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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 97/2020 & I.As. 1188/2020, 1189/2020, 1190/2020
+ O.M.P. (COMM) 98/2020 & I.As. 1192/2020, 1193/2020, 1194/2020
VASATHI HOUSING LTD.
VASATHI HOUSING LTD. Petitioner
Through: Mr. B. Shravanth Shanker, Adv.

versus

INDIABULLS DISTRIBUTION SERVICE LTD.
INDIABULLS DISTRIBUTION SERVICES LTD. Respondent
Through: Mr. Jayant Mehta, Mr. R. Aggarwal,
Mr. Karan Luthra and Mr. Ankit,
Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **28.01.2020**

I.A. 1188/2020 (for exemption) in O.M.P. (COMM) 97/2020
I.A. 1192/2020 (for exemption) in O.M.P. (COMM) 97/2020

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

O.M.P. (COMM) 97/2020, I.As. 1189/2020 & 1190/2020
O.M.P. (COMM) 98/2020, I.As. 1193/2020 & 1194/2020

1. These petitions have been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated April 11, 2019 passed by the learned Arbitrator. The petitions were filed on August 13, 2019, beyond the period of three months and within 30 days thereafter. That apart, I have been informed by the learned counsel for the petitioner that the petitioner had taken the petitions lying under objections from the Registry around August 17, 2019. He concedes to the fact that the

petitions were re-filed after removing the objections only on January 24, 2020.

2. Accordingly, four applications have been filed by the petitioner two for condonation of 133 days delay in re-filing the petition (I.As.1190/2020 & 1194/2020) and other two for condonation of 26 days delay (even though mentioned as 33 days delay) in filing the petitions (I.As. 1189/2020 & 1193/2020). The relevant averments made in I.As.1190/2020 & 1194/2020 seeking condonation of delay in re-filing the petitions are at paras 3 to 7, which are reproduced as under:-

3. That the Petitioner-Company is managed by Chief Executive Officer, Director and Shareholder Sh. P.V. Ravindra Kumar, who looks after it's day to day affairs. He is also the Authorised Representative of the Petitioner-Company for the purpose of this litigation.

4. That the Authorised Representative of the Petitioner-Company herein received the Signed Copy of the A ward on 18.04.2019 subsequent to which this Petition was filed on 13.08.2019, within the period prescribed under Section 34 of the Act. Subsequently, after the filing, the defects were marked and the same were received on 17.08.2019 by the counsel for the Petitioner.

5. That after receiving the defects, the counsel for the Petitioner and the Authorised Representative of the Petitioner-Company were unable meet to cure the said defects because the Authorised Representative's father, Sh. P. Venkata Ratnam, is suffering from Leukaemia i.e. Blood Cancer and the Authorised Representative of the Petitioner-Company had to take care of his ailing father as the primary caregiver.

6. The Authorised Representative of the Petitioner-Company is a resident of Hyderabad and his father resides in Vijaywada

where he is also being treated. The Authorized Representative of the Petitioner-Company has been travelling back and forth to consult doctors in order provide his father with the best possible healthcare facilities. The Copy of the medical records of the father of the Authorised Representative of the Petitioner-Company is filed herewith as Document No. 14 (Colly).

7. The Petitioner-Company operates from Hyderabad making it the primary place of business for the Authorised Representative of the Petitioner-Company. Owing to severe disturbance in his personal life, the Authorised Representative has been unable to manage the affairs of the company as well as travel to New Delhi to coordinate with the legal counsel.”

3. In substance, the reasons given in the applications are the personal difficulties of the authorised representative because of which, he could not pursue with the counsel for removing the objections. The petitions were re-filed after almost five months after they were taken in objections. The applications filed do not give the relevant dates as to when the counsel had contacted the authorized representative of the petitioner and as to whether the counsel had informed the authorized representative with regard to the objections put by the Registry of this Court. No communication has been referred to nor annexed.

4. In the absence of the same, the averments made in the application are not appealing. The delay of five months has not been justified. The applications, also show that the affidavits in support of the same were sworn on 17th December, 2019, whereas they were actually filed on 24th January, 2020. In substance, the contents of the applications do not show that the representative has acted with diligence and dispatch. The reasons given to seek condonation of delay also do not show that the delay was for the reasons beyond the control of the applicant and could not have been

avoided. The issue with regard to the applications seeking condonation of delay in re-filing the petitions is quite well settled and more particularly the judgment of the Division Bench of this Court in the case of **DDA v. Durga Construction Co., 2013 SCC OnLine Del 4451**, wherein Paras 20, 21 and 25 are reproduced as under:

“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."

5. In view of the aforesaid position of law, I am afraid that the applications of the petitioner seeking condonation of 133 days delay in re-filing the petitions cannot be accepted. The applications are dismissed. Consequently, petitions and connected application are also dismissed.

V. KAMESWAR RAO, J

JANUARY 28, 2020/aky