

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

% **Date of order :14th February, 2023**

+ **O.M.P. (COMM.) 459/2019**

DY. CE/C/ JALANDHAR CITY

..... Petitioner

Through: Mr.Avnish Singh, SCGC
with Mr.Aditya Vikram
Dembla, Advocate

versus

M/S SPACECHEM ENTERPRISES THROUGH PROPRIETOR

..... Respondent

Through: Mr.Gaurav Puri, Mr.Sarthak
Gupta and Ms. Yashika
Verma, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. No. 2843/2023 (condonation of delay)

1. The present application has been filed by the petitioner seeking condonation of delay of 137 days in filing of the petition bearing No. **OMP (COMM) 459/2019** under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "**the Act**") by way of which, the petitioner has sought the indulgence of this Court in setting aside the impugned Award dated 31st March 2019 and the *addendum* Award dated 13th May 2019.

2. The respondent's bid to the tender dated 27th October 2015 was accepted by the petitioner on 5th January 2016 and consequently, the

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petitioner awarded the contract to the respondent for construction of additional road over bridge opposite steel girder and structure near Existing Bhandari Bridge, ROB No.156-A at KM 510/33-34 on Jalandhar-Amritsar Section.

3. It was stipulated in the awarded contract that the allotted work has to be completed by 4th July 2016. However, near to the stipulated time of completion, disputes arose between the parties due to reasons pertaining to various claims, raw materials and delay in the project work. The respondent therefore, invoked the Arbitral Clause vide letter dated 28th February 2017 and thereafter, disputes were referred for arbitration on 26th July 2018 and the Arbitral Tribunal was set up on 27th September 2018. The Certificate of Completion was awarded to the respondent on 19th June 2018.

4. The Arbitral Tribunal thereafter passed the impugned award dated 31st March 2019 and the *addendum* award dated 13th May 2019 which have been challenged by the petitioner herein.

5. Before adjudicating the main petition on merits, this Court is inclined to adjudicate the instant application to be satisfied of the fact that there existed just and sufficient reasons for the delay caused in filing of the main petition under Section 34 of the Act.

6. Learned counsel on behalf of the petitioner submitted that the delay in filing the main petition is attributable to the respondent as the respondent kept on changing his stance during the proceedings. It is submitted that there was a change of Counsel for the petitioner and the new counsel on behalf of the petitioner sought time to prepare the case.

7. It is submitted on behalf of the petitioner that since the *addendum*

award was passed by the Arbitral Tribunal on 13th May 2019 and was delivered to the petitioner on 30th May 2019, the prescribed period of limitation under Section 34(3) of the Act would lapse on 14th August 2019 or 31st August 2019. It is further submitted that as per the log information of e-filing, the petition was first filed on 13th August 2019 and therefore, there is no delay in filing in accordance with the prescribed time period as provided under Section 34 (3) of the Act.

8. *Per contra*, learned counsel on behalf of the respondent vehemently opposed the averments made in the main petition and submitted that the petition is liable to be dismissed on the sole ground that the filing of the instant petition suffers from serious delay and defects.

9. It is submitted that the petitioner while seeking the condonation of delay has made the averments in the instant application which do not inspire confidence as the assertions regarding change of counsel, changing of stance by the respondents, etc. are *ex-facie* fabricated and bogus. Learned counsel on behalf of the respondent further submitted that the delay that has been sought to be condoned by this Court is not the delay in re-filing but the delay in filing itself as the petition suffered from grave infirmity and defects. The defects, as notified by the Registry, existed for more than two months after the petition was first filed on 13th August 2019.

10. Accordingly, it is submitted on behalf of respondent that the instant petition is liable to be dismissed due to extraordinary delay and defects in the initial and subsequent filings that were done to stop the limitation period from running.

