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

+ O.M.P. (COMM) 38/2023& I.A. 2022/2023, I.A. 2024/2023

UNION OF INDIA THROUGH GENERAL MANAGER,

NORTHERN RAILWAYS

..... Petitioner

Through: Mr. K.C. Dubey, Adv. SPC

versus

BCC DEVELOPERS AND PROMOTERS PVT. LTD.

..... Respondent

Through: Mr. Rahul Malhotra and Ms. J.
Talukdar, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

29.04.2024

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I.A. 2025/2023

1. This is an application filed under section 5 of the Limitations Act, 1963, seeking condonation of delay of 245 days in re-filing of the petition.
2. In the present case, arbitral award dated 09.06.2021 was received by the petitioner *vide* an e-mail of the same date. Thereafter, the Award was corrected on 09.08.2021.
3. It is stated that in the present case, petitioner filed objection petitions against the award dated 09.11.2021 vide diary No. 901106, during the COVID-19 period.
4. It is stated that subsequently, the counsel for the petitioner changed and the matter was later assigned to the present counsel on 22.12.2022.



5. The officials of the petitioner contacted the earlier counsel, took the files from him and handed them over to the present counsel in January, 2023.

6. It is further stated the new counsel was not keeping well and owing to the voluminous file record which took considerable time for the counsel to go through and prepare the petition, the petition was ultimately re-filed on 31.01.2023.

7. Hence the application for condonation of delay.

8. The Hon'ble Supreme Court in para 5 of “**Cognizance for Extension of Limitation**” [(2022) 3 SCC 117], held that the limitation owing to the COVID-19 pandemic was to be suspended up to 28.02.2022 and a further period of 90 days was to be granted for all filing where the limitation was expiring during the said period.

9. Be that as it may, even after taking into account, the extension of limitation period granted by the Hon'ble Supreme Court, the period of 120 days (90+30), as stipulated in Section 34(3) of the Arbitration and Conciliation Act, 1996, expires on 31.05.2022.

10. The Hon'ble Supreme Court in **Simplex Infrastructure Ltd. v. Union of India**, [(2019) 2 SCC 455] has held asunder:

“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 three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that



the extension cannot be beyond thirty days. ”

11. There is no reason given in the application for condonation of delay for non-filing of the objection under section 34 of the Arbitration and Conciliation Act, 1996, after expiry of 90 days from 28.02.2022.

12. The fact that the matter was assigned to the new counsel, files were voluminous and the new counsel was unwell, does not permit this Court to condone the delay which is sacrosanct under the Arbitration and Conciliation Act, 1996.

13. For the said reasons, this Court cannot condone the delay of 245 days in re-filing of the petition.

14. The application is dismissed.

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15. Since the application seeking condonation of delay is dismissed, consequently, the petition under Section 34 is also dismissed.

JASMEET SINGH, J

APRIL 29, 2024/NG

Click here to check corrigendum, if any