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

% *Date of Decision: 02nd August 2023*

+ O.M.P. (COMM) 233/2023

UNION OF INDIA

..... Petitioner

Through: Mr. Niraj Kumar, Senior
Central Government Counsel.

versus

M/S. ROSHAN REAL ESTATE PVT. LTD. Respondent

Through: Ms. Anusuya Salwan,
Ms. Sonika Singh, Mr. Rachit Wadhwa and
Ms. Simran Sakunia, Advocates.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

I.A. 12397/2023 (exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

O.M.P. (COMM) 233/2023 & I.A. 12398/2023 (delay in filing)

3. Present petition has been filed by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking setting aside of the impugned arbitral award dated 30.01.2023 passed by the learned sole Arbitrator with respect to Claim Nos. 1, Part K (EI 3/7) and 5 and the interest awarded.
4. Factual matrix to the extent relevant is that Petitioner issued an open tender for work at Dr. B.R. Ambedkar National Memorial Complex at 26, Alipur Road, Delhi for Civil Work, Internal and external electrical work, firefighting, D.G. Sets and Lifts, etc. The



estimated cost of the work was a sum of Rs. 40,27,46,531/-. On 29.03.2016, Respondent submitted its Expression of Interest, with a financial bid of Rs. 41,08,01,462/-.

5. Tender was awarded to the Respondent on 07.04.2016 and an agreement was executed between the parties, with 22.04.2016 being the date of commencement of construction work and 21.07.2017 being the stipulated date of completion. Extension of time was granted by the Competent Authority on 25.05.2018, without levy of compensation. Final bill of the Respondent was passed by the Petitioner on 05.07.2018, however, on account of certain grievances, Respondent invoked the Arbitration Clause on 02.05.2020 and sought appointment of the sole Arbitrator. Sole Arbitrator was appointed by the Competent Authority on 13.04.2021 and the Award was passed on 30.01.2023.

6. Challenge to the Award is restricted to award of Claims Nos.1, Part K (EI 3/7) and 5 as well as interest awarded in favour of the Respondent. Claim No.1 was for balance payment of Rs.11,12,10,924/- from the final bill for a sum of Rs.54,98,16,190/- as Petitioner had paid only Rs.43,86,05,266/- to the Respondent. Claim No.5 was with respect to bonus under Clause 2A of the Agreement which provided that in case the contractor completed the work ahead of updated stipulated date of completion, he would be entitled to incentive/bonus @ 1% of the tender value per month computed on per day basis, subject to maximum limit of 5% of the tender value. Objection is raised to the grant of interest on the legal ground that Arbitrator has the discretion to award interest but cannot go outside the contract *albeit* this Court is unable to discern on



what ground the challenge is laid by the Petitioner in the facts of this case.

7. Court is not delving any further into the merits of the grounds raised in the present petition, in view of the preliminary objection raised by the Respondent that the petition has been filed not only beyond the period of three months, which is the statutory period of limitation for filing a petition under Section 34 of the Act, but also beyond the 30 days period, within which Court has the power and discretion to condone the delay, if the Applicant is able to show that he was prevented by sufficient cause from making the application, invoking proviso to Section 34(3) of the Act.

8. Learned counsel for the Petitioner has urged this Court to condone the delay of 63 days for the reasons set out in the application. It is argued that after the Award was received, Petitioner requested the Government Counsel who was defending the matter on behalf of the Petitioner before the learned Arbitral Tribunal to give his legal opinion, which was received on 18.02.2023. Thereafter, the file had to be processed through various channels for examination of the Award for the purpose of deciding if the same was to be challenged. The reasons for delay as stated in the application being I.A. No.12398/2023 for condonation of delay are as follows:-

“3. That thereafter the case file of the department alongwith opinion of the Govt. Counsel was submitted to the S. E.. On 28.02.2023 the case file of present matter was submitted by SE & PD, DPC-1, to ADJ office. Thereafter on 02.03.2023 the case file of present matter was put by E. E.(P-III) to C.E.(W&TLQA). On 13.03.2023 letter was issued to SE & PD, DPC-1 for providing clarifications on his recommendations. On 13.03.2023 reply providing clarifications on his recommendations was sent by SE & PD, DPC-1. Further on 15.03.2023 again letter was issued to SE & PD, DPC-1 for obtaining legal advice from Deptt. Of Legal Affairs (DoLA), Ministry of Law through e-office. On 16.03.2023 reply to



letter was sent by SE & PD, DPC-1 stating that since his office is not equipped with e-office so the case may forwarded to DoLA from O/o CE (W&TLQA).

