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

+ **FAO(OS) (COMM) 329/2019**

NTPC LTD

..... Appellant

Through Ms. Pinky Anand, ASG with Mr. Ashish Kumar, Ms. Snidha Mehra and Ms. Akshita Goyal, Advocates.

versus

VOITH HYDRO JOINT VENTURE

..... Respondent

Through Mr. Rajiv Nayar, Sr. Advocate with Mr. Omar Ahmad, Mr. Kamaljeet Singh, Mr. Vikram Shah and Mr. Amol Gupta, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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02.03.2020

FAO(OS) (COMM) 329/2019, C.M. No.49921/2019 (by the appellant for condonation of 68 days delay in filing the accompanying appeal) C.M. No. 49922/2019 (stay) & C.M. No. 5400/2020 (by the appellant for correction of the typographical error in the additional affidavit dated 13.12.2019)

1. The appellant/petitioner is aggrieved by the judgment dated 2.7.2019, passed by the learned Single Judge, dismissing a petition filed by it under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'A & C Act') wherein, a challenge was laid to an Award dated 23.8.2016, rendered by a majority of the Arbitral Tribunal.

2. When the present appeal was listed before this court for admission on 20.11.2019, we had observed that the appellant/petitioner had filed an application for condonation of delay of 68 days in filing the accompanying appeal. On the said date, on a perusal of the averments made in the **FAO(OS) (COMM) 329/2019**

application for condonation of delay, we had opined that no explanation had been offered by the appellant/NTPC for the delay between 9.8.2019 to 4.9.2019, 4.9.2019 to 13.10.2019 and from 16.10.2019 to the date of filing the appeal, i.e., 13.11.2019. Ms. Pinky Anand, learned ASG had submitted that the appellant may be permitted to file a better affidavit for explaining the delay. Accordingly, the appeal was adjourned to 21.01.2020.

3. On 21.01.2020, in view of the submission made on behalf of the appellant/NTPC that as a matter of fact, the delay in filing the appeal was not of 68 days, but 60 days and noting that the additional affidavit stated to have been filed was not on record, the matter was adjourned to 13.2.2020. It was also directed that the Registry shall re-calculate the period of limitation keeping in mind the observations made by the Supreme Court in N.V. International versus State of Assam & Ors. reported as **(2020) 2 SCC 109**.

4. Pursuant to the aforesaid directions, the Registry has submitted a report dated 13.2.2020, which was shared with learned counsel for the parties for their perusal. The Registry has stated that the appeal was filed after 134 days, reckoned from the date of the passing of the impugned judgment and the appellant had taken six days for obtaining a certified copy of the impugned judgment. On re-calculating the period of delay in terms of the observations made by the Supreme Court in N.V. International (supra), the Registry reports that there is delay of 128 days, i.e., 8 days beyond the maximum period of 120 days available to prefer an appeal.

5. Ms. Anand, learned ASG submits that N.V. International (supra) was decided by the Supreme Court on 6.12.2019, which was after the appellant had filed the present appeal and therefore, the said decision may not be

extended to the facts and circumstances of the present case, as it would amount to giving retrospective effect to the judgment.

6. On pointing out that in N.V. International (supra), the Supreme Court has relied upon its earlier judgment and order dated 17.9.2018 passed in SLP (Civil) No.23155/2013, Union of India versus Varindera Constructions Limited, Ms. Anand states that the said decision was on the peculiar facts of the case as can be made out on a glance at the order extracted in para 4 of the decision in N.V. International (supra).

7. The aforesaid submission is however, refuted by Mr. Rajiv Nayyar, Sr. Advocate appearing for the respondent, who submits that this is not a case of an amendment to a Statute, where any retrospective application is impermissible. The Supreme Court has only clarified the view taken in Varindera Constructions Limited (supra), decided on 17.9.2018, in N.V. International Limited (supra), decided on 6.9.2019 that a delay beyond 120 days in filing an appeal under Section 37 of the A & C Act cannot be allowed as it will defeat the statutory purpose of the arbitral proceedings.

8. We are in agreement with learned counsel for the respondent and are of the opinion that the view expressed in Varindera Constructions Limited (supra) decided on 17.9.2018 having declared that the maximum period available to a petitioner to file a petition either under Section 34 or under Section 37 of the A & C Act, is 120 days, has only been reiterated in N.V. International (supra). This being the position, the present appeal is not maintainable as it has been filed after a delay of 8 days, over and above 120 days, which is the maximum period available to file an appeal.

9. As a result, the appeal is dismissed as barred by limitation alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

MARCH 02, 2020

NA/ap