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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 375/2019, I.As. 12691-12694/2019
JMD OILS PVT. LTD. THROUGH: RESOLUTION
PROFESSIONAL

..... Petitioner
Through: Mr.Abhishek Sharma and Mr.Pravesh
Khyalia, Advs. for applicant

versus

LOUIS DREYFUS COMMODITIES INDIA PVT. LTD. & ORS.
..... Respondents
Through: Mr.Mandeep Singh Vinaik and
Ms.Anjali Sharma, Mr.Deepak
Bashta, Ms.Sumeeta Sunsunwala and
Ms.Vandini Dagar, Advs. for R-1

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER
% **09.01.2020**

I.A. 12693/2019 (for exemption)

Exemption allowed subject to all just exceptions.

Application stands disposed of.

O.M.P. (COMM) 375/2019, I.As. 12691-12692/2019 & 12694/2019

1. This is a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated August 21, 2018 passed by the learned Sole Arbitrator. The said petition is accompanied by two applications being I.As. 12691/2019 and 12694/2019. The same are for seeking condonation of 29 days delay in filing the petition and 20 days delay in re-filing the petition respectively.

2. When the matter was listed on September 16, 2019, notice was issued on both the applications and the replies have been filed by the respondent No.1 to the respective applications.

3. It is noted that the respondent Nos.2 and 3 are also petitioners in O.M.P. (COMM) 374/2019 and are represented by the same counsel in both the matters. Suffice it would to state that I shall first deal with I.A.12694/2019 having relevant averments seeking condonation of 20 days delay in re-filing the petition, as the same would have a bearing on the application seeking condonation of delay as well as on the petition filed under Section 34 of the Arbitration and Conciliation Act, 1996.

I.A.12694/2019

4. This is an application filed by the petitioner for condonation of delay in re-filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996. According to the petitioner there is delay of 20 days in re-filing the petition.

5. It is averred in the application that the petition was initially filed on February 13, 2019. Certain objections were raised by the Registry for the first time on February 15, 2019. Subsequently, the petition was refiled on 21.02.2019, 28.02.2019, 11.03.2019, 16.03.2019, 25.03.2019, 02.04.2019, 07.05.2019 and 28.08.2019 and the petition could not be listed due to further objections raised by the Registry.

6. It is further stated that the delay in re-filing was inadvertent due to the voluminous record that had to be perused/typed in order to file the petition.

7. In reply to application being I.A.12694/2019 the respondent No.1 has stated that the petitioner has mischievously kept the petition 'under objections'. What they in fact did was to file the petition, on various dates

without removing the innocuous objections marked by the Registry, to secure a return of the petition for re-filing. The respondent No.1 has downloaded from the website of the High Court the case status to show in what manner the petition was filed time to time. It is the stand of the respondent No.1 that with this process of objections by the Registry and removal and refilling of the petition by the petitioner consumed eight months of time before the matter could be listed in the Court.

8. No rejoinder to the reply has been filed by the petitioners.

9. I have heard the learned counsel for the parties, on this the application, who reiterate their stand as taken in the application / reply. As per the case filing history handed over to the Court by Mr. Vinaik, it is seen that the petition was initially filed on February 13, 2019 and 14 defects were pointed out by the Registry on February 15, 2019. Petitioner, as per the Registry, refiled the petition for the first time on February 21, 2019. Thereafter between February, 2019 and September, 2019, the process of objections / refiling continued. That on September 12, 2019, the petitioners had filed four applications, being I.As. 12691/2019 (condonation of delay in filing), 12692/2019, 12693/2019 and 12694/2019 (condonation of delay in re-filing), pursuant to defects pointed out by the Registry on August 28, 2019.

