



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

% **Reserved on : 26th April, 2023**
Pronounced on: 19th July, 2023

+ O.M.P. (COMM) 52/2023 & I.A. 2406/2023 & I.A. 2407/2023 &
 I.A. 2408/2023 & I.A. 2409/2023 & I.A. 6309/2023
 OMAXE LTD. Petitioner

Through: Mr. Ramesh Singh and Mr.
 Rajshekhar Rao, Sr. Advocates
 with Ms. Mukti Bodh, and Mr.
 Vipin Sharma, Advocates

versus

JOGINDER SINGH NIJJAR Respondent
 Through: Ms. Shobhana Takiar and Mr.
 Kuljeet Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Act, 1996") has been filed on behalf of the petitioner seeking the following reliefs:-

- a. *Pass an order summoning the entire original arbitral record from the Ld. Sole Arbitrator in the arbitration proceedings arising out of Arbitration Petition No.16/2015 titled Joginder Singh Nijjar Vs. Omaxe Ltd.;*
- b. *Pass an order thereby setting aside the impugned award dated 20.03.2020 passed in arbitration*

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proceedings arising out of Arbitration Petition No.16/2015 titled Joginder Singh Nijjar Vs. Omaxe Ltd.;

- c. *Pass an order thereby allowing the Counter Claims made by the petitioner in arbitration proceedings arising out of Arbitration Petition No.16/2015 titled Joginder Singh Nijjar Vs. Omaxe Ltd.;*
- d. *stay the operation and execution of the impugned Award dated 20.03.2020 passed by the Ld. Sole Arbitrator during the pendency of the present proceedings.*
- e. *Pass an order allowing costs of the present proceedings in favour of the Petitioner and against the Respondents;*
- f. *Pass any other or further order(s) deemed fit in the facts and circumstances of the case and in the interest of justice.*

FACTUAL MATRIX

2. The present petition has arisen out of the following set of events and circumstances:

- a. The petitioner is a Real-Estate Development Company duly incorporated under the *aegis* and provisions of the Companies Act, 1956/2013, and is engaged in the business of construction and development of commercial, residential, and integrated real estate projects Pan-India.
- b. The petitioner began the construction and development of a shopping/commercial mall in the name and style of “Omaxe Novelty Mall” situated at Lawrence Road, Amritsar, Punjab (hereinafter “the Project/said Project”) in collaboration with the landowners, M/s. Novelty Associates Pvt. Ltd., on a land area



admeasuring 4850 sq. yd. approx. on a free-hold basis, *vide* a Collaboration Agreement dated 23rd May 2005. Pursuant to the execution of the Collaboration Agreement dated 23rd May 2005, the landowners also executed the Power of Attorney dated 23rd May 2005 in favour of the petitioner for carrying out the objectives contained in the Collaboration Agreement.

c. The sale proceeds of the aforesaid collaboration/joint venture were to be shared by the landowners and the petitioner in the ratio of 52.75% and 47.25%, respectively, after adjusting 10% of receipts towards costs and expenses for advertising and marketing etc.

d. The Municipal Corporation, Amritsar, *vide* its letter dated 25th May 2006, sanctioned the building plan of the Project in question with a height of up to 30 meters. After the sanction of the building plan by the Municipal Corporation, Amritsar, the petitioner started the construction of the mall, and by April 2007, the construction of two basements and one floor had been completed.

e. Thereafter, the respondent approached the petitioner with the intention of purchasing commercial real estate and in furtherance of the respondent's intentions, the petitioner offered them an opportunity to purchase a commercial property/ shop in their Project. Accordingly, the respondent submitted an application dated 10th December 2006 with the petitioner expressing his desire to be provisionally allotted a Unit in the Project and subsequently



following a mutual agreement and deliberations between the respondent and the petitioner, *vide* Allotment Letter/Agreement, and Addendum thereto, dated 22nd March 2007, the respondent were allotted Unit No. 26 on Second Floor in the Project, having an approximate super area of 518.41 sq. ft. at a basic sale consideration of Rs. 34,65,648/- plus additional charges.

f. The Archaeological Survey of India, Punjab (hereinafter “ASI”) issued a letter/ Show Cause Notices to the petitioner as well as the landowners i.e., M/s Novelty Associates, on the ground that the Project in question was within the regulated area of the monument of Maharaja Ranjit Singh Summer Palace, Company Bagh Complex, Amritsar, Punjab which was declared to be a monument of national importance *vide* Notification No.1142(E) dated 15th October 2004.

g. Subsequently, the ASI, Punjab directed the petitioner to stop the construction of the Project beyond 15 meters and further mandated the Municipal Corporation, Amritsar, to take necessary actions to stop the ongoing construction of the Project, *vide* its letter dated 27th April 2007. *Vide* the said letter, the ASI, Punjab also directed the Municipal Corporation Amritsar not to sanction any Building Plan within the prohibited area without receiving a No-Objection Certificate (hereinafter “NOC”) from the ASI, Punjab and further directed the Municipal Corporation, Amritsar to cancel the site plans accorded to the projects within the prohibited area.



h. On account of the aforesaid objection by ASI, Punjab, the Project remained stalled and the construction was at a standstill for a period of almost 60 months i.e., w.e.f. from April 2007 up until March 2012. The petitioner, thereafter, pursued the ASI, Punjab for seeking approvals and resumption of construction of the Project. Subsequently, ASI, Punjab *vide* its letter dated 27th and 28th July 2007, granted the NOC for construction only up to a height of 15 meters from the ground level.

