



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

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Date of Decision : 07.12.2023

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O.M.P. (COMM) 302/2018

IN THE MATTER OF:

UNION OF INDIA

..... Petitioner

Through: Mr. Om Prakash, SPC with Mr. Nitish Pande, Ms. Swati Mishra, Ms. Komal and Ms. Simran Gill, Advocates

Versus

INDIA INFRASTRUCTURE & LOGISTICS
PRIVATE LTD

..... Respondent

Through: Mr. Ajay Saroya, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

I.A. 9327/2018 (delay of 600 days in filing) and I.A. 9328/2018 (delay of 88 days in re-filing)

1. The present petition has been instituted under Section 34 of the Arbitration and Conciliation Act (hereinafter, '*A&C Act*') seeking to set aside the award dated 30.05.2016 rendered by a three-member Arbitral Tribunal (hereafter, the '*AT*').
2. The petition is accompanied by separate applications under Section 14 and Section 5 of the Limitation Act wherein by way of the former, the petitioner seeks condonation of delay of 600 days in filing the petition and by the latter, seeks condonation of delay of 88 days in filing/re-filing of the petition.
3. Issue of limitation being raised first, the Court proceeds to decide the

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same foremost.

4. Brief facts necessary for the aforesaid issue are that after the impugned award was delivered on 30.05.2016, it was statedly received by the petitioner on the same day. Pertinently, the disputes had arisen in the context of a Concession Agreement dated 04.01.2007. It is noteworthy that the AT was also seized of disputes in relation to two other Concession Agreements albeit with different Concessionaires. The arbitral proceedings in relation to the three disputes were conducted simultaneously. On the date of the passing of the impugned award, the AT also delivered the award in the other two disputes.

5. Against the impugned award, the petitioner preferred a petition under Section 34 of the A&C Act before District Judge, Patiala House Court, New Delhi on 23.08.2016. Similar petitions were filed against the other two awards as well. The respondents in the respective petitions filed applications challenging the maintainability of the petitions filed before District Judge, Patiala House Court on account of lack of pecuniary jurisdiction of that Court. The applications came to be allowed and the petitions were directed to be returned and filed in the appropriate Court.

6. In the aforesaid backdrop, the present petition came to be filed on 20.04.2018. By way of application filed under Section 14 of the Limitation Act, the petitioner, in essence, has sought exclusion of the period spent in pursuing the petition before District Judge, Patiala House Court. In other words, the entire period from 23.08.2016 till 19.04.2018 is sought to be excluded. Further, as noted above, by way of application filed under Section 5 of the Limitation Act, the petitioner has prayed for condonation of delay of 88 days in filing/refiling the petition.



7. A plain reading of Section 14 of the Limitation Act makes it clear that to avail the benefit under the said Section, the applicant is required to establish that it was pursuing its case with due diligence and in good faith before a wrong Court i.e., a Court which lacked jurisdiction.

8. Law of Limitation in the context of a petition filed under Section 34 of the A&C Act is strict and mandatory. The time limit of 3 months under sub-section (3) is to be strictly adhered to and can be extended by a further period of 30 days only subject to the Court's satisfaction that the petitioner was prevented by sufficient cause from making the petition within 3 months. Supreme Court in its recent decision in Anilkumar Jinabhai Patel (D) Thr. LRs v. Pravinchandra Jinabhai Patel & Ors.¹ has held that the Court has no power to condone the delay beyond the period of 30 days after the expiry of 3 months period from the date of receipt of the copy of the award.

9. The impugned award came to be delivered and received by the petitioner on 30.05.2016. The petitioner filed the petition under Section 34 before District Judge, Patiala House Court on 23.08.2016. The petition was directed to be returned and filed in appropriate Court by order dated 24.02.2018 passed by the learned ADJ. The petitioner has claimed that it had redrafted the petition and filed the same before this Court on 20.04.2018. The petitioner contends that for the purpose of counting the limitation period under Section 34(3) of the A&C Act, the date of filing of petition before Patiala House Court should be considered as the date of filing. Alternatively, the entire period from 23.08.2016 till the time when the petition was refiled before this Court on 20.04.2018 be excluded. The said contention has no

¹ (2018) 15 SCC 178



merit. Even if the period from 23.08.2016 till 24.02.2018 i.e., the date when the petition was ordered to be returned to be filed in the appropriate Court, is excluded, the petition is still time barred. Taking the case even further, i.e., excluding the time taken in applying for and preparation of certified copy i.e., from 09.03.2018 till 17.03.2018, the petition is still time barred.

10. Pertinently, similar contentions were raised by the petitioner relating to the other two awards wherein again the issue of limitation was involved. Both the petitions filed under Section 34 of the A&C Act being O.M.P. (COMM) 289/2018 and O.M.P. (COMM) 267/2018 were dismissed by Coordinate Benches of this Court on 13.07.2018 and 09.07.2018 respectively. The appeal preferred against the dismissal of O.M.P. (COMM) 289/2018 also came to be dismissed by the Division Bench vide order dated 04.09.2018 passed in FAO (OS) (COMM) 204/2018. A review petition against the said order was also dismissed on 10.11.2022 in Review Petition No.66/2019. Concededly, the petitioner has not preferred any appeal against the order passed by the Division Bench and the said order has attained finality.

11. The petition being filed beyond the period of 30 days from the expiry of 3 months from the date of receipt of the copy of the impugned award by the petitioner, the applications are dismissed.

O.M.P. (COMM) 302/2018 and I.A. 9329/2018 (stay)

In view of the order passed in I.A. 9327/2018 and I.A. 9328/2018, the present petition is dismissed alongwith the pending application.

**MANOJ KUMAR OHRI
(JUDGE)**

DECEMBER 07, 2023

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