10. The objections which have been raised from time to time by the Registry are as under:

“RELIEF DEFECTS

DATE

*21-FEB-19 1. EACH PAGE OF PLEADING BE SIGNED BY THE
PETITIONER /PETITIONERS. BLANKS BE
FILLED IN THE STATEMENT OF TRUTH.*

2. CERTIFICATE TO THE EFFECT THAT RELEVANT RECORD OF THE ARBITRATION PROCEEDINGS BEING THE RELEVANT PLEADINGS DOCUMENTS DEPOSITIONS ETC HAS BEEN FILED
3. DOCUMENT SHALL BE FILED ONLY WITH A LIST OF DOCUMENTS. NO DOCUMENT SHALL BE FILED AS ANNEXURE TO ANY PLEADING. CH IV R 1-G DHC OS RULES
4. CAVEAT REPORT BE OBTAINED AND AT THE TIME OF EACH SUBSEQUENT REFILING AND PROOF OF SERVICE BE FILED.
5. FRESH NOTICE OF MOTION UPON COUNSEL FOR CONCERNED RESPONDANT BE FILED IF 3 DAYS HAVE ELAPSED SINCE THE DATE OF LAST SERVICE. ANY AMENMENTS DONE IN THE PETITION SHOULD ALSO BE INFORMED/SERVED TO THE OPPOSITE/CONCERNED PARTY
6. SERVICE BE MADE TO THEIR NOMINATED COUNSEL PERSONALLY / TRACKING REPORT / DELIVERY REPORT OF SPEED POST / COURIER BE ATTACHED
7. .
8. PETITION/ APPLICATIONS/ MOP/ INDEX/ POWER OF ATTORNEY BE SIGNED AND DATED BY PETITIONERS AND ADVOCATE
9. REST OF THE OBJECTIONS WILL BE RAISED LATER ON (AFTER MODIFICATION)/ACCORDING TO CORRECT CLASSIFICATION/NOMENCLATURE OF THE CASE.
10. APPLICATION FOR CONDONATION OF DELAY IN FILING/REFILING BE FILED ALONG WITH AFFIDAVIT.
11. VAKALATNAMA BE FILED / DATED AND SIGNED BY THE COUNSEL AND ALL PETITIONERS. EACH ADVOCATE MUST MENTION THEIR NAME/ ADDRESS/ ENROLMENT NO. MOBILE NUMBER IN VAKALATNAMA. TITLE ON THE VAKALATNAMA BE CHECKED. WELFARE STAMP BE AFFIXED. SIGNATURE OF THE CLIENT BE IDENTIFIED.
12. STATEMENT OF TRUTH BE FILED AS PER COMMERCIAL COURTS ACT, 2015. ENTIRE PLEADINGS BE SIGNED BY THE PLAINTIFF/PETITIONER O XI- R-1(3) OF CPC

(AMENDED) BY COMMERCIAL COURTS ACT, 2015 - 2018

13. ADVANCE COPY OF PETITION/APPLICATION FILED U/S ? 9, 11, 14, 15, 27, 34, 37 OF ARBITRATION AND CONCILIATION ACT, 1996 BE SERVED UPON OPPOSITE PARTY CH-III R-6 -2018

14. ADVANCE COPY OF PETITION/APPLICATION FILED U/S ? 9, 11, 14, 15, 27, 34, 37 OF ARBITRATION AND CONCILIATION ACT, 1996 BE SERVED UPON ON NOMINATED COUNSEL/EMPANELLED ADVOCATES OF UNION OF INDIA/STATE GOVERNMENT/STATUTORY AUTHORITY/ PUBLIC SECTOR UNDERTAKINGS AND NOT DIRECTLY ON SUCH AUTHORITIES CH-III R-6 -2018

15. DESCRIPTION OF ANY OTHER DEFECTS:TOTAL 382 PAGES FILED WITHOUT BOOKMARKING. DELAY IN FILING. IN ADDITION TO THE E-FILING,IT IS MANDATORY TO FILE HARD COPIES OF THE FRESH MATTERS FILED UNDER SECTION 9,11, AND 34 OF THE ARB. ACT. 1996 WITH EFFECT FROM 22.10.2018

28-FEB-19 1. DESCRIPTION OF ANY OTHER DEFECTS:TOTAL 282 PAGES FILED WITHOUT BOOKMARKING WITHOUT PAGINATION.PLEASE REMOVE ALL PREVIOUS OBJECTIONS.

