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

% **Date of order : 21st March, 2023**

\+ O.M.P. (COMM) 310/2021 & I.A. 13224/2021 & I.A. 13225/2021

MS J J FABTEX PVT LTD ..... Petitioner

Through: Mr. Sidharth Joshi, Mr. Anmol Mehta and Mr. Vipul Gupta, Advocates

versus

UNITED INDIA INS CO LTD ..... Respondent

Through: Mr. Abhishek Gola and Mr. Anshul Mehral, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "the Arbitration Act") seeking the following reliefs:

> *"a) To allow the present petitioner in the favour of the petitioner and against the respondent and set aside the imposed award dated 15th July, 2019 to the effect whereby the Arbitral Tribunal has no objection Reply to the petitioner.*
>
> *b) Pass any other order deem fit and proper to this Hon'ble Court in the interest of justice."*

2. The petitioner, by way of the instant petition, has assailed the Award dated 12th July 2019, which has been passed by the Arbitral Tribunal in the arbitration proceedings initiated between the parties pursuant to the disputes arisen amongst them stemming from the insurance coverage sought by the petitioner from the respondent.

3. On 13th June 2015, a fire broke out at the NOIDA factory of the petitioner, for which the petitioner sought coverage, however, it has been alleged that the same was not acted upon by the respondents as per its scheme and policies, after which the said reference to arbitration was sought.

4. The learned counsel for the petitioner has taken several objections with respect to the Award, which have been summarised hereunder:-

a. The Arbitral Tribunal while ignoring the aspect of arbitrary deductions in claim as well as an additional 20% interest on the same, allowed the interest on account of delay in payment of the claim.

b. The Arbitral Tribunal did not allow any interest towards the delay in issuing the Survey Report dated 28th July 2016 by M/s Sandeep Bharti Insurance Surveyor and Loss Assessors Pvt. Ltd. The surveyors took 13 months to release the Report from the date of the fire, thereby violating the IRDA guidelines for settlement of the claims.

c. In addition to disallowing Interest on account of delay in issuing the survey report by the surveyor, the Arbitral Tribunal allowed interest @ 9% per year only, despite the provision of payment of interest @ 2% over and above the Bank rate, in the IRDA guidelines.

d. The impugned Award has been passed on the basis of presumption and suspicion without appreciation of the facts and circumstances.

e. The impugned Award is in conflict with the public policy of the country. Moreover, the Award is also not reasoned.

5. On the last date of hearing, notice was issued to the respondent and today, the learned counsel for the respondent has appeared and vehemently opposed the instant petition on the ground of limitation. The respondent has also filed its written synopsis which records the objections to the delay in filing the petition.

6. The learned counsel appearing on behalf of the respondent at the very outset submitted that the petition has not been filed in accordance with Section 34(3) and 34(5) of the Arbitration Act and there is a significant delay in filing the instant petition challenging the impugned Award. It is submitted that the Award had been passed in the month of July 2019, whereas the petition has been filed in March 2021.

7. It is submitted that, despite the inordinate delay, the petitioner has failed to file any application seeking the condonation of such delay. The petitioner has not shown any cause or reason for the delay of over two years. Moreover, instead of seeking condonation of delay in filing the petition, the petitioner only filed an application for condonation of 154

days' delay in re-filing of the petition, when the same was marked under objections, on the grounds of inability during the second wave of Covid-19 pandemic.

8. The learned counsel strongly urged that the petition is liable to be dismissed on the grounds of delay as well as for the reason of being devoid of merit.

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

10. The preliminary objection taken on behalf of the respondent to the petition is on the ground of limitation as stipulated under Section 34(3) of the Arbitration Act. Therefore, before delving into the merits of the case, this Court shall first test the instant petition on the maintainability in light of the objections raised on behalf of the respondent.

11. Section 34 of the Arbitration Act provides recourse to those aggrieved by an arbitral award. A challenge to an arbitral award may be brought by way of an application before the Court of law, however, the same is subject to the qualifiers provided under sub-section 2 and 3 of Section 34. While sub-section 2 of Section 34 lays down the circumstances wherein an arbitral award may be set aside, sub-section 3 provides a pre-condition to be necessarily adhered to while seeking a challenge under Section 34. Section 34(3) is thus reproduced hereunder for proper adjudication of the dispute before this Court in the instant matter:-

> *"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."

12. The provision under Section 34(3) of the Act stipulates that an arbitral award shall only be challenged within three months from the date when the award is received by the party challenging such award. This Section also confers the power upon the Court to condone the delay, if any, upon being satisfied of the just and sufficient reasons for doing so, for a further period of 30 days but not thereafter. It is also essential to note that an application for setting aside the arbitral award shall be filed mandatorily within a total period of 120 days provided the court is satisfied of the reasons stated for the delay beyond three months.

