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

% **Date of order : 26th April, 2023**

\+ O.M.P. (COMM) 79/2023

UNION OF INDIA ..... Petitioner

Through: Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates

versus

AADHAR STUMBH TOWNSHIP PRIVATE LTD..... Respondent

Through: Mr. Abhishek Semwal, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 3337/2023

1. The main Petition has been filed against the arbitral award dated 04.12.2019 passed by the Ld. Sole Arbitrator which was corrected vide Order dated 04.01.2020. Vide the said arbitral award, the Sole Arbitrator awarded a total sum of Rs. 1,40,32,569/- towards the claims to the Respondent.

2. The instant Application has been filed by the Petitioner praying for condonation of the delay of 589 days and to hear the matter on its own

merits and treat the present Petition within the limitation period.

3. Learned Counsel for the Petitioner submitted that an objection petition was filed by the Petitioner before the District Court (Commercial), Patiala House, New Delhi on 11.11.2020. The delay in filing the same was condoned due to the COVID-19 Lockdown and the closure of Court during the said period.

4. Learned counsel further submitted that after withdrawing the Petition from the Patiala House Courts, the Central Public Works Department (CPWD) approached the Ministry of Law and Justice vide letter dated 25.03.2021 for appointment of a counsel for filing the appeal before the appropriate forum i.e., the Delhi High Court. Further, a Counsel was appointed, and the said Counsel never filed the appeal and kept the file and documents with him.

5. It is stated that the CPWD again requested the Ministry of Law and Justice vide letter to appoint some other senior counsel for urgent filling of the objection petition and thereafter the case was marked/transferred to the present Standing Counsel. The counsel in this matter was appointed by the Ministry of Law and Justice vide letter dated 15.06.2022 to file the same. After various deliberation and conferences in this matter with the officers of the concerned department, the present petition has been filed without any delay.

6. It is submitted that the Hon'ble Supreme Court in the case of *"In re:* Cognizance for Extension of Limitation" in Suo Motu Writ Petition (c) No. 3 of 2020 has extended the limitation period which came to an

end on 30.05.2022. Therefore, the limitation period of the present Petition begins from the said date.

7. It is submitted that the delay in filing the present petition is not deliberate or intentional. The delay occurred due to administrative exigencies, as the files must go through various departments and officers for necessary approvals and vetting. It is stated that most of the delay caused is only due to administrative exigencies and due to the laxity of the previous counsel who did not file the present petition on time. It is further submitted that if the delay is not condoned the Petitioner will suffer an irreparable loss, however, no prejudice would be caused to the Respondent if the delay in filing the present Petition is condoned by this Court.

8. *Per contra,* learned counsel for the respondent vehemently opposed the averments made and submissions advanced by the learned counsel for the Petitioner. It is submitted that under the provisions of the Arbitration Act, the delay beyond what is stipulated under Section 34(3) of the Act cannot be condoned unless the petitioner satisfies the Court of the reasons for the extraordinary delay.

9. It is submitted that under Section 34(3) of the Arbitration Act, the objections to an Arbitral Award may be filed within three months. However, the petitioner failed to do so. Further, the provision lays down that beyond the period of three months, a further period of thirty days may be condoned by the Court, if the Court is satisfied of the reasons for the delay but no leverage shall be given to the petitioner thereafter. It is

submitted that in the instant case, the petitioner has not showed sufficient cause for the inordinate delay in filing the petition. It is also submitted that a defective petition had been deliberately filed on behalf of the petitioner to take undue advantage of the limitation period.

10. Therefore, it is submitted that the instant application may be dismissed for being devoid of merit and the main petition may be dismissed for being barred by limitation.

11. Heard learned counsels for the parties and perused the record.

12. The issue before this Court is whether the Court has power to condone the delay in challenging the award by preferring appeal under Section 34 of the Arbitration Act, 1996, after the lapse of three months and thirty days and thereafter.