i. The petitioner kept pursuing its matter before the competent authorities for the necessary approvals for further construction upto the height as sanctioned and after several representations and letters, on 22nd February 2012, the competent authority granted the petitioner permission to construct the its Project upto a height of 24 meters and additional 2 meters height for air conditioning plant and mumty etc.

j. After the said approval from the ASI, the petitioner submitted the revised building plans to the Municipal Corporation, Amritsar and after the grant of sanction to the revised building plans resumed the construction of the project. After the said resumption of the construction, the construction was completed and the Completion Certificate dated 8th July 2015 was issued by the Competent Authority *vide* the letter dated 8th July 2015, which was also cancelled by the Municipal Corporation on 29th January 2016.

k. The respondent, in the background of the above course of events seeking refund of its Principal Amount on account of delay



in carrying out construction of the Project, invoked arbitration *vide* notice dated 31st January 2013. Upon invocation, the respondent approached the Hon'ble Supreme Court by way of filing an Application under Section 11 of the Act, 1996 for appointment of Arbitrator in Arbitration Proceedings bearing No. 16/2015 appointed a Sole Arbitrator *vide* order dated 27th February 2015. The arbitration proceedings were initiated between the parties wherein the respondent herein had raised 9 Claims against the petitioner herein and the petitioner had raised 9 Counter-Claims.

1. On 20th March 2020, the impugned Award was passed, aggrieved by which, the petitioner has filed the instant petition under Section 34 of the Act, 1996.

SUBMISSIONS

3. The parties argued the instant matter at length on several dates of listing before this Court on the issue of limitation as well as on merits. A combined consideration of the contentions raised in the pleadings, written submissions as well as the contentions raised during the course of hearing lay out the following broad arguments on behalf of the parties.

On behalf of the petitioners

4. Mr. Ramesh Singh and Mr. Rajshekhar Rao, learned senior counsels appeared for the petitioner and, on merits of the case, submitted that at the very outset, the unilateral rescinding of the Allotment Agreement by the respondent and invocation of the Arbitration clause was bad in the eyes of the law and the Notice dated 31st January 2013 was



invalid and *non-est*.

5. It is submitted that, upon conclusion of arbitration proceedings, the impugned order was passed without appreciating the facts and circumstances. The learned Arbitrator failed to appreciate that by March-April, 2007, the petitioner had already constructed two basements and one floor and the construction was in full swing on the basis of the sanctions and approvals granted by the Municipal Corporation, Amritsar, which had allowed construction up to the height of 30 meters. It has been further submitted that the learned Arbitrator also failed to appreciate that ASI, Punjab had wrongly stopped the petitioner from constructing the mall beyond the height of 15 meters when it itself had raised the height to 24 meters with additional 2 meters in February 2012.

6. It is submitted that the learned Arbitrator has ignored the fact that the booking, in this case, was made on 10th December 2006, i.e. much prior to ASI, Punjab raising any objection. The Allotment Agreement was signed on 22nd March 2007. The interventions/objections by ASI, Punjab began only in April 2007, i.e., after the execution of the Allotment Agreement between the parties. Hence, the delay had occurred on account of the objections raised by the ASI that was beyond the control of the petitioner.

7. It is submitted that the learned Arbitrator wrongly held that the *force-majeure* was already in existence when the Allotment Agreement dated 22nd March 2007 was executed between the petitioner and the respondent. It is submitted that ASI, Punjab had granted the NOC to the petitioner on 27th July 2007 for constructing up to 15 meters height and



the petitioner was all along pursuing with the ASI, Punjab for raising the height. Further, the said NOC is to construct up to 15 meters height was cancelled only on 20th June 2008 i.e., after the execution of the Allotment Agreement dated 22nd March 2007. Thus, till 20th June 2008, the construction work was progressing.

8. Learned senior counsel further submitted on behalf of the petitioner that the respondent was well aware of the objections raised by the ASI, Punjab. It is submitted that a perusal of the Allotment Agreement makes it clear that the respondent had agreed to book/purchase the Unit in question on being fully aware of the applicable laws, rules, regulations, and notifications, etc. Clause 3 of the Allotment Agreement had also made clear that the plans, designs, and specifications of the said Unit were tentative and liable to change on account of any Government action or otherwise. Moreover, the respondent nowhere specifically stated in their pleadings that he not made aware of the ASI objections and in fact, he was present at the meeting dated 14th March 2011 wherein it was agreed that the parties would keep pursuing the ASI for completion of the Project. It is submitted that the minutes of the meeting dated 14th May 2010 and 19th January 2011 filed by the respondent himself also point out to the fact that the respondent was well aware of the ASI objections. Even the said alleged Minutes of Meeting do not state that any such fact was concealed from the Allottees.

9. Learned senior counsel for the petitioner further submitted on behalf of the petitioner that the learned Arbitrator had wrongly held the ASI objection not to be a *force-majeure* condition. It is submitted that the



delay had occurred on account of the objections raised by the ASI that was beyond the control of the Company.

10. It is submitted that the letter dated 27th April 2007 and other communications issued by the ASI make it abundantly clear that it was the responsibility of the Municipal Corporation, Amritsar, to obtain NOC from the ASI prior to the sanction of the building plan.

11. Learned senior counsel further submitted on behalf of the petitioner that the petitioner was pursuing the NOC from ASI, Punjab diligently and it was expected that the same could be received at any time. It is submitted that indeed the ASI, Punjab's NOC to raise the height up to 24 meters was obtained on 22nd February 2012 i.e. very soon after the meeting dated 14th March 2011 with the respondent's representatives.

