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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 168/2019 & I.A. 6052/2019
HEAVY ENGINEERING CORPORATION LIMITEDPetitioner
Through: Mr. Vikas Verma, Mr. Mayank
Choudhary, Mr. Jagdish Verma, Advs.
versus
RAMPUR ENGINEERING CORPORATION LIMITED
.....Respondent
Through: Ms. Cauvery Birbal, Mr. Soham
Kumar, Ms. Prarthana Singhanian, Advs.

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+ OMP (ENF.) (COMM.) 236/2018 & EX.APPL.(OS) 3721/2022
RAMPUR ENGINEERING COMPANY LIMITED ...Decree Holder
Through:
versus
HEAVY ENGINEERING CORPORATION LIMITED
.....Judgement Debtor
Through: Mr. Vikas Verma, Mr. Mayank
Choudhary, Mr. Jagdish Verma, Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

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20.09.2024

I.A. 6053/2019-DELAY in O.M.P. (COMM) 168/2019

1. This is an application filed by the petitioner under Section 151 of CPC for condonation of delay of 75 days in filing the petition under section 34 of the Arbitration and Conciliation Act, 1956.
2. To decide the present application, paragraphs 3 and 5 of the present application are important which read as under:-

“3. That on or about 15.10.2018, the Petitioner was duly served with the copy of the Petition under Section 36 of the Arbitration and Conciliation Act, 1996, as amended (for short “**the Act**”) filed by the Respondent against the Petitioner on



*08.10.2018 before this Hon'ble Court (for short "**Section 36 Petition**").*

. . . .

5 . It is submitted that the Ld. Sole Arbitrator has erred in law by not sending a signed official copy of the Award to the Petitioner even after repeated requests made by the Petitioner vide its letter dated 18.10.2018, 16.11.2018 and 31.12.2018 and the same is in complete violation of Section 31(5) of the Act."

3. On perusal, it is stated that on 15.10.2018, the petitioner was duly served with a copy of the petition filed under Section 36 of the Arbitration and Conciliation Act, 1996 by the respondent. In paragraph 5, it is stated that the petitioner on 18.10.2018, 16.11.2018 and 31.12.2018 sought copy of the Award but the same was not provided by the learned Sole Arbitrator. Hence, the present application seeking condonation of delay of 75 days in filing the petition under section 34 of the Arbitration and Conciliation Act, 1956.
4. In the present case, the learned Sole Arbitrator passed the Arbitral Award on 18.04.2018. On the same day, the learned Sole Arbitrator sent a copy of the Award to the petitioner at its Delhi address as well as Ranchi address.
5. The copy of the courier receipt shows that the Award was served upon the petitioner at E-84, Masjid Moth, Greater Kailash, Part-III, New Delhi as well as Plant Plaza Road, Dhurva, Ranchi, Jharkhand.
6. In addition, the Speed Post receipt also shows that the petitioner "refused to accept" the service of the courier on 20.04.2018.
7. In this regard, the law is settled that the refusal to accept the service is good service in the eyes of law. The Hon'ble Supreme Court in



Mahindra & Mahindra Financial Services Ltd. v. Maheshbhai Tinabhai Rathod, (2022) 4 SCC 162 has observed as under:-

10. In the above backdrop, a perusal of the order [Goplabhai Tinabhai Rathod v. Mahindra and Mahindra Financial Services Ltd., 2012 SCC OnLine Bom 2337] passed by the learned Single Judge indicates that as per the explanation put forth by the respondent herein, it was their case that the arbitration petition under Section 34 of the 1996 Act filed on 4-1-2012 was on having knowledge of the award, which according to the respondent was on 15-11-2011 when notice in the execution petition was received. The affidavit-in-reply was noted by the learned Single Judge, as per which it was brought on record that the learned arbitrator had dispatched the award dated 28-2-2011 on 15-3-2011 by making an inscription, “Award”, on the envelope, by regd. post acknowledgment due. The refusal to receive was endorsed by the postal authority on 23-3-2011. The postal remark in Gujarati “Lenavi Na Pade Che” (refused to accept) was noted by the learned Single Judge. In SCC OnLine Bom paras 9 and 10 of the order [Goplabhai Tinabhai Rathod v. Mahindra and Mahindra Financial Services Ltd., 2012 SCC OnLine Bom 2337] , the learned Single Judge has ascertained the factual position of the refusal made by the respondent and there being no denial on that front. In that light, the learned Single Judge concluded as hereunder : (Goplabhai Tinabhai Rathod case [Goplabhai Tinabhai Rathod v. Mahindra and Mahindra



