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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 09th October, 2024***

+ CM(M) 3592/2024 & CM APPL. 59997/2024
KELVIN AIR CONDITIONING AND VENTILATION SYSTEM
PRIVATE LIMITED

.....Petitioner

Through: Mr. SK Mongia and Ms. Mahima
Mongia, Advocates.
Mr. Sunil Dutt Dixit and Mr. Shashwat
Dixit, Advocates.

versus

TRIUMPH REALITY PRIVATE LIMITED

.....Respondent

Through: Mr. Gaurav Bahl, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

CM APPL. 59998/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3592/2024

1. Petitioner is defending a claim petition before the learned Sole Arbitrator.
2. In terms of the first procedural order passed by learned Sole Arbitrator on 6th December, 2023, the respondent was supposed to file its *Statement of Defence* on or before 14th February, 2024, which it did not.
3. However in the interest of justice, it was granted one more opportunity.
4. Thereafter, as per the second procedural order dated 3rd May, 2024, it was permitted to file *Statement of Defence* on or before 21st May, 2024 but



since even by that day, no *Statement of Defence* was filed, its right to file the same was closed on 24th May, 2024.

5. An application was moved by the petitioner herein before the learned Sole Arbitrator seeking recall of the above said order and while considering the above said application, the learned Arbitrator framed the following three issues:-

“Issue 1: Whether this Arbitral Tribunal has the power to recall/review its orders?”

Issue 2: Whether this Hon’ble Tribunal has the discretion to condone the delay in filing the SOD and CC?

Issue 3: Whether sufficient cause has been shown by the Applicant/Respondent to condone the delay of 134 days (4 months 13 days) in filing the SOD and CC?”

6. Facts remains that with respect to the first two issues, the findings were eventually in favour of the petitioner herein as the learned Sole Arbitrator held that it was vested with power to recall such order, upon being shown “sufficient cause” and also that Arbitral Tribunal possesses power to condone the delay in filing the *Statement of Defence*, subject to “sufficient cause” being shown.

7. However the application has been dismissed, holding that the petitioner herein had failed to disclose any “sufficient cause”.

8. Learned counsel for the respondent appears on advance notice.

9. This Court is conscious of the fact that the petitioner has invoked jurisdiction of this Court by filing a petition under Article 227 of Constitution of India. Judicial inference in such type of matters has to be minimal and recourse to Article 227 of the Constitution of India has to be under exceptional circumstances when it is shown that such order is absolutely perverse.



10. Reference be made to *IDFC First Bank Limited Vs. Hitachi MGRM Net Limited*: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect”.

25. Recently, in *Surender Kumar Singhal v. Arun Kumar Bhalotia* [*Surender Kumar Singhal v. Arun Kumar Bhalotia*, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [*Deep Industries Ltd. v. ONGC Ltd.*, (2020) 15 SCC 706; *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*, (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; *Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd.*, (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; *Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd.*, 2022 SCC OnLine Del 566 and *Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal*, 2021 SCC OnLine Del 4023] has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

“24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be ‘exceptional circumstances’.



(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained."

11. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers. The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to *Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283*.

12. This Court in order dated 03.10.2024 passed in CM(M) 3265/2024 titled as *M/s Agarwal Associates (Promoters) Limited vs. M/s Sharda*



Developers has also observed that the remedy available under Article 227 of the Constitution of India does not stand knocked off by the *non-obstante* clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed.

13. The issue in the present case is merely with respect to the fact that whether “sufficient cause” existed or not for the purpose of condoning delay in filing *Statement of Defence*.

14. Having seen the order passed by learned Sole Arbitrator, this Court does not find any reason to interfere with the impugned order. The aspect whether the ground shown is “*sufficient or not*” is primarily in the domain of discretionary jurisdiction and even if this Court was to take a contrary view, the impugned order cannot be set aside while exercising supervisory power under Article 227 of Constitution of India, particularly in context of arbitral proceedings where such interference is, to a very large extent, proscribed.

15. There is also nothing which may indicate that exercise of such discretion smacks off any bad faith or demonstrates any perversity, much less of extreme nature.

16. Resultantly, finding no merit and substance, the present petition is dismissed.

(MANOJ JAIN)
JUDGE

OCTOBER 9, 2024/ss