12. It is also submitted that time was not the essence of the Contract and further the parties *vide* the minutes of meetings had agreed to extend the time of completion of construction, the learned Arbitrator erred in granting the interest @ 14% to the respondent when the petitioner had obtained the Completion Certificate dated 08th July 2015 and offered the possession to the respondent on 16th July 2015. It is submitted that in such an event, the grant of any interest after the offer of possession was neither justified nor tenable.

13. It is submitted that Clause 26 (a) of the Allotment Agreement stipulated that the petitioner shall complete the construction of the Unit/Commercial Complex within 36 months from the date of the signing of the Allotment Agreement with a further reasonable extension of time for delivery of possession, subject to the other conditions and *force*



majeure. In addition to the Allotment Letter, an Addendum was also executed by and between the respondent and the petitioner which stipulated that upon receipt of 95% of the basic sale price for the said shop by the petitioner, the petitioner shall be liable to pay a sum of Rs. 34,474.00/- per month, as a monthly return in terms of the said Addendum. Under the Allotment Agreement, it was also provided that no claim by way of damages/compensation shall lie against the petitioner Company for the delay in handing over the possession on account of any reason beyond the control of the Company. Further, Clause 26 (e) of the Allotment Agreement stipulated that in case of delay in construction of the Unit attributable to delay of the Company, the Company would pay a sum at the rate of Rs. 10/- per sq. ft. of super area per month for the period of delay whereas the Building Plan as approved by the Municipal Corporation, Amritsar, had sanctioned the height to be 30 meters and it was on the basis of the sanction of the Building Plan by the Municipal Corporation, Amritsar, that the petitioner had floated and advertised the proposed project. It has been further submitted that Clause 26(f) of the Allotment Agreement provided that in case of abnormal delay, no other claim apart from the return of the money paid by the allottee with simple interest @ 6% p.a. would be refunded to him.

14. It is submitted that in terms of Clause 26 (c) and (d), the petitioner Company had to offer the possession of the Unit within 30 days from the date of receipt of the Completion Certificate and the respondent's allottee was liable to take the possession of the Unit. It is further submitted that after completing the said Project, the petitioner *vide* a possession letter



dated 16th July 2015, offered the respondent to settle their accounts so that possession could be handed/taken over as mandated vide the Allotment Agreement. However, there was a delay on the part of the respondent, in taking possession. It is submitted that Clause 20 of the Allotment Agreement treated 10% of the Sale Consideration as earnest money which as per Clause 21 is liable to be forfeited along with interest as stipulated therein in the event of the failure of the allottee to perform his obligation thereunder which include the obligation to take over the possession of the Allotted unit as per Clause 26 (d). Hence, in case the allottees fail to take possession of the premises, the amount of earnest money in terms of the Allotment Agreement was liable to be forfeited in terms of the Allotment Agreement.

15. It is submitted that the learned Arbitrator has travelled beyond the terms of the Contract to allow interest @ 14% contrary to the rate of interest provided in the Allotment Agreement. The learned Arbitrator also failed to appreciate that Clause 26(a) of the Allotment Agreement provided that no claim shall lie against the petitioner in case of delay in handing over the possession on account of any reasons beyond the control of the Company.

16. It is submitted that the agreed assured returns that was being paid was equivalent to interest @ 9%. Therefore, in any case any interest beyond the rate of 9% was neither reasonable nor tenable in the eyes of law. It has been further submitted that the delay was caused due to the restriction imposed by ASI, Punjab, the petitioner was not liable to pay any interest for the said period.



17. It is further submitted on behalf of the petitioner that learned Arbitrator did not consider to set-off the amounts paid by the petitioner to the respondent towards the Assured Monthly returns. It is submitted that the payment of Assured Monthly Returns was subject to the respondent adhering to the terms and conditions of allotment. When the respondent allegedly cancelled the allotment, he was liable to pay back the benefits received by them under the Addendum Agreement to the petitioner company.

18. Learned senior counsel for the petitioner submitted that it has been wrongly held that the Addendum to the Allotment Letter is part of the Allotment Letter. The impugned Award erred in not deciding whether the addendum to the Allotment Letter incorporates arbitration clause contained in the Allotment Agreement as per Section 7 of the Act, 1996.

19. It has been further submitted that learned Arbitrator failed to appreciate that limitation was not applicable to the plea of set-off set up by the petitioner in its Statement of Defence. Moreover, the learned Arbitrator further failed to appreciate that even on facts, the Counter-claim was not time-barred. Further, no issue related to claims falling beyond the limitation period was taken as an objection in Statement of Defence. Also, no such issue was framed by the learned Arbitrator.

20. It has been submitted on behalf of the petitioner that impugned Award has otherwise disallowed the claim of assured return amounts made by the respondent which meant that the respondent was legally not entitled for the assured returns and in that event also the petitioner becomes entitled for the refund or set off of the assured returns paid by it



to the respondent.

21. It has been further submitted on behalf of the petitioner that the learned Arbitrator had wrongly held that the Completion Certificate dated 8th July, 2015 was cancelled by the Municipal Corporation, since no evidence or proof has been filed to support the same. It is submitted that even till date, the Completion Certificate dated 8th July, 2015 is in existence and the petitioner is in a position to hand over the Unit in question to the respondent and other co-allottees. Moreover, the learned Arbitrator further ignored the fact that, *vide* his order dated 23rd December, 2019, the examination of witnesses proposed to be summoned by the petitioner from the ASI, Punjab, the Municipal Corporation, Amritsar, and from the Police Authorities was dispensed with, on the basis of the statement by the counsel for the respondent that she would not insist for proof of such documents. Moreover, no issue was framed in this regard by the learned Arbitrator, nor was it pressed by the respondent. Fact of the matter remains that although the Completion Certificate was cancelled, the operation of the cancellation order was stayed by the High Court of Punjab and Haryana, and finally the Municipal Corporation revoked the said cancellation. Thus, in effect the Completion Certificate never remained cancelled.