13. Section 34 of Arbitration Act is a comprehensive provision prescribing the remedy to the parties to challenge an Arbitral Award and also providing the procedural technicalities thereto. For the instant case and the application filed by the petitioner, Section 34(3) of the Arbitration Act is the relevant provision which will lead the way for this Court to adjudicate the plea raised by and on behalf of the petitioner. Hence, it is necessary to reproduce section 34(3) of the Arbitration Act, 1996 which reads as follows:

> *"34(3) An application for setting aside may not be made after 3 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 u/s 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 3 months, it may entertain the application within a further period of 30 days, but not thereafter."*

14. At the outset, the bare language of the provision clarifies that the limitation for filing a petition seeking setting aside of an Arbitral Award is three months. The Act also provides for and allows extension of this period by another thirty days, but not thereafter, subject to the conditions as stated in the provision. Thus, the intent behind this provision is to be just and considerate towards the litigants when they have an emergent and justifiable reason for such delay caused in filing of the petition, however, the consideration for same is also subject to the sufficient cause being shown.

15. It is essential to note that objections against the Arbitral Award must be filed within a total period of 120 days provided that the court is satisfied of the reasons stated for the delay beyond three months. The words used in the provision are '*but not thereafter*' which shows the certainty of the limitation of 120 days, that is, three months plus thirty days, when sufficient cause is shown. Hence, 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 thirty days period.

16. 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. In the case of ***Delhi Development Authority vs. Durga Construction Co*., 2013 SCC OnLine Del 4451**, the Division Bench of this Court has 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:—*
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>> *"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 refiling 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.""*

17. The Hon'ble Supreme Court in ***Bharat Barrel and Drum Mfg. Co. Ltd. vs. ESI Corpn.,* (1971) 2 SCC 860** has observed as under:-

> *"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 asseting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, 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."*

18. In ***Union of India v. 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, 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.

19. In the case of ***Assam Urban Water Supply & Sewerage Board v. 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.*
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> *13. The crucial words in Section 4 of the 1963 Act are "prescribed period". What is the meaning of these words?*
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> *14. Section 2(j) of the 1963 Act defines:*
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> > *"**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."*
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> *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."*

20. In the case of ***State of Maharashtra* v. *Hindustan Construction Co. Ltd.* (2010) 4 SCC 518** , the Hon'ble Supreme Court emphasised 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 1996 Act 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. It is needless to point out that the law of limitation finds its root in two Latin maxims, one of which is *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.

21. 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) cannot be granted liberally as the same would defeat the very purpose of the enactment of the Arbitration Act, 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.

22. In the case at hand, the impugned Award was passed on 4.12.2019 and correction order was passed on 4.1.2020 which was received on 6.1.2020. As per the provisions, the petitioner should have approached this Court seeking the objections to the Award within a period of three months from the said date. However, the petitioner filed the objection petition before the District Court (Commercial), Patiala House, New Delhi on 11.11.2020. After withdrawing the said Petition, the instant petition was filed through e-filing on 14.11.2022. The petitioner has placed reliance on the Order of the Hon'ble Supreme Court passed during COVID-19 pandemic which directed the exclusion of limitation period.

23. The Hon'ble Supreme Court in the Suo Motu Writ Petition (C) No. 3/2020 ***In Re: Cognizance For Extension Of Limitation Order*** dated 10th January 2022, directed that the period from 15.03.2020 till 28.02.2022 shall stand 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. Therefore, there is no dispute as

to the exclusion of limitation period from 15.3.2020 to 28.2.2022. However, as per their own admission, the petition was filed on 14.11.2022 which is after a substantial delay far more than the statutory period prescribed. Further, the petition filed was found to be defective and the petitioner re-filed the same wherein again a delay of 26 days was caused as per the petitioner which has also been sought to be condoned in the application bearing IA No. 3336/2023.

24. At this instance, it is also relevant 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.*
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> *(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.*
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> *(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."*

25. 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 subRule (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."*

26. Therefore, it is clear that the mandate of law to the effect of limitation does not favour the petitioner before this Court and neither has the petitioner exercised due diligence in pursuing its case.

27. Since the petitioner has failed to show that there was sufficient cause in filing the objections at the first instance beyond the period of three months and since the petitioner has also failed to file the petition within the thirty days provided for thereafter, this Court finds no merit in the application of the petitioner and is of the considered view that the objections filed on behalf of the petitioner under Section 34 of the Arbitration Act is barred by limitation.

28. Therefore, keeping in view the facts, circumstances, the principles and position of law and the submissions made on behalf of the petitioner

in the application as well as during the course of arguments, this Court is not inclined to condone the inordinate delay in filing the captioned petition. Accordingly, the instant application stands dismissed.

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1. In terms of the aforesaid Order, the main petition being barred by limitation is also dismissed.

2. Pending applications also stand dismissed.

3. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 26, 2023
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Click here to check corrigendum, if any