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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 22.11.2023

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FAO (COMM) 240/2023 & CM APPL. 60446-49/2023

UNION OF INDIA

..... Appellant

versus

M/S APCON INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner:

Mr Vikrant N. Goyal with Mr. Nitin Chandra,
Advocates

For the Respondents:

Advocate (name not given)

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellant impugns order dated 27.02.2023 whereby the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act) filed by the appellant has been dismissed on the ground that same was filed beyond the statutory period of limitation.



2. A tender for mechanised housekeeping contract was floated by the appellant on 29.06.2018. Respondent was the successful bidder and was awarded the contract on 24.12.2018.
3. Certain disputes arose between the parties towards the execution of the contract leading to respondent seeking arbitration. An Arbitral Tribunal was constituted and the subject award was rendered by the Arbitral Tribunal on 15.10.2021.
4. Appellant impugned the award by filing a petition under Section 34 of the Act on 30.09.2022.
5. As per the appellant, in terms of the order of the Supreme Court in Suo Moto Petition No. 3 of 2020 by order dated 15.03.2020, Supreme Court had extended the period of limitation and the period was thereafter extended from time to time Supreme Court granted further 90 days w.e.f. 01.03.2022.
6. In terms of the extended period, appellant could have filed the petition under Section 34 of the Act within 90 days of expiry of 28.05.2022. Arbitration Act permits a further period of 30 days of extension for valid reasons to be shown. With the result that a petition under Section 34 of the Act for valid reasons could be filed within a period of 120 days.
7. In the present case, appellants were required to file a petition under Section 34 within 120 days of 28.05.2022 which expired on 27.09.2022. Subject objections under Section 34 have been filed



13.10.2022 beyond the statutory period of 120 days.

8. Learned District Judge (Comm) has opined that the appeal has been filed beyond the period of 120 days and that no application seeking condonation of delay can be entertained after the expiry of 30 days of the expiry of period of 90 days permitted under the Act to file objections under Section 34 of the Act.

9. Reference may be had to the judgment of the Supreme Court in (2019) 2 SCC 455 ‘Simplex Infrastructure Ltd. Vs. Union of India’ wherein the Supreme Court has held that there is no power of Court to condone the delay beyond the period of 120 days. The Supreme Court held:-

“11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period of any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in Union of India v. Popular Construction Company wherein it held as follows:

As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold the extended period



under the proviso would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

21. *Under the circumstances, we are of the considered opinion that in view of the period of limitation prescribed in Section 34(3), the learned Single Judge of the High Court was not justified in condoning the respondent’s delay of 514 days in filing the application. The judgment rendered by the learned Single Judge of the High Court of Calcutta on 27.04.2016, in ‘Union of India v. Simplex Infrastructures Ltd.’ Is set aside and the appeal is allowed. The petition under Section 34 stands dismissed on the ground that it is barred by limitation. There shall be no order as to costs.”*

10. We may also note that the subject objections under Section 34 was signed by the appellant on 27.09.2022 but the affidavit is attested on 30.09.2022. We may further note that the learned District Judge (Comm) has noticed that the application was filed in the Court on 13.10.2022.

11. In view of the judgment of the Supreme Court in *Simplex Infrastructure Ltd.(Supra)*, we are of the view that there is no infirmity in the order passed by learned District Judge (Comm) holding that the objections being beyond the statutory period of limitation and condonable period of 30 days could not be entertained.

12. We may also note that the subject appeal has also been filed with a delay of 155 days.

13. In view of the above facts and circumstances, we are of the



view that there is no infirmity in the impugned order or merit in the appeal. Accordingly, the appeal is dismissed.

14. Since the appeal has been dismissed, the application seeking condonation of delay of 155 days is also dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

NOVEMBER 22, 2023
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