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

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Date of decision: 22.03.2024+ **FAO(OS) (COMM) 63/2024**

UNION OF INDIA

..... Appellant

Through: Mr Rajesh Gogna, CGSC with Ms
Priya Singh, Ms Shivangi Jain and Mr
Vinod Kumar, Advocates.

versus

M/S PNSC INFRASTRUCTURE PVT LTD.

..... Respondent

Through: None.

CORAM:**HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)****CM APPL. 18343/2024**

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 63/2024 and CM APPL. 18342/2024 *[Application
filed on behalf of the appellant seeking interim relief]*2. This appeal is directed against the judgment and order dated
04.01.2024 passed by the learned Single Judge in O.M.P. (COMM) 2/2024
and I.A. 135/2024.3. *Via* the impugned judgment and order, the learned Single Judge
dismissed the application for condonation of delay filed by the
appellant/IOI [I.A. 135/2024]. Pursuant to this dismissal, the learned Single



Judge disposed of the petition [and all pending applications] filed by the appellant i.e., Union of India [hereafter referred to as “UOI”] under Section 34 of the Arbitration and Conciliation Act, 1996 [hereafter referred to as “Arbitration Act”] against the arbitral award dated 20.07.2021.

4. The short ground on which the petition and the application for condonation of delay have been dismissed is that they were preferred beyond the period of limitation.

4.1 The dates and events relevant to the issue were captured by the learned Single Judge in paragraph 3 of the impugned order.

4.2 For convenience, the table set out by the learned Single Judge in paragraph 3 of the judgment is extracted hereafter:

Date	Particulars
20.07.2021	The Award was made and received by the petitioner.
28.10.2021	A petition under Section 34 of the Act was filed by the petitioner before the District Court, Tis Hazari.
18.07.2023	The learned District Court returned the petition to the petitioner on the ground that it had no jurisdiction to entertain the petition, with a direction to file the same before this Court within 30 days.
04.10.2023	The petitioner applied for a certified copy of the order of the learned District Court dated 18.07.2023.
17.10.2023	The certified copy of the aforesaid order was received by learned counsel for the petitioner.
27.11.2023	The present petition was filed in this Court.

4.3 As would be evident, the initial filing of the Section 34 petition before the District Court was beyond the period of three (3) months prescribed in sub-section (3) of the said Section.

5. However, *via* order dated 18.07.2023, the learned District Judge in whose Court the Section 34 petition was instituted returned the petition to counsel for the appellant/UOI and directed the appellant/UOI to file the



petition before this Court, *albeit*, within thirty (30) days of return of the petition.

5.1 Concededly, the appellant/UOI did not file the petition in this Court within thirty (30) days, as directed by the learned District Judge. The petition was filed only on 27.11.2023.

5.2 In fact, the report of the Registry of this Court shows that the Section 34 petition was filed only on 21.12.2023 [See pdf page 1 of OMP (COMM) 2/2024], even beyond the date mentioned in the Section 34 petition i.e., 27.11.2023.

6. The aforementioned dates and events would show that the appellant/UOI applied for obtaining a certified copy of the order only on 04.10.2023, which was received by the appellant/UOI on 17.10.2023.

7. Therefore, there was delay even in applying for a certified copy.

8. Even after receiving the certified copy on 17.10.2023, the appellant/UOI waited for close to sixty-five (65) days before filing the Section 34 petition before this Court. As noted above, the petition was filed on 21.12.2023 and not on 27.11.2023 as claimed by the appellant/UOI.

9. Mr Rajesh Gogna, learned CGSC, says that the appellant/UOI should have applied for extension of time, granted by the said Court *via* order dated 18.07.2023, for filing the Section 34 petition in this Court.

10. It is contended by Mr Gogna that the appellant/UOI should be allowed to approach the District Court to extend the period granted by the said Court for filing the Section 34 petition before this Court.

10.1 In support of this plea, Mr Gogna relied upon the judgment of the Supreme Court in ***Oriental Insurance Company Ltd. v. Tejparas Associates and Exports Pvt. Ltd.***, (2019) 9 SCC 435.