13. In the instant petition, the Award was passed by the Arbitral Tribunal on 12th July 2019 and the same was communicated to petitioner on 15th July 2019. Admittedly, the challenge to the Award was brought under Section 34 of the Arbitration Act, only in the month of March 2021, i.e., after twenty-one months of the passing and communication of the order. The provision stipulates a time period of three months for filing the application under Section 34 of the Arbitration Act, thus, the petitioner was bound to approach this Court within such period, i.e., till the month of October in the year 2019. Even thereafter, had the petitioner filed the petition within the subsequent 30 days and satisfied this Court of

the reasonable cause for the delay, the petition would not be barred by the limitation provided under the Arbitration Act. The keywords in the provision are *'within a further period of thirty days, but not thereafter'*. Therefore, it is evident that after three months and 30 days, this Court does not have the power to condone the delay in filing a challenge to Section 34 of the Arbitration Act. Be it as it may, the petitioner has not even sought the condonation of the extraordinary delay of over 15 months which has been caused in filing of the instant petition and hence, failed to explain the delay. This explicitly contravenes the mandate of Section 34(3) of the Arbitration Act.

14. The petitioner before this Court has only sought condonation of delay in re-filing of the petition by way of filing the application bearing I.A. No. 13224/2021. At the first instance, as discussed in the foregoing paragraphs, the inordinate and extraordinary delay caused in filing of the petition has neither been explained by the petitioner nor has any application been filed on its behalf to seek condonation of the delay. Therefore, a delay in re-filing of an already significantly delayed petition cannot be granted by way of this application. Upon query, the learned counsel for the petitioner submitted that the delay has been sought to be condoned by way of filing the aforesaid application. However, this Court does not find force in the argument advanced on behalf of the petitioner.

15. 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. It is a settled principle that law does not help those who sleep over their rights. To this aspect, the

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

> *"7. …. Keeping these basic assumptions in view it will be appropriate to examine whether the topic of limitation belongs to the Branch of procedural law or is outside it. If it is a part of the procedure whether the entire topic is covered by it or only a part of it and if so what part of it and the tests for ascertaining them. 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. ...”

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) R.A.J. 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 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.”*

22. The decision of a Division Bench of this Court in The Executive Engineers v. Shree Ram Construction & Co. (supra) which is relied upon by the respondent also does not support the contention that this Court would not have the jurisdiction to condone the delay in re-filing beyond the period of three months and 30 days as specified under section 34(3) of the Act. The Court in that decision had pointed out that, in the context of Arbitration and Conciliation Act, liberality in condoning the delay in re-filing would be contrary to the intention of the Parliament. However, this does not imply that the Court would have no jurisdiction to condone the delay in re-filing beyond the period as specified in section 34(3) of the Act. This is also apparent from Para 41 of the said judgment which reads as under:

> *"41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the refiling of the Objections. Since this delay crosses the frontier of the statutory limit, that is three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms. Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D. Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing Counsel, namely, Ms. Prem Lata Bansal. We have called for the records of OMP No. 291/2008 and we find that the Objections have not been signed by Late Shri R.D. Jolly but by Ms. Sonia Mathur on*

> *9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D. Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of refiling of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal."*

17. A reference to the abovementioned judgments clarifies that the approach in exercising powers for allowing condonation of delay cannot be liberal. The conduct of the party seeking the same shall be tested to evaluate whether the applicant has acted with due diligence.

18. Thus, the challenge has been brought before this Court after eighteen months beyond the permissible time period stipulated under the Arbitration Act, which provides for a limitation of three months and a further extension of 30 days' time, upon satisfaction of the Court. However, the petitioner while evidently ignoring, contravening, and bypassing the entire procedural and technical requirements has not only sought to evade the process of law but also abused the same.

19. Therefore, in view of the extraordinary delay in filing the petition under Section 34 of the Arbitration Act as well as in the absence of an application seeking condonation of such delay, this Court is of the

considered view that allowing such a petition to sustain would not only cause grave prejudice to the other parties involved but would defeat the scheme and purpose of the Arbitration Act itself, especially the mandate under Section 34(3) of the Act.

20. Thus, this Court does not find any cogent reason to hear the instant matter on merits since the same is not maintainable for being barred by limitation.

21. Accordingly, the instant petition stands dismissed alongwith pending applications, if any.

22. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MARCH 21, 2023
gs/ms

Click here to check corrigendum, if any