22. It has been further submitted that the order dated 10th October, 2019 passed by the learned Arbitrator thereby consolidating all the 9 claims was also wrong. It is submitted that such application/order was filed/made at a belated stage when separate affidavit of evidence in all the 9 cases were filed by the claimant pursuant to the understating that oral



evidence shall be led in all the 9 claims. The same has grossly prejudiced the defence of the petitioner in other cases where the dates of the Allotment Agreements are prior to the objection from the ASI since the reasoning of main Award in Arbitration Petition No.25/2015 have been applied to those cases which shows complete non-application of mind by the learned Arbitrator.

23. It has been also submitted on behalf of the petitioner that the learned Arbitrator has allowed the cost of Rs. 25 Lacs without any reasoning which is on higher side. It is submitted that in view of the submissions advanced, the instant petition deserves to be allowed and the impugned Award is liable to be set aside.

On behalf of the petitioner on maintainability

24. An Additional Affidavit was filed on behalf of the petitioner on the question of limitation, in pursuance of the objections raised on behalf of the respondent on limitation and maintainability, further an applications for condonation of delay in filing and re-filing have been filed on behalf of the petitioner and also during the course of arguments the objections on limitation were vehemently opposed.

25. The learned senior counsel submitted that there is no bar on this Court to entertain the instant petition on merits. It is submitted that the impugned Award was received by the parties on 20th March 2023, after which the Courts were closed with limited functioning with the advent of COVID-19 pandemic. Further, the Hon'ble Supreme Court in ***In re: Cognizance for extension of limitation, Suo Moto Writ Petition No. 3 of 2020*** excluded the period till 28th February 2022 for the purposes of



limitation. After exclusion of such period, the petition was filed as per the requirements and mandate under the Act, 1996.

26. It is further submitted that the petition was initially filed on 21st April 2022, whereupon the objections were raised by the registry time to time and which were removed by the petitioner. On 22nd April 2022, the registry raised objections which were removed and the petition was re-filed on 25th April 2022. Defects/objections were again raised, removed and the petition was re-filed thereafter on several subsequent dates, i.e., 31st May 2022, 12th October 2022 and finally on 17th January 2023.

27. It is submitted there was a delay of 57 days in re-filing the petition since in the meantime there were attempts made to amicably settle the disputes between the parties in the connected matters pending amongst them. It is also submitted that any delay caused in the filing or re-filing of the petition was neither intentional nor deliberate.

On behalf of the respondent

28. *Per contra*, learned counsel on behalf of respondent vehemently opposed the averments made by the learned senior counsel for the petitioner, on merits as well as on the issue of maintainability *qua* limitation. It is submitted that the present petition has been filed by the petitioner with the sole objective/purpose of harassing the respondent and to coerce them, to escape from their liability. The present petition is nothing but an abuse of the process of law, instituted with the intent to derail the process of law.

29. It is submitted on behalf of the respondent that the petition suffers



from severe delay and laches and is liable to be dismissed for this ground alone. The learned counsel submitted that the limitation period for making an application for setting aside an Arbitral Award under Section 34 is three months, which starts from the date on which the party making the application receives the Award. It is further submitted that if a party is unable to file an application for setting aside an award within three months on account of the existence of sufficient cause, the Court may, in exercise of its discretion, entertain the application, provided it is not beyond 30 days from the date of expiry of the three months. As per Section 36 of the Act, 1996, if the period of three months and 30 days has elapsed, the award would become enforceable as if it a decree of the court.

30. It is submitted on behalf of the respondent that in the instant case, the petitioner miserably failed to bring forth the objections under Section 34 of the Act, 1996 within the stipulated time. In the present case, the delay much beyond three months is not explained properly and adequately. Petitioner was negligent in pursuing the matter, and even thereafter there is a significant delay in filing and refiling of the objections. Therefore, this Court may not entertain the objections to the Award. It is submitted that the petitioner has failed to explain the reason for not filing the petition within three months as well as the delay beyond three months. The reasons stated by the petitioner are unsubstantiated and *ex-facie* incorrect. The said nine petitions filed by the respondent were withdrawn on objection taken by the petitioner that the Award was insufficiently stamped.



31. It is submitted that the respondent filed fresh petition under Section 36 of the Act, 1996 on 9th March 2021 after serving the petitioners herein directly and through their counsel. Petitioner appeared in the matter and again filed objection to the enforcement petition on 24th November 2021 and 23rd February 2022, the learned counsel placed its reliance on E - log detail of cases filed by the respondent.

32. Learned counsel on behalf of the respondent submitted that it is absolutely incorrect that the office of the petitioner remained closed for substantial period during lockdown. The respondent filed the enforcement petition on 7th September 2020, 8th September 2020 and 10th September 2020 in all the nine cases. In the said cases petitioner was served in advance at their office address as well as through their counsel. On 6th November 2020, the counsel filed his *Vakalatnama* on behalf of the petitioner company in all the nine cases. On 26th January 2021, the counsel filed objections in execution in enforcement petition. In view of these facts, it is absolutely incorrect and denied that the office of the petitioner company was closed.

