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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 382/2024, CAV 437/2024, I.A. 38607/2024, I.A.
38608/2024, I.A. 38609/2024

CHIEF ENGINEER NATIONAL HIGHWAYS DIVISION UPPWD

.....Petitioner

Through:

versus

MAHAKALESWAR INFRATECH PVT LTD

.....Respondent

Through: Ms. Geeta Luthra, Sr. Adv. with Mr.
S. Sharma, Mr. K. Gupta, Ms.
Anushka Nayyar, Mr. Manas
Agrawal, Mr. Shiv Azad Sharma, Mr.
Charchit Talwar, Mr. Syed Aggar,
Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER
06.09.2024

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I.A. 38610/2024

1. This is an application under Section 34(3) of the Arbitration and Conciliation Act, 1996 ("*Act of 1996*") seeking condonation of delay of 98 days in filing the present petition under Section 34 of the Act of 1996.
2. The facts as per the petitioner itself are that the learned Sole Arbitrator passed the Award on 17.10.2023 and was received by the petitioner on the same day. Thereafter, the respondent (claimant) moved an application for additional award which was allowed by the learned Sole Arbitrator on 30.01.2024. The same was also received by the petitioner on



30.01.2024.

3. As per section 34(3) of Act of 1996, the limitation period available to challenge the Award is three months. Failing to challenge the Award within three months, additional thirty days are granted subject to showing sufficient cause. The Hon'ble Supreme Court in ***Simplex Infrastructure Ltd. v. Union of India, (2019) 2 SCC 455*** has observed as under:-

“9. Section 34 provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award “in accordance with” sub-section (2) and sub-section (3). Sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section (3) of Section 34, would not be an application “in accordance with” that sub-section. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words “but not thereafter” in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an



arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of up to thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.”

4. In the present case, the petitioner could have filed the petition under Section 34 of Act of 1996 by 29.04.2024. Even giving the benefit of additional thirty days as provided under the proviso of Section 34(3) of Act of 1996 on showing sufficient cause, the maximum period for filing the petition will be 29.05.2024.

5. The present petition under section 34 of Act of 1996 has been filed on 07.08.2024 after a delay of 68 days. Hence, in view of the above cited judgment, the delay of 68 days beyond 30 days after three months cannot be condoned.

6. For the said reasons, the present application is dismissed

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7. As the above application is dismissed on the ground of delay which is non-condonable, the petition becomes infructuous.

8. Accordingly, the petition is dismissed.

JASMEET SINGH, J

SEPTEMBER 6, 2024/DM

Click here to check corrigendum, if any