$~43

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

Date of Decision: 10th January, 2024

\+ **O.M.P. (COMM) 14/2023, I.As. 544/2023, 545/2023 & 21815/2023**

SOMA ENTERPRISE LTD. ..... Petitioner

Through: Mr. Nitish Kant Sharma, Adv. (M. 9999098219)

versus

ENVIRO GEOSYNTHETICS PVT. LTD. ..... Respondent

Through: Mr. Abhishek, Adv.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. In the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'the Act'*), the Petitioner-Soma Enterprise Ltd. challenges the Award dated 28th September, 2021 passed by the ld. Sole Arbitrator on the ground that the said Award provides for contradictory findings.

3. Heard. The short question in this case, at this stage, is whether the petition under Section 34 of the Act has been filed within the limitation period under Section 34(3) of the Act. The impugned Award is, admittedly, dated 28th September, 2021. The petition was filed on 9th June, 2022 before the Patiala House Court, and was withdrawn due to pecuniary jurisdiction on 16th November, 2022. It was again refiled before this Court on 9th December, 2022 before this Court.

4. On the last date, ld. Counsel had wanted to cite some decisions and the matter has been listed today. Heard ld. Counsel for the parties.

5. The Supreme Court in ***In Re Cognizance for Extension of Limitation, (2022) 3 SCC 117***, had passed the following directions in respect of the period of limitation during the covid-19 pandemic:

> *"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*
> *II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.*
> *III.* ***In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022.*** *In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

6. A perusal of the same would show that the period between 15th March 2020 and 28th February 2022 was excluded for the purpose of calculating limitation. In addition, the Supreme Court has also directed that the period of limitation would start after 28th February, 2022 meaning thereby if any pleadings or filing to be made under any enactments, the same would have to be filed from 1st March, 2022 within the prescribed period.

7. In the present case, the petition was first filed before the Patiala House Court on 9th June, 2022 which is beyond the 30th May, 2022

deadline that would have applied in terms of Section 34(3) of the Act considering the timeline prescribed as three months plus 30 days from the date of award. The same was also withdrawn on 16th November, 2022 and refiled on 9th December, 2022. Thus, the petition has been clearly filed beyond the permissible period under Section 34 of the Act. The delay is not condonable as the limitation period has been held to be mandatory in Supreme Court in ***Simplex Infrastructure Ltd vs. Union of India reported in (2019) 2 SCC 455***. The relevant portion of the said decision is set out below:

> *"18. A plain reading of sub-section(3) along with the proviso to Section 34 of the 1996 Act shows that the application for setting aside the award on the grounds mentioned in sub-section(2) of Section 34 could be made within 3 months and the period can only be extended for a further period of 30 days on showing sufficient cause and not thereafter.* ***The use of the words "but not thereafter" in the proviso makes it clear the extension cannot be beyond 30 days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in subsection(3) read with proviso to section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate****."*

8. In this view of the matter, the petition is liable to be dismissed as being barred by limitation. This Court had, on 5th July, 2023 directed deposit of the entire awarded amount with up-to-date interest subject to which the impugned award was stayed. The said amount has been deposited by way of a banker's cheque for the sum of Rs.79,62,935/-. The same has been retained in an FDR for a period of one year.

9. Let the amount lying deposited along with interest accrued thereon be released in favour of Respondent after deducting TDS on the interest component as per applicable law.

10. The petition is, accordingly, disposed of with the above directions. All pending applications are also disposed of

11. Ld. Counsel for the parties submit that they would make appropriate submissions before the execution court in order to get the execution petition disposed of in view of today's order.

PRATHIBA M. SINGH
JUDGE

JANURARY 10, 2024
dj/bh