

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-19 OF 2021(O&M)

DATE OF DECISION : 02.12.2021

M/s. Jai Parkash Associates Ltd. through its authorized signatory Sh. Jagdish P. Aggarwal

.....Appellant

Versus

Haryana Power Generation Corporation Ltd. through its Chairman, Office at Urja Bhawan, Sector 6, Panchkula, Haryana.

.....Respondent

CORAM HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Himanshu Rao, Advocate
for the applicant-appellant.

SANDEEP MOUDGIL, J

The instant first appeal has been preferred assailing the order dated 10.08.2021, vide which the application under section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'Act of 1996') seeking condonation of delay of 22 days, has been dismissed by the Additional District Judge, Panchkula.

The appellant herein challenged the correctness of aforesaid Award under Section 34 of the Act of 1996 before the Additional District Judge, Panchkula bearing Case No.ARB/42/2019. The said application was accompanied

by an application under Section 34(3) of the 'Act of 1996' seeking condonation of delay in filing the objection petition under section 34.

It is the case of the applicant that the Award was dated 08.05.2019, which was received by him on 13.05.2019 and calculated the delay in filing as 22 days. The Additional District Judge, Panchkula, dismissed the application under Section 34(3) vide its order dated 10.08.2021.

It is the said order dated 10.08.2021 which has been put to challenge before this court in the present first appeal under Section 37 of the 'Act of 1996' read with section 13 of the Commercial Courts Act, 2015 (hereinafter referred to as 'Act of 2015') limited to the issue of dismissal of the appeal on the ground of delay which was not condoned holding that the applicant has failed to explain the delay in filing the objection petition who was also found guilty of misrepresentation.

After having heard the learned counsel for the applicant-appellant and on perusal of the record, the vital facts relating to the limited issue for condonation of delay can be noticed to the effect that the award by the Sole Arbitrator was passed on 08.05.2019, a copy of which was admittedly received by the applicant-appellant on 13.05.2019 against which the application under Section 34(3) under the 'Act of 1996' was preferred on 05.09.2019 with a delay of 22 days beyond the prescribed period of 90 days.

Mr. Himanshu Rao, learned counsel for the applicant-appellant contended that the alleged delay was neither intentional nor deliberate on the part of the applicant-appellant and therefore, the learned Additional District Judge, Panchkula, ought not to have dismissed the petition under Section 34 along with the application for condonation of delay on a short and just delay of 22 days though it was also preferred after the expiry of the limitation of three months.

The learned counsel for the applicant-appellant further pleaded that the learned Additional District Judge, Panchkula should have considered the factum that the very cause of dispute is absent and the arbitration claim of the respondent relates to illegal, arbitrary and invalid demand of assessing authorities.

Perusal of the order dated 10.08.2021 and the pleadings make it evident that the explanation made for delay of 22 days, primarily has been attributed to procedural aspects, wrong legal advice and closedown of office of the counsel during summer vacations. Owing to the aforesaid reasons, the learned counsel for the applicant-appellant pleaded that the petition – application could not be finalized in time and hence a delay of 22 days has occurred.

The learned counsel has vehemently argued that the Additional District Judge, Panchkula failed to exercise the jurisdiction vested in it while dismissing the petition under Section 34 on a technical ground of delay without considering the fact that it is the applicant-appellant who would be saddled with a liability arose on account of the acts of omissions, negligence, mis representation of facts and improper representation in law by the respondents before its assessing authority. It has been stated that when Fly Ash was allocated by the respondent for lifting by the applicant-appellant on “free of costs” basis and when no sale/tax invoices were issued, there was no justifiable reason for including the “Free of Costs” supply in its VAT returns.

However, this Court is confined to limited question of whether the delay of 22 days has been rightly declined to be condoned, is not inclined to go into the merits or legality of the Award dated 08.05.2019.

Before reaching to any conclusion, it would be appetite to have a glance to **Section 13 of the ‘Act of 2015’ alongwith Section 34(3) of the ‘Act of**

1996’ while testing the veracity of order dated 10.08.2021 under challenge in the instant appeal, which reads as under:-

13. Appeals from decrees of Commercial Courts and Commercial Divisions.—

(1) 1 [Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.”