2. DESCRIPTION OF ANY OTHER DEFECTS:ALL PREVIOUS OBJECTIONS NOT REMOVED TILL DATE. TOTAL 282 PAGESFILED.

11-MAR-19

16-MAR-19 1. DESCRIPTION OF ANY OTHER DEFECTS:TOTAL 282 PAGES FILED WITHOUT BOOKMARKING .CAVEAT REPORT NOT OBTAINED. HIGHLIGHTING/BOLD NOT ALLOWED IN THE PETITION. PLEASE REMOVE ALL ABOVE MENTIONED OBJECTIONS.IN ADDITION TO THE E-FILING,IT IS MANDATORY TO FILE HARD COPIES OF THE FRESH MATTERS FILED UNDER SECTION 9,11, AND 34 OF THE ARB. ACT. 1996 WITH EFFECT FROM 22.10.2018.PLEASE CORRECT THE PAGINATION.

25-MAR-19 1. APPLICATION FOR CONDONATION OF DELAY IN FILING/ REFILING BE FILED ALONG WITH AFFIDAVIT.

2. DESCRIPTION OF ANY OTHER DEFECTS:TOTAL 971 PAGES FILED. CAVEAT REPORT BE

OBTAINED. HIGHLIGHTING/BOLD NOT ALLOWED IN THE PETITION. IN ADDITION TO THE E-FILING, IT IS MANDATORY TO FILE HARD COPIES OF THE FRESH MATTERS FILED UNDER SECTION 9, 11, AND 34 OF THE ARB. ACT. 1996 WITH EFFECT FROM 22.10.2018. ALL VOLUME OF LIST OF DOCUMENTS BE PAGINATED. PLEASE CORRECT THE PAGINATION. DELAY IN REFILING.

02-APR-19 1. DESCRIPTION OF ANY OTHER DEFECTS: TOTAL 978 PAGES FILED. DATE BE GIVEN IN THE VAKALATNAMA. HIGHLIGHTING/BOLD AND UNDERLINE NOT ALLOWED IN THE PETITION. ALL VOLUME OF LIST OF DOCUMENTS BE PAGINATED. IN ADDITION TO THE E-FILING, IT IS MANDATORY TO FILE HARD COPIES OF THE FRESH MATTERS FILED UNDER SECTION 9, 11, AND 34 OF THE ARB. ACT. 1996 WITH EFFECT FROM 22.10.2018.

7-MAY-19 1. DESCRIPTION OF ANY OTHER DEFECTS: TOTAL 978 PAGES FILED. CAVEAT REPORT BE OBTAINED. DATE BE GIVEN IN THE VAKALATNAMA. PLEASE REMOVE ALL PREVIOUS OBJECTIONS. HARD COPY BE FILED.

28-AUG-19 1. PETITION/ APPLICATIONS/ MOP/ INDEX/ POWER OF ATTORNEY BE SIGNED AND DATED BY PETITIONERS AND ADVOCATE
 2. APPLICATION FOR CONDONATION OF DELAY IN FILING/ REFILING BE FILED ALONG WITH AFFIDAVIT.
 3. ADVANCE COPY OF PETITION/ APPLICATION FILED U/S ? 9, 11, 14, 15, 27, 34, 37 OF ARBITRATION AND CONCILIATION ACT. 1996 BE SERVED UPON OPPOSITE PARTY CH-III R-6 -2018
 4. DESCRIPTION OF ANY OTHER DEFECTS: TOTAL 971 PAGES FILED. CAVEAT REPORT BE OBTAINED. DATE BE GIVEN IN THE VAKALATNAMA. LIST OF DOCUMENTS BE SIGNED. HARD FILE BE SUBMITTED AFTER RECTIFICATION OF ALL OBJECTIONS.
 DELAY IN REFILING. PAGE NO. 21 IS MISSING IN THE APPLICATION PART.