4. That on 20.03.2023 the case was forwarded by CE (W&TLQA) to Deptt. Of Legal Affairs. Further on 28.03.2023 response received from DoLA to depute an officer conversant with the facts and circumstances of the case to discuss with Sr. Govt. Advocate, DoLA. On 28.03.2023 SE & PD deputed EE to discuss the case with Sr. Govt. Advocate, DoLA. The legal opinion of DoLA was received on 19.04.2023. On 19.04.2023 the case was resubmitted to O/o ADG (PD) by SE & PD, DPC-1 after receiving the opinion of DoLA. On 21.04.2023 letter was issued to SE & PD, DPC-1 to submit the case directly to SDG (Chandigarh). On 21.04.2023 the case was submitted by SE & PD, DPC-1 to SDG (Chandigarh). On 27.04.2023 letter was received from SDG (Chandigarh) for comments of ADG (Projects) Delhi. On 10.05.2023 comments of ADG (Projects) Delhi was sent to SDG (Chandigarh). On 30.05.2023 letter was received regarding partial acceptance of award and challenging the remaining part from SDG (Chandigarh).

5. The department provided the relevant documents of the present matter to its counsel on 17.06.2023. The Sr. Central Govt. Counsel after going through the voluminous record of the present matter vide e-mail dated 19.06.2023 requested to the E. E. & Sr. Manager (C)-1, Development Project Circle, CPWD to provide certain documents/information as well as for a detail conference with him to further proceed with the matter.

6. The matter was briefed by the officer of (C)-1, Development Project Circle, CPWD on 21.06.2023 to his counsel and the required relevant documents/information were also handed over to the Sr. Central Govt. Counsel preparation of the present Petition. On 25.06.2023 the Sr. Central Govt. Counsel sent the final draft of the Petition alongwith applications to the department. The department after vetting the draft copy of the Petition and applications and getting approval from competent officer returned back to S C G C. The S C G C after obtaining signature from the competent officer on the Petition and applications the same is being filed with registry of the Hon'ble High Court Of Delhi."

9. I have heard the learned counsels for the parties.

10. Section 34(1) of the Act provides recourse to a Court against an arbitral award by an application for setting aside the Award in accordance with sub-section (2) and sub-section (3) and both operate in different fields. Sub-section (2) of Section 34 of the Act enumerates



the grounds on which an arbitral award may be set aside by the Court while sub-section (3) lays down the statutory period of three months within which an application for setting aside the arbitral award may be made from the date on which the party making that application has received the arbitral award or if a request has been made under Section 33, from the date on which that request has been disposed of by the Arbitral Tribunal. Section 34(3) is extracted hereunder for ready reference:-

“34. Application for setting aside arbitral award.

xxxx xxxx xxxx xxxx

(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.”

11. Proviso to Section 34(3), however, provides a period of 30 days within which the Court is empowered to condone the delay, on being satisfied that there was a just and sufficient cause for the delay, but not thereafter. The expression ‘but not thereafter’ has been a subject matter of discussion and interpretation in several judgments and it has been held in no uncertain terms that the time limit prescribed under Section 34 is absolute, unextendible and inflexible in view of the history and scheme of the Act and the legislative intent in using this expression qualifying the condonable period of 30 days. The aim and objective of the Act, which is evident from the Arbitration and Conciliation Bill, 1995 was to minimise the supervisory role of Courts in arbitral process. Therefore, given the legislative intent and the



expression ‘but not thereafter’, if the application seeking setting aside of the arbitral award is filed beyond a period of three months and 30 days, this Court does not have the power to exercise discretion to condone the delay, even if sufficient cause is made out by the Applicant.

12. In the instant case, the Award was published by the learned Arbitrator on 30.01.2023 and was received on the same day by the Petitioner. Admittedly, present petition was filed on 30.06.2023. Section 34(3) of the Act provides limitation period of three months for filing the application assailing an Award and a further period of 30 days within which the Court has the power to exercise its discretion and condone the delay if sufficient cause is shown by the applicant which prevented the applicant from filing the petition within the three months’ limitation period. Therefore, excluding the date of 30.01.2023 the petition ought to have been filed on or before 31.05.2023. It is settled law that the Court has no power to condone the delay beyond the 30 days’ condonable period. In this view of the matter, this Court is not empowered to exercise discretion to condone the delay in filing the present petition, even if the Petitioner explains the delay or makes out a reasonable cause for approaching the Court belatedly. Therefore, the reasons furnished in the application seeking condonation of delay cannot aid the Petitioner and the application cannot be allowed as that would be doing violation to the statutory scheme and mandate of Section 34(3) of the Act.

13. For the aforesaid reason, the application seeking condonation of delay is dismissed and in this light the petition under Section 34 also stands dismissed.

**I.As. 12399/2023 and 12400/2023**

14. In view of the dismissal of the O.M.P. (COMM) 233/2023, the applications are dismissed.

JYOTI SINGH, J**AUGUST 02, 2023/shivam/kks**