11. In our view, this plea of Mr Gogna cannot be accepted for the following reasons:

- (i) First, the appellant/UOI ought to have made this plea in the first instance, i.e., in the Section 34 petition filed before this Court.
- (ii) Second, the learned District Judge had directed filing of the Section 34 petition before this Court within thirty (30) days of the return of the petition. Therefore, the delay in obtaining a certified copy of the order passed by the District Court had little relevance to the institution of the Section 34 petition before this Court. Thirty (30) days granted for the said purpose commenced from the date on which the petition was returned. The appellant/UOI could have applied for seeking exemption from filing a certified copy.
- (iii) Third, even if obtaining a certified copy was necessary for the appellant/UOI, it waited for close to forty (40) days [if the date given in the Section 34 petition is considered] or sixty-five (65) days [if the date given by the Registry is considered] before instituting the petition in this Court. Clearly, the appellant/UOI displayed lethargy in filing the Section 34 petition even after it received a certified copy.
- (iv) Fourth, the reliance placed by Mr Gogna on the decision in ***Oriental Insurance*** is misplaced for two reasons:
 - a) In the facts of that case, the Section 34 petition filed in the first instance was in time. This is not the case here. There was a delay in filing the Section 34 petition even at the first instance.
 - b) The decision in ***Oriental Insurance*** has been expressly overruled by a three-Judge Bench of the Supreme Court in ***EXL Careers v.***



Frankfinn Aviation Services (P) Ltd., (2020) 12 SCC 667. In *EXL Careers*, the Supreme Court held:

17. We regret our inability to concur with *Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Tejparas Associates & Exports (P) Ltd.*, (2019) 9 SCC 435 : (2019) 4 SCC (Civ) 534], relied upon by Mr Patwalia, that in pursuance of the amendment dated 1-2-1977 by reason of insertion of Rule 10-A to Order 7, it cannot be said that under all circumstances the return of a plaint for presentation before the appropriate court shall be considered as a fresh filing, distinguishing it from *Amar Chand Inani [Amar Chand Inani v. Union of India, (1973) 1 SCC 115]*. The attention of the Court does not appear to have been invited to *Modern Construction [ONGC v. Modern Construction & Co., (2014) 1 SCC 648 : (2014) 1 SCC (Civ) 617]* and the plethora of precedents post the amendment.

18. Order 7 Rule 10-A, as the notes on clauses indicates, was inserted by the Code of Civil Procedure (Amendment) Act, 1976 (with effect from 1-2-1977) for the reason:

“New Rule 10-A is being inserted to obviate the necessity of serving summonses on the defendants where the return of plaint is made after the appearance of the defendant in the suit.”

Also, under sub-rule (3) all that the Court returning the plaint can do, notwithstanding that it has no jurisdiction to try the suit is:

“10-A. Power of court to fix a date of appearance in the court where plaint is to be filed after its return.—(1)-(2) * * *

(3) Where an application is made by the plaintiff under sub-rule (2), the court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.”

19. The language of Order 7 Rule 10-A is in marked contrast to the language of Section 24(2) and Section 25(3) of the Code of Civil Procedure which read as under:

“24. General power of transfer and withdrawal.—(1) * * *

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the court which is thereafter to try or dispose of such suit or proceeding may, subject



to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn. ...

25. *Power of Supreme Court to transfer suits, etc.—(1)-(2)* * * *

(3) The court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order of transfer, either retry it or proceed from the stage at which it was transferred to it. ”

*20. The statutory scheme now becomes clear. In cases dealing with transfer of proceedings from a court having jurisdiction to another court, the discretion vested in the court by Sections 24(2) and 25(3) either to retry the proceedings or proceed from the point at which such proceeding was transferred or withdrawn, **is in marked contrast to the scheme under Order 7 Rule 10 read with Rule 10-A where no such discretion is given and the proceeding has to commence de novo.***

*21. For all these reasons, **we hold that Oriental Insurance Co. Ltd. [Oriental Insurance Co. Ltd. v. Tejparas Associates & Exports (P) Ltd., (2019) 9 SCC 435 : (2019) 4 SCC (Civ) 534] does not lay down the correct law and overrule the same.** R.K. Roja [R.K. Roja v. U.S. Rayudu, (2016) 14 SCC 275 : (2017) 3 SCC (Civ) 270] has no direct relevance to the controversy at hand.*

[Emphasis is ours]

12. In sum, the return of the petition preferred under Section 34 of the Arbitration Act, for lodging in this Court, constituted a fresh filing. Therefore, approaching the District Court for an extension of the period to file a Section 34 petition before this Court would not help the cause of the appellant/UOI as it would have to justify delay concerning the period commencing from the date when the thirty (30) days granted to file the Section 34 petition before this Court expired.

13. The learned Single Judge, in our view, was correct in dismissing the Section 34 petition. The submission of Mr Gogna that we should now permit the appellant/UOI in Section 37 proceedings to approach the District Court for seeking an extension of time to approach the Court under a Section 34 petition cannot be accepted.

14. In the present appeal, we are examining whether the judgment passed



by the learned Single Judge was in accordance with the provisions of the Arbitration Act and the law enunciated on the subject.

15. We find no error in the impugned judgment passed by the learned Single Judge. Accordingly, the appeal is dismissed.

16. The pending interlocutory application shall also stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 22, 2024 / tr