



2024:DHC:989



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

Decided on: 9th February, 2024

+ **O.M.P. (COMM) 465/2022, I.A. 19054/2022, & I.A. 991/2024**

STATE BANK OF INDIA

..... Petitioner

versus

ASHA ENTERPRISES PRIVATE LIMITED

..... Respondent

+ **O.M.P. (COMM) 466/2022, I.A. 19058/2022, & I.A. 995/2024**

STATE BANK OF INDIA

..... Petitioner

versus

M/S ASHA ENTERPRISES PRIVATE LIMITED

..... Respondent

+ **O.M.P. (COMM) 467/2022, I.A. 19062/2022, & I.A. 979/2024**

STATE BANK OF INDIA

..... Petitioner

versus

ASHA ENTERPRISES PRIVATE LIMITED

..... Respondent

+ **O.M.P. (COMM) 468/2022, I.A. 19066/2022 & I.A. 996/2024**

STATE BANK OF INDIA

..... Petitioner

versus

M/S A. K. BUILDERS

..... Respondent

+ **O.M.P. (COMM) 469/2022, I.A. 19070/2022, & I.A. 993/2024**



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STATE BANK OF INDIA

..... Petitioner

versus

M/S ASHA ENTERPRISES PRIVATE LIMITED Respondent

+ **O.M.P. (COMM) 470/2022, I.A. 19076/2022, & I.A. 994/2024**

STATE BANK OF INDIA

..... Petitioner

versus

M/S A. K. BUILDERS

..... Respondent

Appearances:

Mr. Rajiv Kapur, Mr. Akshit Kapur, Mr. Aditya Saxena, Advocates for petitioner.

Mr. Sanjay Bansal, Advocate for respondents.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

I.A. 19056-19057/2022 (condonation of delay in filing and refiling) in O.M.P. (COMM) 465/2022

I.A. 19060-19061/2022 (condonation of delay in filing and refiling) in O.M.P. (COMM) 466/2022

I.A. 19064-19065/2022 (condonation of delay in filing and refiling) in O.M.P. (COMM) 467/2022

I.A. 19068/2022 (for condonation of delay in filing) in O.M.P. (COMM) 468/2022

I.A. 19072-19073/2022 (condonation of delay in filing and refiling) in O.M.P. (COMM) 469/2022

I.A. 19078/2022 (for condonation of delay in filing) in O.M.P. (COMM) 470/2022

1. The petitions are pending for issuance of notice as learned counsel



for the respondent has raised a preliminary objection with regard to limitation.

2. It is the admitted position that the impugned awards in four cases¹, are dated 02.05.2022, and were received by the petitioner on 06.05.2022. The petitions were filed on 13.08.2022, within the maximum condonable period of 30 days, after the period of three months provided in Section 34(3) of the Arbitration and Conciliation Act, 1996 [“the Act”].

3. In the other two cases², the awards are dated 31.05.2022, and are stated to have been received on 02.06.2022. The original filing was delayed for two days in each case.

4. It is, however, the contention of Mr. Sanjay Bansal, learned counsel for the respondent, that the delay in refiling of the petition renders the petitions deemed to have been filed on the date when it was refiled, and not on the date of original filing. That refiling having occurred beyond the maximum condonable period of 30 days, Mr. Bansal submits that the petitions are barred by limitation.

5. It is specifically stated by Mr. Bansal that, in these cases, there is no allegation that the original filing was *non-est* for want of any documents crucial to a valid filing.

6. Having heard learned counsel for the parties, I am of the view that it is appropriate to condone the delay in these applications. The judgment of the Supreme Court in *Northern Railway vs. Pioneer Publicity Corporation Pvt. Ltd.*³ clearly states that the maximum condonable period

¹ OMP (COMM) 465/2022, OMP (COMM) 466/2022, OMP (COMM) 467/2022 and OMP (COMM) 469/2022.

² OMP (COMM) 468/2022 and OMP (COMM) 470/2022.

³ (2017) 11 SCC 234.



of limitation [3 months + 30 days] under Section 34(3) of the Act is not applicable to delays in refiling of petitions. The delay in original filing in these cases is only of two days in OMP (COMM) 468/2022 and OMP (COMM) 470/2022 and of nine days in the other four petitions.

7. In the circumstances of the cases, for the reasons stated in the applications, the delay in filing and refiling are condoned.

