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

+ **O.M.P. (COMM) 373/2024**

M/S R.G.A FRESH FRUITS PRIVATE LIMITED & ANR.

.....Petitioners

Through: Mr Kapil Malik, Adv.

versus

RAJESH GURALMAL NAGPAL

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **02.09.2024**

I.A. 38085/2024

1. Exemption is granted subject to all just exceptions.
2. The petitioners shall file legible and clearer copies of exempted documents, compliant with practice rules before the next date of hearing.
3. The application is disposed of.

I.A. 38086/2024

4. This is an application seeking condonation of 28 days delay in refiling the present petition.
5. In view of the submissions made by the learned counsel and for the reasons stated in the application, the delay of 28 days in refiling the present petition is condoned.
6. The application is disposed of.

O.M.P. (COMM) 373/2024

7. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Act of 1996**") seeking setting aside of the



impugned order dated 11.06.2024 passed by the learned Sole Arbitrator wherein the 65 days of delay in filing Statement of Claim by the respondent was condoned.

8. It is stated by Mr Malik, learned counsel for the petitioners that in view of Section 25 of Act of 1996, the learned Sole Arbitrator could not have condoned the default in filing statement of claim.

9. Before going into the merits of the matter, on bare perusal of the impugned order, I am of the view that the order passed by the learned Sole Arbitrator is a procedural order and hence cannot be challenged in a section 34 petition. Reliance is placed on ***Rhiti Sports Management (P) Ltd. v. Power Play Sports & Events Ltd., 2018 SCC OnLine Del 8678***, wherein this Court has observed as under:-

“16. A plain reading of Section 32 of the Act indicates the fact that the final award would embody the terms of the final settlement of disputes (either by adjudication process or otherwise) and would be a final culmination of the disputes referred to arbitration. Section 31(6) of the Act expressly provides that an Arbitral Tribunal may make an interim arbitral award in any matter in respect of which it may make a final award. Thus, plainly, before an order or a decision can be termed as ‘interim award’, it is necessary that it qualifies the condition as specified under Section 31(6) of the Act: that is, it is in respect of which the arbitral tribunal may make an arbitral award.

17. As indicated above, a final award would necessarily entail of (i) all disputes in case no other award has been rendered earlier



in respect of any of the disputes referred to the arbitral tribunal, or (ii) all the remaining disputes in case a partial or interim award(s) have been entered prior to entering the final award. In either event, the final award would necessarily (either through adjudication or otherwise) entail the settlement of the dispute at which the parties are at issue. It, thus, necessarily follows that for an order to qualify as an arbitral award either as final or interim, it must settle a matter at which the parties are at issue. Further, it would require to be in the form as specified under Section 31 of the Act.

18. To put it in the negative, any procedural order or an order that does not finally settle a matter at which the parties are at issue, would not qualify to be termed as “arbitral award”.

19. In an arbitral proceeding, there may be several procedural orders that may be passed by an arbitral tribunal. Such orders may include a decision on whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the arbitral proceedings are to be conducted on the basis of documents and other materials as required to be decided - unless otherwise agreed between the parties - in terms of Section 24(1) of the Act. There are also other matters that the arbitral tribunal may require to determine such as time period for filing statement of claims, statement of defence, counter claims, appointment of an expert witness etc. The arbitral tribunal may also be required to address any of the procedural objections that may be raised by any party from time to time. However, none of those orders



would qualify to be termed as an arbitral award since the same do not decide any matter at which the parties are at issue in respect of the disputes referred to the arbitral tribunal.”

(Emphasis added)

10. Section 34 permits to challenge the Arbitral Award. The Award is passed after adjudication of dispute between the parties. In the present case, the impugned order indicates that the arbitration proceedings are at the pleading stage and the learned Sole Arbitrator has neither decided any claim/issue nor any partial claim/issue. Hence, the impugned order is not an interim/final Award but a procedural order.

11. On this ground alone, the petition needs to be dismissed, however, I am proceeding to decide the submission raised by the learned counsel for the petitioner.

12. Section 25 of Act of 1996 reads as under:

“25. Default of a party. - Unless otherwise agreed by the parties, where, without showing sufficient cause -

(a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings.

(b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant 3[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited].



(c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.”

13. In the present case, the learned Sole Arbitrator after noting the contentions of both the parties has observed under:-

“I have considered the aforesaid submissions of Ld. Counsels. In my view, even though there has been some delay in filing the Statement of Claim, the same is not so grave as to lead me to conclude that the Claimant has abandoned its claim. Firstly, it is not uncommon for parties to seek even up to 6 to 8 weeks to file their respective pleadings. Had the Claimant initially sought up to 8 weeks to file its Statement of Claim, there would have been no ground for the Respondent to seek the declaration as sought in this application. Secondly, the application itself was moved after nearly a month of the filing of the Statement of Claim and the application to seek condonation of delay. The respondent neither moved the application after expiry of two weeks’ time granted for filing the Statement of Claim, nor immediately after the Statement of Claim was filed along with the application seeking condonation of delay. The Respondent has not yet filed its Statement of Defence/Counter Claim which was required to be filed within four weeks of the filing Statement of Claim. Instead the application in question has been filed after expiry of nearly three weeks of the filing of the Statement of Claim. Thirdly, the period of 06 months postulated



for completion of pleadings under Section 23 (4) of the Act has not yet expired, and it is still possible to conclude the proceedings within the statutorily prescribed time period.

For the aforesaid reasons, I am not inclined to reject the claim of the Claimant abandoned. At the same time, I make it clear that the delay of 65 days in filing the Statement of Claim shall be taken into consideration while determining the Award on interest, if any and cost. The delay in filing the Statement of Claim is condoned and same is taken on record.”

14. I am of the view that it was within the domain of the learned Sole Arbitrator to grant time for filing pleadings, the same also includes deciding application for condonation and as well as extending time for filing and completing pleadings. In the present case, the learned Sole Arbitrator has given detailed reasons including the fact that the period of six months postulated for completion of pleadings under Section 23 (4) of Act of 1996 has not expired and there is still the possibility to conclude the arbitration proceedings within the prescribed time period. Hence, there is no infirmity in the findings of the learned Sole Arbitrator.

15. For the said reasons, the petition is dismissed.

JASMEET SINGH, J

SEPTEMBER 2, 2024/sr

(Corrected and released on 17.09.2024)

Click here to check corrigendum, if any