12-SEP-19 I.A.-12693/2019 FOR EXEMPTION FORM FILING CERTIFIED COPIES ETC Filed By

12-SEP-19 I.A.-12694/2019 FOR CONDONATION OF DELAY IN

12-SEP-19 *FILING PLEADINGS Filed By*
 I.A.-12692/2019 For EX-PARTE
 STAY/INJUNCTION/INTERIM STAY/STATUS QUO/
 Filed By
 12-SEP-19 I.A.-12691/2019 For CONDONATION OF DELAY IN
 FILING PLEADINGS Filed By.”

11. Taking the date of receipt of the award as October 15, 2018, the limitation of three months and 30 days thereafter expired around February 15, 2019, so the question would be, whether the petition having remained under objections between February and September can be said to have been validly instituted even if the initial filing was done within the time prescribed. The objections raised by the Registry also included petition / applications / MOP / Index / Power of Attorney have not been signed by the petitioners and Advocates and even affidavit in support of the petition and applications are incomplete. The reasons, for seeking condonation of delay in refiling have already been noted above.

12. This issue of delay in refiling is no more *res integra* in view of the judgment of the Division Bench of this Court in the case of ***Delhi Development Authority v. Durga Construction Company, 2013 (139) DRJ 133 [DB]*** wherein in paras 17, 18, 20, 21 and 25 has stated as under:

“17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the

party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in Ashok Kumar Parmar v. D.C. Sankhla: 1995 RLR 85, whereby a Single Judge of this Court held as under:-

"Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit."

A Division Bench of this Court upheld the aforesaid view in D.C. Sankhla v. Ashok Kumar Parmar: 1995 (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:-

"5. In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act."

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing.

As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.

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20. *It follows from the above that once an application or an appeal has been filed within the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.*

21. *Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in M/s. Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman: 2011 (2) R.A.J. 347 (Del) has held as under:-*

"9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further

period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in re-filing are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refilling the petition."

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25. *Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred."*

13. In this context, I may also refer to the Judgments of the co-ordinate bench of this Court in ***INX News Pvt. Ltd. v. Pier One Construction Pvt. Ltd., 2014(1)ARB LR 27 (Delhi)*** and ***Food Corporation of India v. Sukhbir Singh and Co. and Ors., OMP No.1189/2013***; wherein it was held even though the Court has the power to condone delay in re-filing, application for condonation of delay shall not be maintainable if the delay is malafide or no sufficient cause/adequate reason has been given to explain the delay.

14. Having noted the position of law and the manner in which the petition has been filed, which is obvious from the objections raised by the Registry, that the petitioner has not acted with due diligence and petition/applications filed by the petitioner are hopelessly inadequate and insufficient and contains defects which are fundamental to the institution of the proceedings. Further the reasons seeking condonation of delay are not such, which were beyond the control of the petitioners and could not be avoided despite all possible efforts by them. Even though, the petitioners have in their application stated that there is a delay of 20 days in re-filing, which according to this Court may not be correct as from the first date of filing the petition on February 21, 2019, the petitioner could remove the objections only on September 12, 2019. It is not a case where the delay can be condoned. Rather any condonation of delay in re-filing would defeat the very purpose of specifying inelastic period of time for filing petition under Section 34 of the Arbitration and Conciliation Act, 1996. This Court is of the view that in the facts of this case as noted above, the petitioners would not be entitled to condonation of delay in re-filing the petition and the application needs to be dismissed. Consequently, the application for condonation of delay in filing the present petition being I.A.12691/2019, the petition under Section 34 of the Arbitration and Conciliation Act, 1996 and the application for stay being I.A.12692/2019 are dismissed.

V. KAMESWAR RAO, J

JANUARY 09, 2020/aky