



2024:DHC:4342-DB



\$~31

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

%

Date of Decision : 28.05.2024

+ **FAO (COMM) 105/2024 & CM APPL. 32244-45/2024**

STERLING AND WILSON PRIVATE LTD Appellant
Through: Mr.Sanjeev Kumar Tyagi, Advocate.
versus
M/S SHARMA TURNKEY ENGINEERS PVT LTD Respondent
Through: Mr.Gautam Suhag and Mr.Ashish
Verma, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (ORAL)**

1. 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 28.03.2024 (hereafter *the impugned order*) passed by the learned Commercial Court in OMP (COMM) No.61/2023 captioned *Sterling and Wilson Private Ltd. v. M/s. Sharma Turnkey Engineers Pvt. Ltd.*
2. The appellant had filed the said application under Section 34 of the A&C Act seeking setting aside of an Arbitral Award dated 12.12.2022 (hereafter *the impugned award*).
3. The learned Commercial Court had rejected the said application in terms of Section 34(3) of the A&C Act on the ground that it was filed beyond the period of limitation and the appellant had failed to show



sufficient cause which prevented it from filing the application within the stipulated period of three months.

4. The appellant had claimed that it had received the impugned award on 22.12.2022. There is no serious dispute regarding the same as the record shows that it was dispatched by the Arbitral Tribunal on 20.12.2022. The appellant had filed the said application to set aside the impugned award on 10.04.2023 – that is after a delay of 18 days after the expiry of three months, from the date of receipt of the impugned award. The said application was defective and returned for refiling and it was again refiled on 21.04.2023.

5. Concededly, the learned Commercial Court had the jurisdiction to condone the delay of 18 days in terms of the proviso to Section 34(3) of the A&C Act. The appellant has also filed an application seeking condonation of delay in filing the said application. The only reason provided in the said application was that the impugned award was received at the Noida office and it was sent to the head office for necessary approval and for further action. It was claimed that the board meeting was held on the basis of the in-house recommendations and the instructions were issued by the head office to the Noida office for filing said application.

6. The learned Commercial Court found that the said explanation was sketchy and that the said application was bereft of any particulars. The appellant had not disclosed as to when the board meeting was held and the instructions were issued by the head office to file the said application.

7. It was also noticed that the impugned award was sent to the Mumbai office and therefore, the explanation that it was received at the Noida office



appears to be incorrect. Accordingly, the learned Commercial Court held that the appellant had not satisfied the Court that it was prevented by sufficient cause from filing the application within the stipulated period of three months from the date of receipt of the impugned award.

8. Undeniably, the explanation for the delay as set out in the application filed for condonation of delay by the appellant was sketchy. However, the appellant has now provided some particulars to explain the delay in filing the application under Section 34 of the A&C Act. The appellant has averred that the copy of the impugned award was sent to the registered office of the appellant company at Mumbai and was received on 22.12.2022. The officials at the registered office did not have the knowledge about the particular contract. Therefore, the registered office had sought report from its northern office at Noida and the impugned award was forwarded to the Noida office accordingly. Thereafter, the appellant's Noida office sent the report and sought the approval for further action.

9. In view of the aforementioned explanation and considering the limited right available to the appellant to assail the impugned award, we consider it apposite that the delay in filing the application under Section 34 of the A&C Act, be condoned.

10. Accordingly, the appeal is allowed. The impugned order is set aside and the appellant's application [OMP(COMM) No.61/2023] is restored before the learned Commercial Court for a decision on merits, subject to payment of ₹25,000/- as cost to the respondent within a period of four weeks from date.



2024:DHC:4342-DB



11. It is clarified that, in case the cost is not paid by the appellant, the present appeal would be considered as dismissed. All pending applications also stand disposed of.

12. List before the learned Commercial Court for directions on 09.07.2024.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MAY 28, 2024

M

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed
By: DUSHYANT
RAWAL
Signing Date: 03.06.2024