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

+ O.M.P. 1/2024, I.A. 1301/2024, I.A. 3328/2024

DELHI DEVELOPMENT AUTHORITY Petitioner

Through: Ms. Vrinda Kapoor Dev, Ms. Saumya
Soni & Mr. Vishal Vaid, Advs.

versus

JAKSONS DEVELOPERS PVT LTD Respondent

Through: Mr. Sumit Bansal , Mr. Pankaj Gupta,
Mr. Utsav Garg & Ms. Tulna Rampal,
Advs.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

12.02.2024

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Present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award dated 25.04.20223 and corrected on 21.05.202023.

Admittedly, as per the petitioner the present petition has been filed on 19.12.2023. Section 34 (3) of the Arbitration and Conciliation Act, 1996 provides as under:

“(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

The bare perusal of Section 34 (3) of the A&C Act makes it clear that



the petition under Section 34 is required to be filed within three months of the receipt of the award. This period is extendable if a request is made under Section 33, the limitation in such a case would be counted from the date on which the request had been disposed of by the arbitral tribunal. The proviso of Section 34 also makes it clear that the further delay of 30 days can be condoned, if the court is satisfied that the petitioner was prevented by sufficient cause from making the application within the said period of three months. Therefore, the limitation is 90 days and in case the sufficient cause is shown, then objections can be filed in further 30 days. Along with the petition, an application for condonation of delay has also been moved wherein the delay of 122 days has been sought to be condoned.

Learned counsel for the petitioner submits that the petitioner were under genuine and bonafide belief that the file has been misplaced. The department made all the efforts to trace the file and to take the appropriate steps. It has been submitted that the file could be traced on 11.12.2023 and thereafter the steps were taken for filing the petition. Learned counsel for the petitioner submits that this is a peculiar case where on account of the bonafide lapse on the part of the department, delay occurred. Learned counsel submits that if the delay is not condoned the petitioner department would be put to undue hardship. It has further been submitted that the respondent has also filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the same award and if the respondent is heard and the petitioner's doors are closed for challenging the award, it would be prejudice the petitioner.

Per contra, learned counsel for the respondent submits that there is no discretion of the court for extending the period beyond three months and 30



days. Learned counsel submits that even in the application for condoning the delay, no sufficient cause has been shown.

The courts have repeatedly held that the government departments cannot be treated differently and the delay against them cannot be condoned only on account of lapse on the part of the government department. The limitation is an important right which accrues to the party and such rights cannot be taken away on the mere plea of the lapse or failure on the part of the government official. In ***Simplex Infrastructure Limited vs. Union of India*** (2019) 2 SCC 455 it has been inter alia held 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 subsection (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.....

18. A plain reading of sub-section (3) along with the proviso to



Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of [Section 14](#) of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.”

I consider that there is no sufficient cause for the condonation of delay. In the present case the petition was filed even much beyond the period of three months and 30 days. Hence, the present petition under Section 34 cannot be entertained.

The petition along with the pending applications is dismissed

DINESH KUMAR SHARMA, J

FEBRUARY 12, 2024
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