33. It is further submitted that the petitioner advanced the argument that the death of the Senior General Manager of the petitioner company in April 2022 affected the circumstances, however, the same has nothing to do with the delay as has been submitted by the petitioner. It is also submitted that the petitioner Company entered appearance on 6th November 2020 and filed objections in enforcement petition on 26th January 2021. This itself shows that the petitioner was negligent in pursuing the present matter and for this ground alone the present



application is not maintainable and liable to be dismissed.

34. It is further submitted that during lockdown the petitioner company filed various cases. The averments made by the petitioner with respect to the delay, are based on falsehood and merely on this short ground alone the application is liable to be dismissed.

35. It is further submitted that there is a total unexplained delay of 933 days in filing the present petition which is not maintainable in view of Section 34 of the Act, 1996. The reasons given on behalf of the petitioner are in a very casual manner and not explained properly. It is well -settled that the Court is empowered to condone the delay up to a period of thirty days on being satisfied that the applicant was prevented by sufficient cause from making the application within the period of three months. It has been held in catena of cases that the Court has no power to condone delay beyond the 30 days' period after expiry of three months' period. In the present case, in view of the above facts there is an unexplained delay for not filing the petition within the stipulated period. Hence, in view of the settled law, the petitioner is not maintainable being filed beyond the statutory period and for this ground alone the petition is liable to be dismissed.

36. Learned counsel for the respondent further submitted that in addition to delay and defects, there are significant grounds which merit dismissal of the instant petition because challenge raised by the petitioner to the Award does not fall within the scope of Section 34 of the Act as the petitioner is challenging the Award factually and re-agitating the issues raised before the learned Arbitrator which is expressly not maintainable



and barred under Explanation 1 to Section 34(2)(b) of the Act. It is well settled that there should be limited intervention of the Courts in arbitral proceedings and after the proceedings which has been concluded as an Award.

37. Therefore, it is submitted that the instant petition is liable to be dismissed on the ground of limitation at the very threshold.

ANALYSIS AND FINDINGS

38. Heard learned counsel for the parties and perused the record, including the impugned Arbitral Award as well as the entire arbitral record brought before this Court.

39. Upon giving a thoughtful consideration to the submissions made on behalf of both the parties, the principal issue for consideration which culls out from the facts and circumstances of the instant case is that whether while adjudicating objections under Section 34 of the Act, 1996 to an award passed, an adjudication upon the issue of limitation would preclude the adjudication on merits. If yes, whether in the instant case, the petition is barred by limitation.

40. At the outset, it is evident that the respondent have vehemently opposed the instant petition on the issue of limitation and hence, a consideration to that aspect, in view of Section 34 (1) and (3) of the Act, 1996, is necessary. The relevant provision under the Act, 1996, is reproduced hereunder:

“Section 34 – Application for setting aside arbitral awards.



(1) *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).*

....

(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.”

41. The Act, 1996 is a special law that prescribes a specific period of limitation in Section 34 (3) for filing objections to an arbitral award passed under the Act and consequently the provisions of the Act, 1996 would apply. The limitation provision in Section 34 (3) also provides for condonation of delay, which is, it can only be condoned for 30 days after the expiry of three months from the date of receipt of the award, only on showing sufficient cause. The crucial phrase “*but not thereafter*” reveals the legislative intent to fix the exact period within which objections may be raised against an award. Hence, an application for raising objections against arbitral award shall be filed mandatorily within a total prescribed period of 120 days, provided the Court is satisfied of the reasons stated for the delay beyond three months. There is no doubt to this effect that this Court shall, at the first instant be satisfied that there was sufficient



cause for the delay beyond stipulated three months and on the next step that there was no delay beyond the 30 days' period.

42. The principles of law pertaining to condonation of delay under the Act have been reiterated time and again in a catena of judgments by the courts. The Hon'ble Supreme Court in ***Bharat Barrel and Drum Mfg. Co. Ltd. vs. ESI Corpn., (1971) 2 SCC 860*** has observed as under:

“7.The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dormientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there



are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced with a particular time and the other merely bare the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation.”

43. The Hon’ble Supreme Court fittingly explained the reasons why limitation shall be given due consideration and, by extension, how the elements of time, probabilities of fraudulent cases, active recourse by the aggrieved party, all being an extension of the issue of limitation, play a significant role for proper adjudication of any case before the court. Therefore, the law of limitation shall not be ignored or even considered liberally, especially with regard to special legislations that provide a stricter rule for limitation.

44. In the case of **Assam Urban Water Supply & Sewerage Board s\vs. Subash Projects & Mktg. Ltd., (2012) 2 SCC 624**, the Hon’ble Supreme Court held that:

“6. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of Section 34 provides that on sufficient cause being shown, the court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.

13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these



words?

14. Section 2(j) of the 1963 Act defines:

“2. (j) “period of limitation” which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and “prescribed period” means the period of limitation computed in accordance with the provisions of this Act.”

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the “period of limitation” and, therefore, not “prescribed period” for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the “period of limitation” or, in other words, “prescribed period”, in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case.”

45. In *Union of India vs. Popular Construction Co.*, (2001) 8 SCC 470 the Hon’ble Supreme Court has held that an application for setting aside an award filed beyond the period mentioned in Section 34(3) would not be an application “*in accordance with sub-section (3) as required under Section 34(1) of the 1996 Act*” and Section 5 of the 1963 Act has no application to such application. It was further held that as far as the



language of Section 34 of the 1996 Act is concerned, the crucial words are ‘*but not thereafter*’ used in the proviso to sub-section (3). This phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, 1963 and would therefore, bar the application of Section 5 of that Act. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase ‘*but not thereafter*’ wholly otiose. No principle of interpretation would justify such a result.

