determination of Court. Respondent 1 therein, took the view that the application thus made was beyond time under the proviso to Section 18 of the Land Acquisition Act 1894 and so he rejected it, aggrieved the appellant filed a WP in the Allahabad HC. This Judgment has been relied upon by Mr. Anand in support of his submission that the limitation would start only on November 27, 2019 when the petitioner had received the order passed by the Arbitral Tribunal under Section 33 of the Act of 1996. In view of my conclusion above, this Judgment has no applicability in the facts of the case. On similar proposition, the reliance placed by Mr. Anand on the cases of *Bachhittar Singh (Supra)* and *Collector of Central Excise Madras (Supra)* is also misplaced as they have no applicability in the facts of this case. Even the reliance placed by Mr. Anand on the Judgment of *State of Maharashtra and Ors. (supra)* to contend that it is only when a party receives a signed copy of the award, the limitation would commence, has no applicability in the facts of this case. It may

be stated that the reliance placed on *Ved Prakash Mithal & Sons. (supra)* is also misplaced for the reason that in this case as concluded by me limitation would commence from the date of receipt of the award on July 11, 2019. Similarly, the Judgment of *Bipsomasz Bipun Trading Sa. (supra)* shall not have applicability in the facts of this case. In view of my discussion above, the application is dismissed and noting the position of law in the case of *UOI vs. Popular Construction Co (2001) 8 SCC 470*, the petition under Section 34 of the Arbitration and Conciliation Act being not maintainable is also dismissed.

V. KAMESWAR RAO, J

JULY 24, 2020/aky/jg