



\$~8

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

%

Date of Decision: 04.04.2024

+ **FAO (COMM) 255/2023**

LIBRA ASSOCIATES

..... Appellant

Through: Ms Divya Singh, Advocate.

versus

DABUR INDIA LIMITED

..... Respondent

Through: Advocate (appearance not given).

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

1. The appellant has filed the present appeal impugning an order dated 14.10.2023 passed by the learned Commercial Court in an application filed in OMP(COMM) 134/2023 captioned *Libra Associates v. Dabur India Limited*. The appellant had filed the said petition [OMP(COMM) 134/2023] on 22.07.2023 impugning an arbitral award dated 16.03.2023 (hereafter *the impugned award*). Undisputedly, there was a delay in filing the said petition and accordingly, the appellant had filed an application seeking condonation of delay in filing the same. The said application seeking condonation of delay was declined and consequently, the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) was not entertained.

2. The only question that arises for consideration in the present



appeal relates to the decision of the learned Commercial Court in rejecting the appellant's application for condonation of delay in filing the petition in OMP(COMM) 134/2023.

3. The appellant states that although the impugned award was dated 16.03.2023, a copy of the same was received on 24.03.2023. The appellant had also filed the envelope in which the said impugned award was received and there appears to be no credible dispute in this regard. The period available for filing a petition under Section 34 of the A&C Act thus, expired on 24.06.2023. As noted above, the appellant had filed the petition on 22.07.2023. Thus, it was filed after a delay of 28 days, after the expiry of the limitation of three months from the date of the receipt of the impugned award.

4. The appellant had sought to explain the delay on account of time taken by the appellant to seek legal advice. It was stated that the appellant is a resident of Panchkula and after receipt of the impugned award, had sought a legal opinion. The appellant had thereafter, decided to file the appeal and had sent the documents to her counsel in Delhi. It is stated that at the material time in July, there was a flood like situation in Delhi on account of incessant rains. There was some delay for that reason as well.

5. The learned Commercial Court did not accept the said explanation and held that there were no plausible reasons for explaining the delay. The learned Commercial Court faulted the appellant for not setting out the full particulars of the lawyers that



were consulted for the legal opinion. The learned Commercial Court also disbelieved the reasons for the delay as the affidavit accompanying the application seeking condonation of delay was dated 10.07.2023. The learned Commercial Court reasoned that since the appellant had made up its mind to file the petition by 10.07.2023, the delay of twelve days between 10.07.2023 and 22.07.2023 was unexplained.

6. The learned counsel appearing for the appellant submits that the appellant is facing health issues and is suspected of suffering from cancer. Thus, the petition as well as the present appeal is being pursued by her husband, who is authorized to do so.

7. She candidly states that she was the appellant's counsel before the Arbitral Tribunal. Since the impugned award was not in the appellant's favour, the appellant was skeptical about her advice and, had sought a second opinion from another counsel. However, the counsel's particulars were not disclosed. She states that she had also traced out the envelope in which the relevant documents were received by her from the appellant, and has brought the same to court. The said envelope was received on 18.07.2023. She submits that there was heavy water logging in Delhi, which explains the delay after 10.07.2023. She states that the petition was filed within a period of four days after receiving the relevant documents including an affirmed affidavit.

8. The learned counsel appearing for the respondent has contested



the present appeal. He submits that a liberal approach in condoning the delay is not warranted.

9. We find considerable merit in the contention advanced by the learned counsel for the respondent that a liberal approach, in condoning the delay in filing a petition under Section 34 of the A&C Act is not warranted. However, the facts obtaining in this case do indicate that a reasonable explanation has been granted by the appellant for not filing the appeal within the period of limitation. The period of delay between 10.07.2023 to 22.07.2023, which appears to have weighed heavily with the learned Commercial Court, is clearly explained by the learned counsel.

10. We also find that the learned Commercial Court has proceeded on an erroneous assumption that the petition under Section 34 of the A&C Act was filed on 120th day and period available under Section 34(3) of the A&C Act for filing the said petition is ninety days. A plain reading of Section 34(3) of the A&C Act indicates that an application for setting aside the award may be filed within a period of three months from the date of receipt of the arbitral award. The period of limitation is thus, three calendar months and not ninety days. This question is no longer *res integra* in view of the decision of the Supreme Court in ***State of H.P v. Himachal Techno Engineers: (2010) 12 SCC 210***. The learned Commercial Court had proceeded on the basis that the petition was filed on the last day of the thirty day period, which could not be condoned under the terms of the proviso to Section 34(3) of the A&C Act. This is erroneous because, as noted



above, the period for filing the petition is three months and not ninety days. The petition was filed after a delay of twenty-eight days and not on the last day of the thirty day period that can be condoned by the Court in terms of the proviso to Section 34(3) of the A&C Act.

11. In view of the above, we consider it apposite to allow the present appeal. The impugned order is set aside.

12. The appellant's petition is restored before the learned Commercial Court for consideration on merits.

13. The parties shall appear before the concerned Commercial Court on 22.04.2024.

14. The Registry is directed to communicate this order to the concerned District Judge.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 04, 2024
RK