11. Heard the learned counsel for both the parties and perused the records.

12. The petitioner has filed the instant application under Section 34(3) of the Act seeking condonation of delay of 137 days in filing of the main petition. Section 34(3) of the Act is reproduced hereunder:

"(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. 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, on being satisfied of the just and sufficient reasons for doing so, for a further period of 30 days and not thereafter. It is also essential to note that an application for setting aside the arbitral award has to 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.

14. In the instant petition, the petitioner filed the petition for the first time on 13th August 2019 after receipt of the impugned awards which was under objection for several times in the Registry. The petition, though

filed in the prescribed limitation period of three months, could not be listed before the Court for approximately next two months due to the objections and defects notified by the Registry. As noted by this Court, the petitioner first filed a petition on 13th August 2019 which was lying under objections as notified by the Registry on 17th August 2019. The petition was subsequently re-filed on 15th October 2019 and the registry again notified the presence of previous defects, following which the petition was again filed on 17th October 2019 and filing was again marked as defective. The defects were finally removed and the petition was re-filed on 21st October 2019. It is observed that the defects notified by the Registry in the said petition were not technical in nature but were the basic requirements that must be fulfilled for the purpose of listing a petition/application before the Court. The list of defects included non-filing of *Vakalatnama*, non-filing of impugned awards, unattested affidavit and statement of truth, absence of bookmarking etc. The petitioner in the instant application has contended that the *addendum* Award was delivered to him on 30th May 2019, but even after approximately three months of the receipt of the Award, he failed to file the copies of the impugned Awards at the time of filing the petition.

15. 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, In-charge 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 sub-rule (1) it shall be considered as fresh institution.”

16. 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 sub-Rule (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.”

17. As noted above, the petitioner has taken more than two months to

remove the defects as the petition was first filed on 13th August 2019 and came on record on 21st October 2019 after the lapse of permissible delay of 30 days in accordance with above-mentioned Delhi High Court Rules. Therefore, even though the petition was not barred by limitation at the very first instance, it did not meet the requisite for re-filing of the petition after removal of the defects. The petition being filed on 13th August 2019 suffered from significant defects including absence of *Vakalatnama*, appropriate affidavits, the copy of impugned awards *etc.* which are the basic requirements to file any petition/application. It is further observed that the petitioner failed to take diligent steps for removal of defects within the maximum permissible period under the aforementioned High Court Rules. Therefore, in light of the above-mentioned High Court Rules and the law settled by the Division Bench of this Court, the petition which was admittedly filed with defects on 13th August 2019 shall not be construed as an appropriate petition for adjudication by this Court. Thus, the instant petition would also be hit by the afore-mentioned Rule 5(3) of the Delhi High Court Rules and accordingly, the petition filed on 21st October 2019 shall be treated as a fresh and proper filing of the instant petition.

18. 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 v. 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 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 refiling 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 re-filing 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.”

19. It is a settled principle that law does not help those who sleep over their rights. 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. The Supreme Court in ***Bharat Barrel and Drum Mfg. Co. Ltd. v. 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 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.”

20. It is patent 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.

Therefore, in view of the above discussion, arguments advanced by the parties and judicial pronouncements *qua* delay in filing and re-filing of a petition under Section 34 of the Act, this Court arrives at the finding that the conduct on part of the petitioner does not provide any cogent reason to entertain the instant petition by condoning the delay and to interfere with the impugned awards passed by the Arbitral Tribunal. The conduct of the petitioner has evidently signified his intent of evading the administration of justice by not complying with the procedure of law.

21. Accordingly, the instant application for condonation of delay, i.e. **I.A. 2843/2023** is dismissed.

22. In view of the foregoing discussions, this Court is not satisfied that the reasons stated for the delay are sufficient to condone the delay and thus, the instant petition bearing No. **O.M.P. (COMM) 459/2019**, being barred by limitation, also stands dismissed.

23. Pending applications, if any, also stand dismissed.

24. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 14, 2023
SV/AS

[Click here to check corrigendum, if any](#)