8. The applications are disposed of.

I.A. 23158/2023 (for early hearing) in O.M.P. (COMM) 466/2022

I.A. 23157/2023 (for early hearing) in O.M.P. (COMM) 467/2022

As the petitions are listed today, these applications for early hearing of the petitions have become infructuous.

The applications stand disposed of.

O.M.P. (COMM) 465/2022, O.M.P. (COMM) 466/2022, O.M.P. (COMM) 467/2022, O.M.P. (COMM) 468/2022, O.M.P. (COMM) 469/2022, O.M.P. (COMM) 470/2022

1. Mr. Bansal takes a preliminary objection that the pecuniary jurisdiction to entertain these petitions, lies before the District Court as the sum claimed by the respondent in each case was less than Rs. 2 crores.

2. Under Section 5(2) of the Delhi High Court Act, 1966, the ordinary original civil jurisdiction of this Court is attracted in a suit valued at over Rs. 2 crores. Section 12(2) of the Commercial Courts Act, 2015, relevant for valuation of these petitions under Section 34 of the Act, provides that the “specified value” in an arbitration of a commercial dispute will include the value of both the claims and counter claims. Under Section 2(1)(e) of the Act, the jurisdiction for filing of proceedings in a Court—



including a petition under Section 34 of the Act– would lie with the Court which would have had jurisdiction to entertain the claims if they were the subject matter of a suit. The effect of these statutory provisions is that a petition under Section 34 of the Act can be entertained in this Court only if the value of the claims and counter claims adjudicated by the learned arbitrator in each case, exceeds Rs. 2 crores.

3. It is clear from a perusal of the record that this threshold is not met in any of these cases. Each of the impugned awards contains a tabular statement of the claims made and the amounts awarded against each claim. The statements are reproduced below:

In O.M.P. (COMM) 465/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Release of Security Deposit (Rs.9,49,937) and Release of wrongly recovered LD (Rs.9,49,937)	18,99,874	18,99,874
2	Balance payment for work done.	39,11,396	37,40,846
3	Interest @12% p.a. since date of submission of bill till date of invocation of arbitration, i.e. 09.08.2018 and further interest @12% p.a. from 10.08.2018 till date of award and future interest.	Not quantified	37,32,148 till date of award
4	Idle establishment for the extended period.	3,80,000	NIL
5	Interest @ 12% p.a. for all such periods on above claims.	Not quantified	NIL



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6	Cost of arbitration and litigation.	Not quantified	2,00,000
		TOTAL	95,72,868 (A)

In O.M.P. (COMM) 466/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Release of Balance Security (Rs.4,92,098), Release of wrongly recovered LD (Rs.7,87,357) and interest (Rs.74,799) on account of delay in release of part amount of LD.	13,54,254	13,37,246
2	Balance payment for work done.	38,51,167	27,98,236
3	Interest @12% p.a. since date of submission of bill till date of invocation of arbitration, i.e. 09.08.2018 (Rs.17,44,411) and further interest @12% p.a. from 10.08.2018 till date of award and future interest.	17,44,411 till 09.08.2018 and further @ 12 p.a.	25,06,930 till date of award
4	Idle establishment for the extended period.	3,80,000	NIL
5	Interest @ 12% p.a. for all such periods on above claims.	Not quantified	NIL
6	Cost of arbitration and litigation.	Not quantified	2,00,000
		TOTAL	68,42,412



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In O.M.P. (COMM) 467/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Release of Security Deposit (Rs.9,49,937) and Release of wrongly recovered LD (Rs.9,49,937)	18,99,874	18,99,874
2	Balance payment for work done.	52,87,306	46,92,525
3	Interest @12% p.a. since date of submission of bill till date of invocation of arbitration, i.e. 09.08.2018 and further interest @12% p.a. from 10.08.2018 till date of award and future interest.	Not quantified	43,61,820 till date of award
4	Idle establishment for the extended period.	3,80,000	NIL
5	Interest @ 12% p.a. for all such periods on above claims.	Not quantified	NIL
6	Cost of arbitration and litigation.	Not quantified	2,00,000
		TOTAL	1,11,54,219 (A)

In O.M.P. (COMM) 468/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Balance payment for work done	32,98,322	30,81,192