46. In the case of ***State of Maharashtra vs. Hindustan Construction Co. Ltd. (2010) 4 SCC 518***, the Hon’ble Supreme Court emphasized the mandatory nature of the limit to the extension of the period provided in the proviso to Section 34(3) and held that an application for setting aside an arbitral award under Section 34 of the Act, 1996 has to be made within the time prescribed under sub-section (3) of Section 34 i.e. within three months and a further period of 30 days on sufficient cause being shown and not thereafter. The law of limitation finds its root in the Latin maxim *vigilantibus et non dormientibus jura subveniunt* which means that the law will assist only those who are vigilant about their rights and not those who sleep over them.

47. Therefore, upon a conjoint reading of the abovementioned statutory provisions and pronouncements, it is evident that even though the power to condone the delay is conferred upon the Courts, the condonation under Section 34 (3) of the Act, 1996 cannot be granted liberally as the same would defeat the very purpose of the enactment of the Act, 1996, that is, the expeditious resolution of disputes. It is also significant to see that



even the objective of the law of limitation is to prevent the outdated, fictitious, or fraudulent claims while also requiring a person to exercise his rights to action within the prescribed time.

48. Hence, with regard to the first question, it is evident that the law remains settled that adjudging the question of limitation would preclude the adjudication of objections to an arbitral award on merits. It is also evident that the majority view taken is that delay, *qua* Section 34 of the Act, 1996, may not be condoned in a routine manner. There is a stricter view in this regard. Accordingly, this Court shall consider the issue of limitation.

49. This Court is to examine as to whether there exists such a delay in filing the challenge under Section 34 of the Act, 1996 that bars the instant petition by limitation.

50. In the instant case, the Award under challenge was passed on 20th March 2020, and was admittedly received by the parties on the same date, i.e. 20th March 2020. It has been contended by the learned counsel for the petitioner that the instant petition was filed on 21st April 2022 for the first time and hence, is within limitation. Admittedly, since then, it has been re-filed on various occasions i.e. 25th April 2022, 31st May 2022, 2nd July 2022, 12th October 2022, 17th January 2023, and finally on 9th February 2023. There is evidently a gap of 295 days between the date of the first filing and the date of the last re-filing. The petitioner also preferred two interim applications in this regard I.A. No. 2407/2023 seeking condonation of 410 days' delay in filing the petition and I.A. No.



2409/2023 which is an application for condonation of delay of 57 days in re-filing the instant petition.

51. The limitation period prescribed under Section 34 (3) of the Act, 1996 is three months i.e., 90 days from the date of receipt of the award with an additional period of 30 days within which the application raising objections may be filed, if sufficient cause is shown for not filing it within the threshold period of 90 days. In the instant case, it is not in dispute between the parties that the Award was passed and received by them on 20th March 2020. Hence, in the normal course of things, the limitation as prescribed under Section 34 would have expired on 20th June 2020 i.e., after the expiry of three months from the aforesaid date of passing and receipt of the award and on 20th July 2020, considering an additional 30 days' time. However, due to the advent of COVID-19, and in view of the directions of the Hon'ble Supreme Court, the limitation period got extended till 28th February 2022. As per the directions of the Hon'ble Supreme Court, the fresh limitation period began from 1st March 2022. The arguments advanced on behalf of the petitioner is that the impugned Award was passed during the advent of COVID-19 pandemic, whereby the period of limitation was excluded by the orders of the Hon'ble Supreme Court and hence, the objections under Section 34 of the Act, 1996 have been raised within the stipulated time.

52. There is no doubt that there has been a delay in filing the instant petition, however, considering that the instant petition suffers from the unexpected delay due to the advent of COVID-19, the question which arises for consideration is whether the Hon'ble Supreme Court's order



dated 10th January 2022, excluding the period from 15th March 2020 to 28th February 2022 for the purposes of limitation, would be applicable to facts of the present case.

53. The Hon'ble Supreme Court in ***In re: Cognizance for extension of limitation***, with MA No. 21 of 2022 in MA No. 665 of 2021 in Suo Moto Writ Petition No. 3 of 2020 observed as under:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

- I. *The order dated 23.03.2020 is restored and in continuation of the subsequent order dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall extend excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
- II. *Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
- III. *In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event*



the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

- IV. *It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”*

54. The matter was taken up by the Hon’ble Supreme Court on 23rd March 2020, and as a result of that order, the period for filing petitions, applications, suits, appeals, and any other proceedings, regardless of the time limit set forth under general or special laws, was extended with effect from 15th March 2020 until further orders. Subsequent to which by March 2021, it became apparent that the nation was returning to normal. Since all courts and tribunals had begun operating, either physically or virtually, at that point, the Hon’ble Supreme Court ended the exclusion of period from limitation in March of that year. However, as the situation again gained momentum, on 27th April 2021, the Hon’ble Supreme Court reinstated the Order until further orders in response to a request made via



Miscellaneous Application No. 665/2021 in Suo Moto Writ (C) No. 3/2020.

55. The Hon'ble Supreme Court then decided on **Miscellaneous Application No. 665/2021** in the said case on 23rd September 2021 and held as under:

“8. Therefore, we dispose of the M.A. No.665 of 2021 with the following directions:

I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.