Financial Services Ltd., 2012 SCC OnLine Bom 2337] , SCC OnLine Bom para 17)

“17. The envelopes forwarded by the learned arbitrator to the petitioners, which are returned by the postal authorities to the arbitrator on the ground that the petitioners have refused to accept service of the same, are opened in Court and it is noted that the learned arbitrator had forwarded signed copies of the award to the petitioners. As stated hereinabove, the petitioners have admitted the fact that they have refused to accept service of the envelopes containing copies of the arbitral award. Refusal of service is good service in law. In view thereof, the petitioners are deemed to have been served with the signed copy of the award on 23-3-2011. The petitioners have filed the Petition only on 2-1-2012 to 4-1-2012 i.e. after delay of about 197 days. The issue as to whether the provision of Section 34(3) of the Act, has the effect of excluding Section 5 of the Limitation Act, 1963, came up for consideration before the Hon'ble Supreme Court in Consolidated Engg. Enterprises v. Irrigation Deptt. [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] wherein the Hon'ble Supreme Court has in para 53 of its decision, categorically held that the provisions of Section 34(3) of the Act, has the effect of excluding Section 5 of the Limitation Act, 1963.”

11. The learned Single Judge in that view took note of the legal



position and declined to condone the delay. The notice of motion was accordingly dismissed.”

8. Even as per the admission made by the petitioner in paragraph 3 reproduced above of the present application, the petitioner was duly served on “15.10.2018” with a complete set of the paper book including the copy of the Arbitral Award dated 18.04.2018. The petitioner shall also be deemed to have been served on 20.04.2018 when he refused to accept the courier. Hence, the petitioner had knowledge of the Award on 20.04.2018 or latest by 15.10.2018. If the limitation period is counted from 15.10.2018, then also the petition under section 34 of Arbitration and Conciliation Act, 1996 ought to have been filed on or before 15.02.2019 including 30 days period beyond 3 months on showing sufficient cause.
9. As per section 34(3) of Arbitration and Conciliation Act, 1996, the limitation period available to challenge the Award is three months. Failing to challenge the Award within three months, additional thirty days are granted subject to showing sufficient cause. The Hon’ble Supreme Court in ***Simplex Infrastructure Ltd. v. Union of India, (2019) 2 SCC 455*** has observed as under:-

“9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section (3) of Section 34, would not be an application “in accordance with” that sub-section. By virtue



of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words “but not thereafter” in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of up to thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.”

10. In the present case, the petition under section 34 of Arbitration and Conciliation Act, 1996 has been filed on 22.04.2019 which is beyond a period of more than 120 days (i.e. three months plus 30 days) from the date of service of the Award i.e. 20.04.2018/15.10.2018 which cannot be condoned as contemplated under section 34(3) of the Arbitration and Conciliation Act, 1996.
11. For the said reasons, the present application seeking condonation of delay in filing the petition under section 34 of Arbitration and Conciliation Act, 1996 is dismissed.



O.M.P. (COMM) 168/2019

12. Since the application seeking condonation of delay is dismissed, consequently, the objections under Section 34 of the Arbitration and Conciliation Act, 1996 are also dismissed.

OMP (ENF.) (COMM.) 236/2018

13. Let the judgment debtor file a better affidavit in terms order dated 28.11.2022 within 2 weeks from today.
14. Learned counsel for the judgment debtor states that the parties may be referred to Mediation to settle the disputes.
15. Let the parties appear before the Delhi High Court Mediation and Conciliation Centre on 26.09.2024 at 3:30 p.m.
16. List before the Court on 09.12.2024.

SEPTEMBER 20, 2024 / (MS)

JASMEET SINGH, J