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

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Date of Decision: 20.12. 2023

+ **FAO (COMM) 259/2023, CM Nos.66518/2023, 665190/2023
& 66520/2023**

I&FC DEPARTMENT, THROUGH EXECUTIVE ENGINEER-
CD-XIII Appellant

Through: Ms. Mehak Nakra & Ms. Disha
Chaudhary, Advs.

Versus

M/S KCC BUILDCON PVT LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE ANISH DAYAL

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning the judgment dated 02.11.2022 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in an application filed by the appellant under Section 34 of the A&C Act [ARBTN No.57956/2016 captioned *Executive Engineer v. M/s KCC Buildcon*].

2. The said application was filed impugning an arbitral award dated 12.01.2013 (hereafter '**the impugned award**').

3. A copy of the impugned award is not annexed with the present appeal. However, the impugned judgment indicates that it was the



respondent's case that it was prevented from executing the works and therefore, the respondent had claimed damages.

4. The impugned judgment indicates that the respondent was awarded the contract for execution of certain works (laying of concrete surface at Dhansa, Najafgarh Road) in terms of a letter dated 05.03.2010. The respondent was required to commence the work on 20.03.2010 and the same was to be completed within a period of six months.

5. It was the respondent's case that it had proceeded on the site but was prevented from executing any work. Accordingly, the respondent had raised a claim for compensation including for the amounts spent on materials and resources for executing the works in question. The respondent also made a claim in respect of idle labour and machinery.

6. The Arbitral Tribunal found in favour of the respondent.

7. The learned counsel appearing for the appellant submits that the appellant had not permitted the respondent to commence the works pursuant to the letter dated 05.03.2010, therefore, no damages could be claimed. Clearly, the appellant seeks a merit review of the impugned award dated 12.01.2013, which is otherwise not permissible.

8. It is also apparent from the impugned order that the learned Commercial Court had examined the rival contentions. The appellant had relied on Clause 3A of the agreement in question, which is set out in paragraph 16 of the impugned judgement. The same is reproduced



below:

“16) The petitioner placed reliance on clause 3A of the agreement which is as under:

“In case, the work cannot be started due to reasons not within the control of the contractor with 1/8th of the stipulated time for completion of the work, either party may close the contract. In such eventuality, the earnest money deposit and the performance guarantee of the contract shall be refunded but no payment on account of interest, loss of profit or damages etc. shall be payable at all.”

9. In the present case, the learned Commercial Court had noted that the Arbitral Tribunal had found that the invocation of the aforementioned clause was after the expiry of 1/8th of the stipulated time for completion of the contract and therefore, the benefit of the said clause was not available to the appellant.

10. The learned counsel appearing for the appellant is unable to point out any infirmity with the aforesaid view.

11. Having stated the above, it is also material to notice that the present appeal has been filed after an inordinate delay of 365 (three hundred and sixty-five) days.

12. The appellant has also filed an application (CM APPL. No.66518/2023) under Section 5 of the Limitation Act, 1963 seeking condonation of delay in filing the present appeal. A plain reading of the application indicates that information regarding the passing of the impugned judgment was provided to the concerned officer of the



appellant. But he had allegedly not taken any steps to communicate the same to the concerned authorities. Although, it is not averred in the application, the learned counsel for the appellant submits that the appellant became aware of the impugned judgment on 18.09.2023 on the respondent commencing proceedings for enforcement of the impugned award.

13. Even if we accept (which we do not) that the appellant became fully aware of the impugned judgment on 18.09.2023, the present appeal has been filed beyond the stipulated period. This appeal was filed on 12.12.2023, which is beyond the period of sixty days from 18.09.2023.

14. In the given circumstances, we find no ground to condone the delay.

15. In view of the above, the present appeal is dismissed both on delay, as well as, on merits.

16. The pending applications are also dismissed.

VIBHU BAKHRU, J

ANISH DAYAL, J

DECEMBER 20, 2023

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