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

+ O.M.P. (COMM) 490/2022

DEPARTMENT OF HEALTH RESEARCH
THROUGH MINISTRY OF HEALTH
AND FAMILY WELFARE

.....Petitioner

Through: Mr. Prasanta Varma, Senior
Central Government Counsel for
UOI with Mr. Rakesh Palo & Mr.
Mr. Rajesh Palo, Advocates with
Mr. Debandra Singh, Senior
Manager Engineering Service.

versus

IRCON INTERNATIONAL LIMITED

.....Respondent

Through: Mr. Udit Seth, Mr. Roshan Roy &
Mr. Siddhant Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% **11.07.2024**

I.A. 20849/2022 (condonation of delay in filing the petition)

1. The petitioner - Union of India has filed this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”] against an arbitral award dated 14.01.2022. It has filed I.A. 20849/2022 for condonation of delay of 141 days in filing the petition and I.A. 20850/2022 for condonation of delay of 107 days in refiling of the petition.

2. I have heard Mr. Prasanta Varma, learned counsel for the petitioner



and Mr. Udit Seth, learned counsel for the respondent.

3. The impugned award was passed on 14.01.2022, and the petition was filed on 05.07.2022.

4. Mr. Seth submits that the petition is belated beyond the maximum condonable period of 30 days under Section 34(3) of the Act, and it is beyond the jurisdiction of the Court to condone such delay. For this purpose, he relies upon *Union of India v. Popular Construction Co.* (2001) 8 SCC 470.

5. Even according to Mr. Seth, however, the benefit of the order of the Supreme Court, extending the period of limitation during the period of the COVID-19 pandemic, will have to be given to the petitioner. By its order dated 10.01.2022 in *Suo Moto Writ Petition (Civil) 3/2020 [In Re: Cognizance for Extension of Limitation, (2022) 3 SCC 117]*, the Supreme Court directed as follows:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the



event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

6. The limitation period for filing of the present petition therefore commenced on 01.03.2022 and the petition could have validly been filed within limitation until 01.06.2022. The maximum condonable period of 30 days, under Section 34(3) of the Act, would expire on 30.06.2022, beyond which the Court has no jurisdiction to condone the delay.

7. My attention has been drawn to paragraph 2 of I.A. 20849/2022 which reads as follows:

“2. That the present Appeal is filed on 05-07-2022 challenging arbitral award dated 14-01-2022 in which the claimant had filed their calculations before the arbitral tribunal on 02.02.2022 which was received by Appellant on 07.02.2022, at best the said date can be hold to be the date of award. It is submitted that as per the guidelines framed by the Hon'ble Supreme Court, 3 months time was extended to the period of limitation from 28.02.2022. Therefore, as per the guidelines of the Hon'ble Supreme Court, filing of the present appeal is required to be filed within 30 days after 28.05.2022. Thus, the limitation for filing of the appeal was till upto 28.06.2022. This Hon'ble court since was having the summer vacations and re-opened on 04.07.2022. Therefore, the day following 04.07.2022 i.e., 05.07.2022 was the last date for filing the appeal on which date the present appeal is filed before this Hon'ble court. Therefore there is no delay in filing of this present appeal.”



8. Mr. Varma first submits that the award must in fact be taken to have been made on 07.02.2022, as this was the date upon which the calculations of the respondent in terms of the award were placed on record before the learned Arbitrator. The communication dated 02.02.2022, addressed by the respondent to the petitioner, seeking payment of an amount of ₹11,87,43,480/- in terms of the award, has been placed on record. The said communication is not addressed to the learned Arbitral Tribunal at all, but to the petitioner. It is a demand for the amount due under the award. The assertion of the petitioner in the application, that this was the calculation filed before the learned Arbitral Tribunal, is not borne out from the record. In any event, having regard to the fact that the limitation period of three months would commence only from 01.03.2022, in view of the order of the Supreme Court, it matters little whether 14.01.2022 is taken as the date of receipt of the award by the petitioner, or 07.02.2022, as stated in the application.

9. Mr. Varma's second submission is that this Court was on summer vacation from 04.06.2022 and reopened on 04.07.2022. He, therefore, submits that the extended period of 30 days, having lapsed during the vacation of the Court, the petition was entitled to file the petition on reopening. This submission is based upon Section 4 of the Limitation Act, 1963 ["Limitation Act"] which provides for the situation where the prescribed period expired during Court holidays. However, Mr. Varma's contention, must be rejected, in view of the judgments of the Supreme Court in *Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd.* (2012) 2 SCC 624 and a very recent judgment in



State of West Bengal Represented through the Secretary & ors. v. Rajpath Contractors & Engineers Ltd. [Civil Appeal 7426/2023, decided on 08.07.2024]. The Court has clearly held that the benefit of Section 4 of the Limitation Act, would not apply *qua* the extended period of 30 days provided in Section 34(3). The period of extension does not constitute the “*prescribed period*”, which is the subject matter of Section 4 of the Limitation Act. This argument is also, therefore, rejected. In any event, even according to the petitioner, the Court opened on 04.07.2022, but the petition was not filed even on that date, but on the following day.

10. In view of the above, I am of the view that the petition has been instituted belatedly, and the delay is beyond the maximum condonable period of 30 days. This Court, therefore, has no jurisdiction to condone the delay.

11. The application for condonation of delay is, therefore, dismissed.

O.M.P.(COMM) 490/2022 and I.A. 20850/2022, I.A. 2278/2023

In view of the order passed in I.A. 20849/2022, the petition and all pending applications stand disposed of.

PRATEEK JALAN, J

JULY 11, 2024

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