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A.No.5521 of 2023

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in
Arb.O.P(Com.Div.)No.475 of 2023

C.SARAVANAN, J.

This application has been filed by way of an appeal against the order dated 26.09.2023 passed by the learned Master in Application No.2951 of 2023 condoning the delay in representing the Arbitration Original Petition that was filed by the respondent herein in Arb.O.P.(Com.Div.)No.475 of 2023. The application is inspired from few decisions of the Division Bench of this Court and Delhi High Court has detailed below:-

(i)*Waaree Energies Limited, Rep by its Authorised Signatory, Mr.Sridhar Vs. Sahasradhara Energy Private Limited* [2021 SCC Online Mad 5086] and

(ii)*Union of India Vs. Bharat Biotech International Limited* [2020 SCC Online Del 483].

2.That apart, it is submitted by the learned counsel for the applicant (petitioner in Arb.O.P.(Com.Div.)No.100 of 2023[Award debtor]) that though the above Arbitration Original Petition was filed in



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time on the last date (i.e.) 19.01.2023, it was filed with defects and therefore returned. It is submitted that the petition was to be re-presented within a period of thirty days of first return on 31.01.2023 in terms of Order 14 Rule 10(i) of the O.S. Rules, 1956.

3.However, it was re-presented beyond the period of limitation on 02.03.2023. Therefore, there was a cumulative delay of 31 days in re-presentation of the first return made on 31.01.2023. It is submitted that the second return was made on 07.03.2023 which again ought to have been re-presented by 06.04.2023. Instead, it was re-presented only on 10.04.2023 and thus there is a cumulative delay of 35 days in filing the representation.

4.It is therefore submitted that claimant (petitioner in Arb.O.P.(Com.Div.)No.475 of 2023) ought to have filed a proper application for condoning the delay at each stage. It is submitted that in the light of the decision of this Court cited above, the above Arbitration



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Original Petition filed by the petitioner in Arb.O.P.(Com.Div.)No.475 of 2023 (respondent in this application) is therefore liable to be rejected.

Hence, this application deserves to be allowed.

5.Defending the impugned order of the learned Master, the learned counsel for the respondent (Claimant/petitioner in Arb.O.P.(Com.Div.)No.475 of 2023) and respondent in Arb.O.P.(Com.Div.)No.100 of 2023 would submit that the issue is no longer res integra and is covered by the decision of the Hon'ble Supreme Court in *Northern Railways Vs. Pioneer Publicity Corporation Private Limited* [2017 (11) SC 234]. It is submitted that the limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 is not applicable to re-presentation of an Original Petition filed in time.

6.I have considered the arguments advanced by the learned counsel for the applicant and the learned counsel for the respondents.



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7.The arguments based on the decision of this Court and the Delhi High Court cited supra by the learned counsel for the applicant is no longer relevant in the light of the decision of the Hon'ble Supreme Court in *Northern Railways Vs. Pioneer Publicity Corporation Private Limited* [2017 (11) SC 234] cited by the learned counsel for the respondents. In para 4 and 5 the Hon'ble Supreme Court has held as under:-

4.We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.

5.We are not inclined to accept this contention, particularly since the petitioner has offered an explanation for the delay for the period after the extensions.



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8. Therefore, there is no merits in the submissions of the Arb.O.P.(Com.Div.)No.475 of 2023 is liable to be dismissed on account of limitation prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996.

9. At the same time, there have been delay on the part of the respondent (Award holder) in representing the Original Petition without filing proper application before the learned Master. There have been multiple representation as detailed above. The respondent (claimant/petitioner in Arb.O.P.(Com.Div.)No.475 of 2023) ought to have been filed suitable applications under Section 5 for condoning the delay which has not been done. However, failure to file such an application are not fatal to the Original Petition filed against the Award dated 19.08.2022 as modified on 14.10.2022.



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10.At best, learned Master would have awarded cost on the applicant herein, if such applications were filed. The Court is therefore of the view, no useful purpose will be served by relegating the respondent herein to file appropriate application to condone the delay as the Master can at best award cost for the delay in re-presentation of the Original Petition that was originally filed on 19.01.2023. Therefore, to balance the interest of both the parties, Court is inclined to dismiss this application, subject to respondent paying a sum of Rs.15,000/- as cost to the Blue Cross of India, No.72, Velachery Road, Guindy, Chennai – 600 032, within a period of fifteen days from the date of receipt of a copy of this order. The respondent shall file a memo to that effect.

11.Registry is directed to list the application for reporting compliance on 17.11.2023.

18.10.2023

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