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

Date of Decision: 13th May, 2021

+ **W.P.(C) 4330/2021 & CM APPLs.13224-25/2021**

DIRECTORATE OF HEALTH SERVICES Petitioner
Through: Mr. Anuj Aggarwal, ASC,
GNCTD with Ms. Ayushi
Bansal, Advocate.

versus

SARVESH HOUSE KEEPING SERVICES
PVT. LTD. Respondent
Through: Ms. Sneha, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition challenges the impugned order dated 22nd January, 2021 by which the petition under Section 34 of the Arbitration and Conciliation Act, 1996, filed by the Petitioner-Department, has been dismissed as being barred by limitation.
3. A tender bearing No. 2013-DHS-44853 was floated by the Petitioner on 13th September, 2013 for housekeeping services. The Respondent had participated in the said tender and was awarded the contract on 23rd May, 2014. The detailed agreement was executed between the parties on 21st May, 2014. The payment had to be made for the period commencing from 1st June, 2014 to 31st May, 2016 @ Rs.51,418.50/- per month plus service tax.
4. Disputes arose between the parties. It is the case of the Respondent

that there was a delay in making payments and various other claims were also raised. The sole arbitrator appointed in the matter passed the arbitral award on 25th January, 2019. The operative portion of the said award reads as under:-

“CONCLUSION:-

1. *Claimant is awarded a sum of Rs. 8.49362.72p along with interest at the rate of 12% per annum from the date when the payment became due till January 2016.*
 2. *An amount of Rs. 123404/- is awarded on account of release of performance security.*
 3. *A sum of Rs. 10,000/- is awarded on account of illegal retention of employees of the claimant and;*
 4. *A sum of Rs. 5,000/- is awarded on account of loss of profit.*
 5. *The claimant is awarded pendente lite and future interest at the rate of 6% per annum from the date of filing of the claim till realization of the claim amount. If the payment is not made within three months from the date of award, the claimant shall be entitled to interest at the rate of 8% per annum from the date of award till realization of the awarded amount.*
- The claimant is awarded litigation expenses also.”*

5. The petition under Section 34, challenging the said award, was filed on 6th February, 2020 i.e., after more than one year. The Commercial Court has applied the settled law as laid down by the Supreme Court in ***Simplex Infrastructure Ltd v. UOI, (2019) 2 SCC 455*** and has held that the delay would not be liable to be condoned. Admittedly, the petition under Section 34 was filed after more than 300 days and thus, the petition was dismissed on the ground of delay itself on 22nd January, 2021. The operative portion of

order dated 22nd January, 2021 reads as under:-

“09. The judgments relied by ld counsel for petitioner are not applicable u/s 34 of Arbitration and Conciliation Act, 1996 since the same pertain to condonation of delay u/s 5 of Limitation Act.

10. Further, I also agree with the contention of ld counsel for the claimant/respondent that the application does not even justify sufficient cause as the application only states that petition could not be filed in time due to administrative delay and involvement of various government agencies. The petitioner has not even explained the delay due to administrative procedure.

Reliance is placed on judgment of Hon'ble Supreme Court in Simplex Infrastructure Ltd Vs UOI(Supra), wherein it was held that administrative difficulties would not be a valid reason to condone a delay above and beyond the statutory period prescribed u/s 34 of the Act.

Reliance is also placed on judgment passed by Hon'ble Delhi High Court in Bharat Sanchar Nigam Ltd Vs M/s Vindhiya Tel Links Pvt Ltd, OMP(Comm)(503/2019) pronounced on 02.12.2019. In the said case, the application for seeking condonation of delay of 26 days in filing the petition u/s 34 of Act for setting aside the award was filed on the ground of administrative exigencies including the detailed calibrations. The application was dismissed by Hon'ble High Court by placing reliance on the judgment of Hon'ble Apex Court in Simplex Infrastructure Ltd Vs UOI(Supra) and considering the strict and inflexible provisions u/s 34(3) of the Act. It was observed:

“since the petitioner has not set out any ground in the application on which the delay can be condoned, leave alone, “sufficient cause” as required under

proviso to section 34(3) of the Act, the present application only deserves to be dismissed.”

In Babu Jagjivan Ram case (supra) also, the Hon'ble Delhi High Court held that delay beyond 30 days cannot be condoned in view of the mandate and provisions of 34(3) of the Act. Hon'ble High Court placed reliance on judgment of Hon'ble Apex Court in State of Maharashtra Vs Hindustan Construction Company Ltd(2010)4SCC 518 wherein, the mandatory nature of the outer time provided in the proviso to Section 34(3) of the Act has been emphasized and it was held “an application for setting aside an arbitral award u/s 34 of the Act has to be made within the time prescribed under subsection (3) of Section 34 of the Act i.e. within 3 months and a further period of 30 days on sufficient cause being shown and not thereafter. Delay thereafter cannot be condoned”.

11. In view of the above discussion, I am of the view that application is without any merits. Hence, the same is dismissed.

12. Since the application u/s 5 of Limitation Act (which is treated as application u/s 34(3) of the Act) has been dismissed, there is no reason to discuss on merits. Accordingly, the petition u/s 34 of the Act for setting aside the award dated 25.01.2019 passed by sole arbitrator is also dismissed.”

6. Mr. Anuj Agarwal, ld. counsel for the Petitioner, submits that though the delay is not in dispute, the fact remains that the Petitioner had made various statutory payments to the workmen for a particular period and credit has not been given in respect of the said amount. In so far as the delay is concerned, he concedes that the delay was more than 300 days.

7. Ld. counsel appearing for the Respondent submits that firstly, the writ

itself is not maintainable as the order is an appealable order under Section 37 of the Act. It is further submitted that even the ground raised on merits is not liable to be entertained inasmuch as the arbitrator was conscious of the fact that some payments have been made by the DGHS to the workmen. Accordingly, the Arbitrator awarded the amount for the period of 19 months instead of the total period of 24 months. She thus submits that the present petition is liable to be dismissed.

8. This Court has considered the matter. The settled position in law is that the period prescribed for filing of a petition under Section 34 is mandatory in nature. The relevant paragraph of *Simplex Infrastructure Pvt. Ltd. (supra)* reads as under:

“9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section (3) of Section 34, would not be an application “in accordance with” that sub-section. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of

the words “but not thereafter” in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of up to thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.”

9. Considering this settled legal position, the delay of 316 days in filing the petition under Section 34 is not liable to be condoned. Thus, the impugned order does not warrant any interference.

10. Accordingly, the present petition, along with all pending applications, is dismissed. No order as to costs.

11. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

**PRATHIBA M. SINGH
JUDGE**

**MAY 13, 2021
MR/T**