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

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Judgment delivered on: 11.04.2023

+ CM(M) 565/2023
M/S SDREEN INDIA LTD

..... Petitioner

versus

SMT. MEENA CHAWLA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Rajshekhar Rao, Mr. Sachin Mittal, Ms. Pulak Gupta, Ms. Bhawna Nanda and Ms. Shubhangi Tiwari, Advs.

For the Respondent : Mr. Shiv Charan Garg, Mr. Imran Khan, Ms. Jahanvi Garg and Mr. Rohit Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 17092/2023 & CM APPL. 17093/2023 (Exempt.)

1. Exemption is allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M) 565/2023 and CM APPL. 17091/2023 (Stay)

3. Petitioner challenges the order dated 20.03.2023 passed by the learned Arbitral Tribunal in Case Reference No. DIAC/5211/09-22 titled "*Smt. Meena Chawla Vs. M/s SDREEN India Pvt. Ltd.*"

whereby the right of the petitioner/respondent to file his Statement of Defence before the learned Arbitral Tribunal was struck off on the ground that the Statement of Defence along with the reply of the application under Section 17 of the Arbitration and Conciliation Act, 1996 were filed belatedly and beyond the prescribed period.

4. Mr. Rao, learned senior counsel appearing for the petitioner submits that though the Tribunal has noted the date of service as 28.10.2022, however, in fact the petitioner was served on 16.12.2022. Mr. Rao, learned senior counsel appearing for the petitioner submits that at best, even if the contentions of Mr. Garg are taken on face value, that as per the rules of DIAC, the original period stipulated for filing the statement of defence is 30 days and another 30 days extension can be granted at the discretion of the Tribunal is concerned, in the present case still gets fulfilled. He submits that this is for the reason that as per orders passed by the learned Arbitral Tribunal, it was on 24.01.2023 that the complete set of documents along with the plaint/petition were provided in hard copies to the petitioner.

5. Learned senior counsel submits that reckoning the period from 24.01.2023, the attempt to file the Statement of Defence along with the application seeking condonation of delay in filing the said statement of defence as also the objections/reply of the petitioner to the application under Section 17 of the Arbitration and Conciliation Act, 1996 filed by the respondent/claimant on 20.03.2023, would still be within the outer limit of 60 days period. Thus, every which way, the filing of Statement of Defence is within the extended period of 30 days.

6. *Per contra*, Mr. Garg, learned counsel appearing on behalf of

respondent, after referring to the previous orders passed by the Arbitral Tribunal, submits that the calculations are not correct in as much as the respondent was served on 28.10.2022 and calculating therefrom the 30 days + 30 days (extended period) would have expired much before the date on which the petitioner has sought to file the statement of defence.

7. Learned counsel submits, after referring to the orders passed by the learned Arbitral Tribunal, that despite having been given time to file the statement of defence, time and again, the lackadaisical attitude of the petitioner of not adhering to the schedule is apparent from the plain reading of the orders.

8. Learned counsel submits that the petitioner does not deserve any indulgence of this court and keeping in view the timeline as specified under the rules, reply having been sought to be filed on 20.03.2023, is clearly beyond the extended period as granted by the learned Arbitral Tribunal vide order 24.02.2023. On that basis, learned counsel submits that there is no judicial impropriety or material irregularity or even procedural irregularity committed by the learned Arbitral Tribunal while passing of the impugned order.

9. This court has considered the submissions made by the respective counsel and also perused the orders.

10. Submissions made by Mr. Garg that the petitioner was served on 28.10.2022 is not substantiated by any document on record. In the absence of such record, this court cannot clearly conclude as to when the respondent was served. Equally, the arguments of Mr. Rao, learned senior counsel that the petitioner was served on 16.12.2022 also cannot be ascertained without the required documents on record.

11. However, this issue need not detain this Court for the reason that it is apparent from the orders dated 24.01.2023 and 24.02.2023 that the learned Arbitral Tribunal itself had granted indulgence and extended time to the petitioner to file its Statement of Defence alongwith the other documents.

12. It is also apparent that the documents annexed to the Statement of Claim in hard copies were furnished to the petitioner as also the Arbitral Tribunal only on 24.01.2023.

13. Having regard to the aforesaid, the aspect whether the petitioner was served on 28.10.2022 or on 16.12.2022 would become irrelevant for the reasons that the period for filing the statement of defence would commence from 24.01.2023.

14. Keeping in view the aforesaid, as also the order dated 24.02.2023 whereby the learned Arbitral Tribunal had granted 15 days further extension of time to the petitioner to file its Statement of Defence, the impugned order can be modified by this Court, keeping in view the fact that the extended period of 30 days itself as per DIAC rules had not lapsed yet.

15. In view of the aforesaid, this court is of the considered opinion that the impugned order, to the extent where it deprives the petitioner/respondent from placing its statement of defence along with the reply to the application under Section 17 of the Arbitral and Conciliation Act, 1996 on record, is set aside.

16. Learned Arbitral Tribunal is directed to take the statement of defence along with the reply to the application under Section 17 of the Arbitration and Conciliation Act, 1996 on record and proceed in

accordance with law thereafter.

17. The aforesaid directions are subject to payment of Rs.60,000/- as cost by the petitioner to the respondent within two weeks from today.

18. Mr. Rao, learned senior counsel submits that there could be a possibility of inclusion of certain subsequent events in the Statement of Defence. Mr. Rao, learned senior counsel submits that an appropriate application under the Arbitration and Conciliation Act, 1996 would be moved before the learned Arbitral Tribunal. Learned Arbitral Tribunal shall consider the said application on its own merits, if so filed.

19. Both the parties are *ad idem* on the fact that the application under Section 17 of the Arbitration and Conciliation Act, 1996 be listed for consideration on an early date and expeditiously be disposed of.

20. Accordingly, in view of the aforesaid submissions, learned Arbitral Tribunal is requested to take up the application under Section 17 of the Arbitration and Conciliation Act, 1996 filed by the respondent at the earliest and dispose it off expeditiously.

21. Copy of this order be given *dasti*, under the signature of the Court Master.

TUSHAR RAO GEDELA, J

APRIL 11, 2023/at