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

% *Date of Decision : 02.05.2024*

+ **FAO (COMM) 82/2024**

UNION OF INDIA

..... Appellant

Through: Mr.Rakesh Kumar, CGSC and
Mr.Sunil, Advocate.

versus

M/S MAHESH EDIBLE OIL INDUSTRIES LTD

..... Respondent

Through: Mr.Ashish Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

VIBHU BAKHRU, J. (Oral)

CM APPL. 25505/2024 (condonation of delay in filing the appeal)

1. For the reasons stated in the application the delay of 13 days in filing the captioned appeal stands condoned.
2. The application stands disposed of.

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3. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an order dated 08.02.2024 (hereafter *the impugned order*) passed by the learned Commercial Court in OMP (COMM) No.28/2024 captioned *Union of India v. M/s Mahesh Edible Oil Industries*.

4. The said application was filed by the appellant under Section 34 of the A&C Act impugning an Arbitral Award dated 18.05.2023 (hereafter *the*



impugned award). The learned Commercial Court rejected the application filed by the appellant, being barred by limitation.

5. The appellant had filed the said petition [OMP (COMM) No.28/2024] before the learned Commercial Court (Patiala House District Courts, New Delhi) on 31.01.2024. Since, the same was beyond the period of thirty days from the expiry of the limitation period of three months from the date of the impugned award, the learned Commercial Court rejected the said petition on the ground of limitation.

6. The learned Commercial Court also held that the delay could not be condoned in view of the express language of the proviso to Section 34(3) of the A&C Act and the authoritative decision of the Supreme Court in ***Union of India v. Popular Construction Co.: (2001) 8 SCC 470***.

7. Prior to the filing of the said petition before the learned Commercial Court, on 26.08.2023, the appellant had filed a similar petition before this Court assailing the impugned award. However, the learned Commercial Court held, on the basis of the averments made in the petition, that the date of filing of the said petition was 23.10.2023. The learned Commercial Court, thus, concluded that since the petition (*vide* diary No.1559865/2023) filed before this Court was beyond the period of 30 days as provided under Section 34(3) of the A&C Act, the benefit of Section 14 of the Limitation Act, 1963 (hereafter *the Limitation Act*) would not be available to the appellant and the said period could not be excluded. In view of the finding that the delay in filing the earlier petition in this Court was beyond the period of delay that could be condoned by a court, the learned Commercial



Court proceeded to dismiss the petition.

8. The learned counsel appearing on behalf of the appellant submits that the signed copy of the impugned award was delivered on 22.05.2023 and the initial petition (diary No.1559865/2023) was filed before this Court on 26.08.2023 – that is, after a delay of four days beyond the period of three months available for filing the application under Section 34(3) of the A&C Act. He contends that since the said delay did not exceed the period of 30 days that could be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act, the conclusion that the benefit of Section 14 of the Limitation Act was not available for excluding the period spent by the appellant in pursuing the petition before this Court, is erroneous.

9. Admittedly, the initial petition filed by the appellant before this Court was beyond the period of three months as stipulated under Section 34(3) of the A&C Act. Thus, *prima facie*, the question of excluding the time spent by the appellant in erroneously pursuing the said petition, would not arise, as the initial filing itself was beyond the limitation period. The appellant's case that the period of 30 days that could be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act would also stand extended by virtue of Section 14 of the Limitation Act by excluding the period spent in pursuing the petition in this Court thereafter, is *prima facie*, unpersuasive.

10. However, it is not necessary to examine the said question in this appeal. This is because even if the benefit of Section 14 of the Limitation Act is extended to the appellant, the petition filed by the appellant before the learned Commercial Court was filed beyond the period of delay that could



be condoned by this Court.

11. This is apparent from the facts as admitted. According to the appellant, the signed copy of the impugned award was received by the appellant on 22.05.2023 and the period of three months to file the petition under Section 34 of the A&C Act thus, expired on 22.08.2023. The appellant filed the petition (diary No.1559865/2023) before this Court on 26.08.2023. The said petition was marked defective by the Registry of this Court and was returned for refiling on 28.08.2023. It is material to note that one of the defects was that the appellant had not mentioned the specific pecuniary value of the dispute. The appellant took no steps for filing the same for a period of more than 5 weeks. The petition was refiled and the same was once again found defective and was returned for re-filing on 07.10.2023. It is also material to note that in addition to the other defects pointed out by the Registry, the defect regarding the pecuniary value of the jurisdiction not being specified, remained unaddressed by the appellant. Thereafter, the appellant did not refile its petition in this Court and abandoned the said filing.

12. The appellant claims that the petition was filed before the District Court on 31.01.2024, however, the impugned order reflects that the petition was filed on 05.02.2024. However, even if it is assumed that the petition was filed on 31.01.2024 and the period between 26.08.2023 (when the petition was filed before this Court) and 07.10.2023 (when it was returned for refiling by the Registry) is excluded, the petition filed before the learned Commercial Court is beyond the period of 30 days, which can be condoned by the Court.



13. In view of the above, the conclusion of the learned Commercial Court that the petition is beyond the limitation period and that the delay in filing the same is beyond the period that can be condoned, cannot be faulted.

14. The appeal is accordingly dismissed.

15. The pending applications (CM APPL. 25503/2024 and CM APPL. 25504/2024 for exemption; CM APPL. 25501/2024 seeking stay of the impugned award; CM APPL. 25502/2024 for summoning arbitral record; and CM APPL. 25506/2024 for additional documents) are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 02, 2024

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[Click here to check corrigendum, if any](#)