III. The period from 15.03.2020 till 02.10.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting



proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings...”

56. Conclusively, the period from 15th March 2020 to 28th February 2022 stood excluded for the purposes of limitation. This Court finds no reason to come to the conclusion that the Hon’ble Supreme Court’s order dated 10th January 2022 would be inapplicable to petitions under Section 34 of the Arbitration and Conciliation Act. The language of the order, which uses the generic terms ‘general or special laws in respect of all judicial or quasi-judicial proceedings’, is wide enough to include an application raising objections under Section 34 of the Act, 1996. The purpose of these orders was to temporarily obviate the stringency of the limitation laws, in light of the difficulties being faced by litigants and the entire nation due to the outbreak of COVID-19 and the resultant drastic measures which were taken by the central and the state governments at the time. Needless to mention, such a rationale would and ought to apply to petitions under Section 34 of the Act, 1996 also.

57. As per the order, in cases where the limitation would have expired during this period, then notwithstanding the actual balance period of limitation remaining, all persons were to have a fresh period of 90 days beginning from 1st March 2022.

58. The learned counsel for the respondent has raised an objection that the petitioner had been actively partaking in the enforcement proceedings initiated on behalf of the respondent. Moreover, the other connected matters were also preferred by and on behalf of the petitioner during the



period of exigencies during the COVID-19 pandemic. This Court finds force in this argument of the respondent that there is no merit in the reasons cited by the petitioner for the delay caused in filing the instant petition. The petitioner has not been able to satisfy this Court of the grounds raised for the significant delay in filing the petition from the date of the receipt of the Award till the date of actual filing, i.e., in April 2022.

59. As reiterated in the above cited judicial pronouncements, the powers of the Court in matters of limitation and delays in cases pertaining to the Act, 1996, shall not be exercised liberally. The very intent of the Act, 1996 is speedy redressal of grievances and disposal of cases and it is for the Courts to make certain that while ensuring justice to the parties, the objective, goal and intention of introducing a legislation is also upheld. The petitioner has neither been able to show due diligence on its part to pursue the matter but also has acted beyond the mandate of the Act, 1996.

60. At this juncture, it is extremely pertinent to refer to the Delhi High Court Rules and Orders, Volume V Chapter 1 Rule 5, which provides as under:-

“5(1) The Deputy Registrar/Assistant Registrar, Incharge of the Filing Counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back, for



amendment within the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, in charge of the Filing Counter, under subrule (1) it shall be considered as fresh institution.”

61. Further, the Delhi High Court (Original Side) Rules, 2018 also to this respect, under Chapter IV Rule 3 provide as under:

“3. Defective pleading/ document.-

(a) If on scrutiny, the pleading/ document is found defective, the Deputy Registrar/ Assistant Registrar, Incharge of the Filing Counter, shall specify the objections, a copy of which will be kept for the Court Record, and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate.

(b) If the pleading/ document is not taken back for amendment within the time allowed under sub-rule (a), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(c) If the pleading/ document is filed beyond the time allowed under subrule (a) the pleading/ document must be accompanied with an application for condonation of delay in re-filing of the said pleading/ document.

(d) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.”



62. To this effect, a Division Bench of this Court in ***Government of NCT of Delhi v. Y.D Builder & Hotels Pvt. Ltd., 2017 SCC OnLine Del 6812***, while adjudicating upon a similar issue, observed as under:-

“12. Upon reading Rule 5(3), which would apply mutatis mutandis to all matters, whether civil or criminal, and would, therefore, apply to a petition under Section 34 of the Arbitration and Conciliation Act, it is evident that in case such a petition is re-filed beyond the time allowed by the Registry under sub Rule (1), the filing shall be considered as a fresh institution. Since the ultimate filing was done on 26.05.2016 and was well beyond the period permitted by the Registry, the filing of the petition under Section 34 would have to be construed as a fresh filing on 26.05.2016. This would mean that not only there was a delay in re-filing but there was a delay in filing of the petition itself which ought to have happened within three months and at the latest within a period of 30 days thereafter, subject to the fulfilment of the conditions laid down under the proviso to Section 34(3) of the said Act. Clearly, the petition, on this ground also, was time barred.”

63. Further, in the case of ***Delhi Development Authority vs. Durga Construction Co., 2013 SCC OnLine Del 4451***, the Division Bench of this Court held that filing and re-filing ought to be put on different pedestals altogether, this court also struck a discordant note and warned against viewing condonation in the context of re-filing as a convenient given. While elaborating upon the mandate of limitation the Act, 1996, the Court held as under:-

“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 Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman, 2011 (2) RAJ. 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.””

64. Certainly, the position stands settled that although the degree of stringency in matters of filing and re-filing stand of different footing, there cannot be an indefinite and unreasonable period for which the filing in a matter may be delayed at the behest of the party or its counsel. A reference to the judgments reproduced in the foregoing paragraphs also clarifies that the powers for allowing condonation of delay cannot be



exercised liberally. It is up to the Court, in its discretion and best judgment, to consider as to whether the delay in re-filing may be condoned in the facts and circumstances of the case before it.

65. There is, in this case, admittedly, a gap of 295 days between the initial filing of the instant petition and the day when it was accepted and placed before the Court. The only reason that the petitioner has given for the delay of 57 days in re-filing is that there was a possibility of settlement which the parties were exploring talks were being held with the respondent(s) before this Court in OMP (ENF.) (COMM.) No. 55/2021 and the connected 8 other matters.

