



2024:DHC:5667



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (COMM) 25/2023**

THE CHIEF EXECUTIVE OFFICER J AND K ERA
SRINAGAR KASHMIR THROUGH AUTHORISED
REPRESENTATIVE ABDUL KHALIQ QURESHI PROJECT
MANAGER

.....Petitioner

Through: Mr. Praveen Chauhan,
Ms. Malvica Satija, Mr. Sarthak Sawhney
and Mr. Parth Awasthi, Advs.

versus

ABHIRAM INFRA PROJECTS PVT LTDRespondent

Through: Mr. Aditya Sikka, Adv. Mr.
Meghav Gupta, Ms. Komal Vats, Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****JUDGMENT (ORAL)**

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31.07.2024

1. This petition is admittedly instituted under Section 34 of the Arbitration and Conciliation Act, 1996¹, challenging an arbitral award passed on 18 May 2022 and stated to have been received by the petitioner on 2 June 2022.

2. The contention of Mr. Pravin Chauhan, learned Counsel for the petitioner, is that the Arbitral Tribunal erred in arbitrating on the dispute under the 1996 Act and that the arbitration should have been conducted under the Jammu & Kashmir Arbitration and Conciliation

¹ "the 1996 Act"



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Act, 1997².

3. Mr. Aditya Sikka, learned Counsel for the respondent, submits that this issue cannot be examined in this petition, as the petition has been filed under Section 34 of the 1996 Act beyond 120 days from the date of receipt of the impugned arbitral award. As Section 34(3), read with the proviso thereto, fixes 120 days as the maximum period within which a petition under Section 34 can be filed, he submits that this petition has to be dismissed on limitation.

4. Mr. Chauhan, learned Counsel for the petitioner, seeks to contend, *per contra*, that his basic case is that the Arbitral Tribunal erred in proceeding in terms of the 1996 Act and that, according to him, the J & K Act was applicable. He submits that the challenge to the present award would be within the time provided for challenging an arbitral award under the J & K Act. Without examining which Act applies, therefore, Mr Chauhan would seek to submit that this petition cannot be dismissed as time-barred.

5. The contention, in my opinion, is misdirected.

6. The arbitral award has, rightly or wrongly, been passed under the 1996 Act. That is a fact which cannot be wished away. The present petition has also, therefore, been correctly filed under Section 34 of the 1996 Act. It is open to the petitioner to argue that the Arbitral Tribunal ought to have proceeded to arbitrate on the dispute

² “the J & K Act” hereinafter



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under the J & K Act, but the fact is that it has not done so. The Arbitral Tribunal having arbitrated on the dispute – as already noted, wrongly or rightly – under the 1996 Act and the present petition, challenging the arbitral award having also been preferred under Section 34 of the 1996 Act, the petition can be entertained only if it subscribes to the time discipline envisaged by Section 34.

7. The question of examining whether the Arbitral Tribunal was correct in arbitrating on the dispute in terms of the 1996 Act instead of the J & K Act would arise only if this Court has the jurisdiction to hear the matter.

8. A Section 34 petition which is filed beyond 120 days from receipt of the arbitral award cannot be entertained by the Court in view of the *terminus ad quem* of 120 days envisaged by the proviso to Section 34(3) of the 1996 Act.

9. Qua a Section 34 petition filed beyond 120 days from the date of receipt of the award under challenge, therefore, the Court is *coram non judice*.

10. As such, the present petition, having been preferred under Section 34 of the 1996 Act beyond 120 days from the date of receipt of the impugned arbitral award, the contention of Mr. Chauhan that the learned Arbitral Tribunal erred in arbitrating on the dispute under the 1996 Act instead of the J & K Act, cannot be examined at all.



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11. This petition is therefore, dismissed as barred by time.

C.HARI SHANKAR, J

JULY 31, 2024

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Click here to check corrigendum, if any