34. Application for setting aside arbitral award.—

34(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

A perusal of the aforesaid provisions make it abundantly clear that the period of limitation to file any appeal is 60 days from the date of judgment or order which came to an end in the instant appeal on 07.07.2019 and in any case if the protection of 34(3) of the 'Act of 1996' is sought, the period of 90 days came to an end on 06.08.2019 as against the filing on 05.09.2019.

The delay cannot be condoned in a casual manner and the provision of the special statute being specific needs to be strictly adhered to. The onus to make out a case of sufficient cause heavily lie on the applicant-appellant to get relief in exercise of discretionary powers which is neither judicial nor arbitrary.

The applicant-appellant failed to place any material or cogent reasons on record. Moreover, the sole arbitrator in its order dated 24.07.2018, went on to record the habitual tendency of appellant to act with laxity while not appearing on quite a number of occasions despite due receipt of notice under the garb of change of address of applicant-appellant-company.

The Hon'ble Supreme Court in **"Balwant Singh v. Jagdish Singh and others – 2010AIR (SC)3043"** has observed that it is not the length of delay but sufficiency of satisfactory explanation needs to be looked into. The law of limitation is a substantive law and has definite consequences on the right and obligation of a party to arise. Once a valuable right, has accrued in favour of one party as a result of the failure of the other party to explain the delay by showing sufficient cause and its own conduct, it will be unreasonable to take away that right

of negligence, default or inaction of that party. If a party has been thoroughly negligent in implementing its rights and remedies, it will be equally unfair to deprive the other party of a valuable right which has accrued to it in law as a result of his acting vigilantly. The very intent of legislation also cannot be ignored which has purposely curtailed the power to condone delay by exclusion of operation of Section 5 of the Limitation Act, emphasizing the need to provide a speedy and expeditious mechanism of adjudication.

The explanation put forth by the applicant-appellant for the purpose of seeking condonation of delay is evidently erroneous and misleading while pleading that the Award was received belatedly and it was ordered to be sent to the address wherefrom the applicant-appellant company has shifted its office. There is nothing on record to justify such stand particularly in the light of the fact that such change, if any, was there in the registered address, it was never intimated during the arbitration proceedings before the sole arbitrator. Even otherwise, admittedly the award was received on 13.05.2019 and the present petition came to be filed on 05.09.2019, still after the lapse of 90 days if the period of limitation is counted from the date of receipt of Award whereas the statute is very categorical to count the period of limitation from the date of passing of Award.

Another frivolous and concocted story has been put forth with regard to the closer of office of its counsel during the summer vacations as the summer vacations too comes to an end by the last week of June every year. In a recent judgment rendered by the Hon'ble Apex Court on 19.03.2021 in **Civil Appeal No. 995 of 2021- Govt. of Maharashtra v. M/s Borse Brothers Engineers and Contractors Pvt. Ltd.**, it has been observed that merely because sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right if sufficient cause is not proven, nothing further has to be done and

the application for condonation of delay is to be dismissed on that ground alone. The relevant factors to enquire before exercising discretion to condone the delay is diligence of the parties or its bonafide, may fall for consideration.

The Apex Court has in para 61 of the aforesaid judgment held as under:-

“Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise held to be applicable to arbitration proceedings and others in which it had not so been held.”

The said ratio in the case of **Govt. of Maharashtra (surpa)** also pertains to the question of condonation of delay beyond the 60 days period provided for filing an appeal under Section 13(1A) of the ‘Act of 2015’, which was declined and the appeal was dismissed holding that the application seeking condonation of delay has no explanation except usual file-pushing and administrative exigency.

The present appeal is also on identical lines having stereo type unjustifiable explanation on the part of the applicant-appellant.

The negligence of the applicant-appellant is writ large and casual approach already recorded by the Sole Arbitrator during the proceedings of arbitration clearly depict that the present case is not a fit case to exercise the discretion vested in this Court for a perfunctory/cursory stand taken by the

applicant-appellant to seek condonation of delay of 22 days in filing the objection petition under Section 34 of the ‘Act of 1996’.

We, therefore, find no reason to interfere with the order dated 10.08.2021, passed by the learned Additional District Judge, Panchkula and hence appeal is dismissed. File be consigned to the record room.

(SANDEEP MOUDGIL)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

02.12.2021
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No