2	P/F Girders for Lifts	30,000.	30,000
3	Service Tax	6,49,482	6,49,482
4	Liaisoning charges so paid for obtaining NOC from Fire Department	2,00,000	NIL
5	Interest @12% p.a. for delay in payment of admitted final bill amount, delay in refund of security deposit and delay in release of withheld amount as LD	10,30,306	7,77,585
6	Interest @ 12% p.a. on all claims from the due date upto the date of the award.	@ 12% p.a.	27,88,131
7	Cost	Not quantified	1,88,650
		TOTAL	75,15,040 (A)

In O.M.P. (COMM) 469/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Release of Balance Security (Rs.4,88,265), Release of wrongly recovered LD (Rs.7,81,223) and interest (Rs.74,216) on account of delay in release of part amount of LD.	13,43,704	13,26,849
2	Balance payment for work done.	43,57,012	33,30,586
3	Interest @12% p.a. since date of submission of bill till date of invocation of arbitration, i.e. 09.08.2018	19,13,010 till 09.08.2018 and further @ 12 p.a.	28,28,100 till date of award



	(Rs.19,13,010) and further interest @12% p.a. from 10.08.2018 till date of award and future interest.		
4	Idle establishment for the extended period.	3,80,000	NIL
5	Interest @ 12% p.a. for all such periods on above claims.	Not quantified	NIL
6	Cost of arbitration and litigation.	Not quantified	2,00,000
		TOTAL	76,85,535 (A)

In O.M.P. (COMM) 470/2022:

Claim No.	Claim on account of	Amount of claim (Rs.)	Amount of award (Rs.)
1	Balance payment for work done	29,22,653	21,81,014
2	P/F Girders for Lifts	30,000.	30,000
3	Service Tax	5,95,440	5,95,440
4	Liaisoning charges so paid for obtaining NOC from Fire Department	2,00,000	NIL
5	Interest @12% p.a. for delay in payment of admitted final bill amount, delay in refund of security deposit and delay in release of withheld amount as LD	8,60,566	7,58,670
6	Interest @ 12% p.a. on all claims from the due date upto the date of the award.	@ 12% p.a.	21,42,413 @ 10% p.a.
7	Cost	Not quantified	1,70,500



			58,78,037 (A)
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4. As there was no counter-claim in any of the cases, the question of pecuniary jurisdiction has to be determined on the basis of the value of the claims. We must, therefore, turn to the enumeration of the claim amounts in the above tables, and are not concerned with the awarded amounts. Although some of the interest claims were not quantified at the stage of filing of the statements of claim, it is clear from the quantum of the principal claims and the rate of interest claimed that, even upon addition of interest until the date of invocation of the arbitration, the claims would not cross the Rs. 2 crore mark in any of these cases. The principle that, for this purpose, interest would have to be computed until the date of invocation of the arbitration is laid down in a recent judgment of a Coordinate Bench in *Simentech India Pvt. Ltd. vs. Bharat Heavy Electricals Ltd.*⁴

5. The petitioner has proceeded to invoke the jurisdiction of this Court on the basis of the total value of each of the award in question, and has cited Section 42 of the Act, on the basis of the fact that the learned Arbitrator was appointed by this Court under Section 11 of the Act. This approach is fallacious. The award value, for the reasons aforesaid, is not the applicable metric. In any event, it is less than Rs. 2 crores in each case. Further, exercise of Section 11 jurisdiction by the Supreme Court, or a High Court does not vest jurisdiction for all future petitions in that Court. Reference, for this purpose, may be made to an order of the

⁴ Judgment dated 12.01.2024 in O.M.P.(COMM.) 348/2022.



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Supreme Court dated 31.10.2022 in *Yashpal Chopra and Co. vs. Union of India & Ors.*⁵, and to a decision of a Coordinate Bench in *Mahavir Prasad Gupta vs. Union of India & Anr.*⁶.

6. For the aforesaid reasons, these petitions do not attract the pecuniary jurisdiction of this Court and stand disposed of from the file of this Court.

7. The Registry is directed to return the petitions to the petitioner for presentation before the Court of competent jurisdiction.

PRATEEK JALAN, J

FEBRUARY 9, 2024

‘Bhupi/SS’/Adhiraj/

⁵SLP (C) No. 18324/2022.

⁶ (2022) 288 DLT 637, ¶ 41.