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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 11th December, 2023

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FAO(OS) (COMM) 112/2020, CM APPL. 22633/2020, CM APPL. 22715/2020 & CM APPL. 26072/2020**INDIRA GANDHI NATIONAL
OPEN UNIVERSITY**

..... Appellant

Through: Mr. Harmeet Sing Ruprah, Adv.
versus**SHARAT DAS AND ASSOCIATES
PVT LTD**

..... Respondent

Through: Mr. Jayant Mehta, Sr. Adv. with Mr.
Aman Dhyani, Ms. Nitika Sethi &
Ms. Kanchan Semwal, Advs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE AMIT MAHAJAN****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**'), impugning a judgment dated 04.06.2020 (hereafter '**impugned judgment**'), rendered by the learned Single Judge in OMP(COMM) 26/2019, captioned as *Indira Gandhi National Open University v. M/s. Sharat Das and Associates Pvt. Ltd.*
2. By the impugned judgment, the appellant's application under Section 34 of the A&C Act assailing an arbitral award dated 25.04.2018 (hereafter '**the impugned award**'), was rejected on the ground that it was filed beyond the period of limitation as stipulated under Section 34(3) of the A&C Act.
3. It is not disputed that the impugned award was rendered on



25.04.2018 and delivered on the same date.

4. In terms of Section 34(3) of the A&C Act, the time available for the appellant to file an application under Section 34 of the A&C Act expired on 24.07.2018. Admittedly, the appellant filed an application under Section 34 of the A&C Act (CIS-ARBTN-233-2018 captioned *Indira Gandhi National Open University (IGNOU) v. M/s. Sharat Das & Associates Pvt. Ltd.*) before the learned Commercial Court on the last date of period of limitation, that is on 24.07.2018

5. Notice in the said application was issued by the learned Commercial Court on 06.08.2018. The respondent appeared in the said proceedings and objected to the jurisdiction of the learned Commercial Court to hear the said application. Concededly, the objection raised was merited. Given the value of the dispute, the learned Commercial Court did not have the jurisdiction to entertain the said application. Accordingly, on 28.08.2018, the learned counsel for the appellant, on instructions, sought to withdraw the said application. His statement was recorded, and the learned Commercial Court dismissed the application as withdrawn with liberty to file a fresh petition in accordance with law.

6. In view of the above, the appellant filed the application under Section 34 of the A&C Act before this Court on 11.09.2018. The said application was dismissed by the impugned judgment on the ground of delay in filing as well as re-filing the application.

7. The learned Single Judge allowed the application of the appellant for condonation of delay under Section 14 of the Limitation Act, 1968. However, rejected the application for condonation of delay in re-filing the



application, *inter alia*, construing the appellant's initial filing before this Court as *non est*. Whilst the appellant, being aggrieved by this decision has filed the present appeal, the respondent has filed cross-objections assailing the impugned judgment to the extent that the appellant's application for condonation of delay under Section 14 of the Limitation Act, 1963 was allowed.

8. As is apparent from the sequence of events as noted above, there was a delay of 48 (forty eight) days in filing the application under Section 34 of the A&C Act. The delay of 35 (thirty-five) days is sought to be explained on account of the appellant pursuing its remedy against the impugned award in a Court not competent to entertain the same. In terms of Section 14 of the Limitation Act, 1963, a litigant who approaches the Court, which does not have jurisdiction and pursues his remedy in good faith, is entitled to the benefit of Section 14 of the Limitation Act, 1963. Thus, the period spent by the said litigant to pursue its remedy is required to be excluded for the purpose of computing the period of limitation.

9. We find no infirmity with the decision of the learned Single Judge in allowing the appellant's application for condonation of delay of 35 (thirty-five) days – that is, from 24.07.2018 to 28.08.2018 – under Section 14 of the Limitation Act, 1968.

10. It is apparent from the above that even if the appellant is granted the benefit of Section 14 of the Limitation Act, 1968, it is also required to explain a further delay of 13 (thirteen) days being the period between withdrawal of the application before the learned Commercial Court and filing of the same before this Court on 11.09.2018.



11. According to the appellant, there was a delay of 11 days for filing the application, which is required to be condoned as it is entitled to some time to file the application in this court after withdrawing the same from the learned commercial court.

12. The application as filed before this Court was returned under defects on 14.09.2018, and was re-filed on 25.09.2018. However, that too was found defective. These defects were pointed out by the Registry on 26.09.2018. The application was re-filed on 30.10.2018. This pattern was repeated successively – the filing was found to be defective, the defects were notified to the appellant, the appellant refiled the application. In all, the application was filed on eleven occasions. The application as filed on 16.01.2020 was finally accepted.

13. The learned Single Judge found that the application as filed initially on 11.09.2018, and successively thereafter, was *non est* as it was not accompanied by certain vital documents and the defects were foundational.

14. Clearly, if the application filed by the appellant under Section 34 of the A&C Act was *non est*, the question of condonation of delay would not arise. This is because in terms of Section 34(3) of the A&C Act, the Court can condone a delay in filing the application beyond the period of three months, subject to a maximum of thirty days. A *non est* filing would imply that, in fact, there was no filing during the period, which could be condoned by the court.

15. However, if the filing was found to be defective, which was successively cured by re-filing of the application, the question as to whether the delay ought to be condoned, is a matter that falls within the discretion of



the Court. Section 34(3) of the A&C Act does not curtail the power of the Court to condone the delay in re-filing¹.

16. After some arguments, the learned counsel for the parties state that the matter may be remanded to the learned Single Judge to consider the question whether the initial filings were *non est*, in the light of the decision of this Court in ***Oil and Natural Gas Corporation Ltd. v. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & M/s Megha Engineering & Infrastructure Limited (MEIL): 2023/DHC/135-DB***.

17. The submissions made by the learned counsel for the parties commend to this Court. The impugned judgment is set aside to the extent that the learned Single Judge has held the filing to be *non est*, and has declined the appellant's application for condonation of delay in re-filing the application.

18. We clarify that nothing stated in this order should be construed as an expression of opinion on the findings of the learned Single Judge. If the Court finds that the initial filing was not *non est*, the Court shall also consider whether condonation of delay in filing and refiling is warranted.

19. The Registry is directed to place the petition [OMP(COMM) 26/2019] before the learned Single Judge on 15.12.2023.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

DECEMBER 11, 2023

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¹ *Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.*: (2017) 11 SCC 234