

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

% **Date of order : 17th April, 2023**

+ **O.M.P. (COMM) 515/2019 and I.A. Nos. 17438/2019, 17441/2019**

UNION OF INDIA

..... Petitioner

Through: **Mr.Ajay Kumar Vali and Mr.Rajat Jain, Advocates**

versus

MPB CONSTRUCTION PVT. LTD.

..... Respondent

Through: **Mr.Rahul Sharma, Advocate**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. No. 19342/2022

The learned counsel appearing for the applicant/respondent does not press the instant application and prayed leave of this Court to withdraw the present application with liberty to file an appropriate application under the appropriate proceedings.

In view of the above, the application is dismissed as not pressed with liberty granted, as prayed for.

I.A. No. 17442/2019

1. The instant application under Section 5 of the Limitation Act, 1963 read with Volume V Chapter 1 Part A(a) Rule 4 of the Delhi High Court (Original Side) Rules, 2018 has been filed by the applicant/petitioner

seeking the following reliefs:

*“A. Allow the present Application and condone the delay of 59 days in filing the Present Petition; and
B. Pass any further order(s) which this Hon'ble Court may deem fit in the facts and circumstances of the case and in the interests of justice.”*

2. The petitioner has sought to file the captioned petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Arbitration Act”) against impugned Award dated 22nd June 2019 whereby an amount of Rs. 1,83,08,290.05/- plus interest thereon has been granted in favour of the respondent and the petitioner has been awarded an amount of Rs.69,500/- against its claim. The petitioner by way of the instant application has sought directions from this Court for condonation of delay of 59 days in filing the petition.

3. The learned counsel appearing on behalf of the petitioner submitted that the petitioner received the impugned Award dated 22nd June 2019 on 1st July 2019. Thereafter, on 15th July 2019, the learned Arbitrator sent a letter bearing no. 405367/PM/Post Arbtrn Award Corres/21/E8 for correction in the impugned Award, which was received by the petitioner on 22nd July 2019.

4. It is submitted that vide letter No. 8655/CEDZ-36/13-14/91/E8 dated 25th July 2019 of the HQ CWE New Delhi Cantt to HQ CE Delhi Zone, Delhi Cantt seeking an onward submission to the E-in-C's Branch for obtaining LA (Def) Advice. The same was then forwarded to E-in-C's Branch, New Delhi on 7th August 2019 and was received in the E-in-C Branch, New Delhi on the same day. Subsequently, on 27th September 2019, the case file for appointment of the CGSC was forwarded to the

Ministry of Law and Justice, and on 30th October 2019, the objections under Section 34 of the Arbitration Act were filed.

5. The learned counsel submitted that thereafter on three occasions, i.e, 31st October 2019, 15th November 2019 and 28th November 2019, the petition came to be marked as defective by the Registry of this Court, and all three time the same was re-filed. It is submitted that due to a bereavement in the family of the counsel for petitioner the petition could not be re-filed in time. However, the delay in filing and re-filing was neither intentional nor deliberate but has occasioned due to reasons which were unavoidable.

6. Therefore, it is prayed that the instant application may be allowed and the delay of 59 days in filing the objections under Section 34 of the Arbitration Act against the impugned Award may be condoned.

7. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant application and 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.

8. 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.

9. Therefore, it is submitted that the instant application may be dismissed for being devoid of merit and the OMP (COMM) 515/2019 may be dismissed for being barred by limitation.

10. Heard the learned counsel for the parties and perused the record.

11. It is pertinent to see that limitation for a petition under the Arbitration Act is not only subject to the provisions under the Limitation Act, 1963 but is also to be examined in accordance with the provisions of the Arbitration. Especially when a challenge is sought to be brought under Section 34 of the Act, the sub-sections and clauses are to be duly observed.

12. The 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. The provision is reproduced hereunder for perusal:-

“34. Application for setting aside arbitral award.-

(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.”

13. 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.

14. 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.

15. In the case at hand, the impugned Award was admittedly received by the petitioner on 1st July 2019, with its correction on 22nd July 2019. As per the provisions, the petitioner should have approached this Court seeking the objections to the Award within a period of three months which ended on 22nd October 2019. However, the petitioner only filed the

objections on 30th October 2019. Further, the petition filed was found to be defective and the petitioner re-filed the same on 14th November 2019, however, again defects were marked in the petition on 15th November 2019. The petition was re-filed after more than 10 days, i.e., on 27th July 2019 and again on 28th November 2019, defects were marked.

16. The petitioner filed a defective petition at the first instant beyond the stipulated period of three months. Thereafter, again on two occasions the defective petition was filed. It is found that even though there was a delay of one week beyond the stipulated three months, however, the delay kept on extending beyond the period prescribed due to the defective filing.

17. 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.

(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.”

18. To this effect, a Division Bench of this Court in ***Government of NCT of Delhi vs. 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.”

19. 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.

20. 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:—

“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.”

21. 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 O.M.P.54/2023 Page 6 of 8 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 within a particular time and the other merely bars 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."

22. 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.

23. It is apparent from the status of filing and re-filing that the petitioner has miserably failed to remove the defects owing to the want of due diligence from the petitioner and thus, it is nothing but an attempt to be exempted from the bar of limitation imposed under Section 34 of the Act. 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 thereon, 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.

24. 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.

25. Accordingly, the instant application, for being devoid of merit, stands dismissed.

O.M.P. (COMM) 515/2019 and I.A. Nos. 17438/2019, 17441/2019

1. The petitioner, by way of filing this petition, has sought setting aside of the Arbitral Award dated 22nd June 2019.

2. Without entering into the merits of the case, in light of the

observations made in I.A. No. 17442/2019 filed on behalf of the petitioner seeking condonation of 59 days' delay, at this juncture, this Court is not inclined to entertain the challenge and interfere with the Award dated 22nd June 2019.

3. In view of the orders passed in I.A. No. 17442/2019 of even date, the instant petition along with the accompanying applications stands dismissed.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 17, 2023
SV/MS

Click here to check corrigendum, if any