66. As per the petitioner itself, owing to the registry raising objections in the defective filing of the instant petition was filed and re-filed on 25th April 2022 and 31st May 2022, subsequent to which the registry had again raised objections on 2nd July 2022. Despite the objections having being raised on the said dates, the petitioner failed to cure the defects of similar nature and left the defective filing lying with the registry for several months thereafter. There were no diligent efforts on behalf of the petitioner to cure the defects and remove the objections which were raised by the registry in the filing of the petitioner. The petitioner neither bothered to look into such defects/objections nor make any effort to cure the same and have the matter placed before the Court. Whether negligence or wilful ignorance, there was most certainly a lackadaisical approach in manner the matter was pursued by the petitioner.

67. Admittedly, the defects pointed out in the filing of the petition were left as they were for several months. The registry of this Court had



raised objections on 2nd July 2022, whereafter, the petitioner, on the ground that settlement talks were going on, only re-filed the petition on 12th October 2022, i.e. more than three months of the objection being raised. Even the filing done by the petitioner on 12th October 2022, was found defective, for the want an application seeking condonation of delay in re-filing. The abovestated provisions under the Delhi High Court (Original Side) Rules, 2018 expressly bar the re-filing done beyond 30 days in aggregate. The only power is with the Court to allow such delay in re-filing, where sufficient cause, due diligence and *bona fide* efforts are shown by the party. Therefore, undoubtedly, the petitioner has caused a delay much above the mandated period without any just cause and reason for doing so.

68. Viewed in the context of the same, the reason given in the application for condonation of delay, that settlement talks were going on, and hence, the petition could not be re-filed within time, severely lacks substance and cannot be sustained. All in all, it appears that the petition was kept alive only to escape the rigour of limitation. Besides, the fact that settlement talks were going on raises no impediment to filing the petition. In fact, this very reason put forth by the petitioner leads this Court to infer that the petition was deliberately kept defective till the time settlement talks were going on to be filed at the last minute when efforts for reaching an amicable settlement proved to be a failure. Such conduct on the part of the petitioner, in this Court's view, is in no manner whatsoever indicative of due diligence on the part of the petitioner.



CONCLUSION

69. The law regarding the scope of interference in an Arbitral Award under Section 34 of the Act, 1996 has been very well settled by the Hon'ble Supreme Court, to uphold the objective and goal of introducing the mechanism of Alternate Dispute Resolution and consequently, the Act, 1996. Such scope of interference under Section 34 of the Act, 1996 is fairly limited and narrow. It has been reiterated time and again that the Courts shall not sit in an appeal while adjudicating a challenge to an Award which is passed by an Arbitrator, the master of evidence, after due consideration of facts, circumstances, evidence, and material before him.

70. Recently, the Hon'ble Supreme Court in the judgment passed in ***Bhaven Construction vs. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75***, observed as under:

“21. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the “principle of unbreakability”. This Court in P. Radha Bai v. P. Ashok Kumar [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , observed : (SCC p. 459, paras 36-37)

“36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in International Commercial Arbitration and Conciliation in UNCITRAL Model Law Jurisdictions, 2nd Edn., observed:

‘An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33



does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although “an unbreakable time-limit for applications for setting aside” was sought as being desirable for the sake of “certainty and expediency” the prevailing view was that the words ought to be retained “since they presented the reasonable consequence of Article 33.’

According to this “unbreakability” of time-limit and true to the “certainty and expediency” of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of “unbreakability” enshrined under Section 34(3) of the Arbitration Act.”

(emphasis in original)

If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished.”

71. The requirement to secure the finality and predictability of arbitral rulings underlies the significance of limitation in arbitration. Without a limitation/deadline, delays may be caused and uncertainty may prevail in matters arising out of arbitration processes, defeating the very purpose of the Act, 1996, that is, the expeditious resolution of disputes. The limitation period protects the finality of the Award, once the limitation



period has passed, by binding the parties by a timeline for filing any claims relating to the Award.

72. A reference to the judgments reproduced in the foregoing paragraphs clarifies that the powers for condoning any delays under the Act, 1996 cannot be exercised liberally, especially when the conduct of the party is *prima facie* neglectful and casual or even conceited, while taking the Court and the process of law for granted. In the instant case as well, there is no doubt that the petitioner has miserably failed to act within the bounds, limits and mandate of the law, specifically the law of limitation, without any sufficient cause. This Court is of the considered view that allowing such a petition to sustain would not only cause grave prejudice to the other parties involved but would also defeat the scheme and purpose of the Arbitration and Conciliation Act, 1996 itself, especially the mandate under Section 34(3).

73. In light of the facts, circumstances, the arguments advanced, the contentions raised in the pleadings, this Court is of the considered view that the petitioner has failed miserably to explain and justify the delay caused in filing and re-filing the matter. As discussed above there is a significant and gross delay in filing and re-filing the petition at hand. The petitioner has not been able to satisfy this Court of existence of any just and plausible reasons for the delay caused in the filing and re-filing of the instant petition. There is nothing in the pleadings of the petitioner to suggest that the petitioner had acted in due diligence in pursuing the matter.



74. Therefore, this Court is not inclined to get into the merits of the instant petition, since the petitioner has failed to satisfy this Court that the requirements under Section 34(3) of the Act, 1996 were duly met. The petition is certainly barred by limitation and hence, in view of the above discussion on facts and law, this Court finds no reason to enter into the merits of the matter, as the same is liable to be dismissed on the ground of limitation.

75. Accordingly, the petition is dismissed alongwith pending applications, if any.

76. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

JULY 19, 2023
sv/ms

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