



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 2625 OF 2024

Ozone Research Applications (India)
Pvt. Ltd. A Private Limited Company
registered under the Companies Act,
1956 Having Registered Office at 902,
Ozone House, Khare Town,
Dharampeth, Nagpur through its
authorized representative Mr. Vishal
Waindeskar.

....PETITIONER

....VERSUS....

Ahluwalia Contracts (India) Ltd. A
Public Limited Company registered
under Companies Act, 1956, Having its
registered office at A-177, Okhla
Industrial Area, PH-1, New Delhi-
110020

....RESPONDENT

Shri D.V.Chauhan, Sr. Advocate a/b. Shri S.P.Bodalkar, Advocate
and Shri Parth Malviya, Advocate for petitioner.
Shri W.T.Mathew, Advocate for respondent.

CORAM : SMT. M.S. JAWALKAR, J.

DATE : 28/04/2025

ORAL JUDGMENT

Heard learned Senior Counsel for the petitioner
and learned Counsel for the respondent.

2] The instant petition assails a patently arbitrary, capricious and illegal order dated 17.02.2024 rendered by the Learned District Judge 2, Nagpur in Miscellaneous Civil Application No. 287/2023 *inter alia* condoning the delay in filing application under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, “the Act of 1996”) in spite of the delay being more than the prescribed statutory period of 120 days.

3] The petitioner Company is a Private Limited Company registered under the Companies Act, 1956. The petitioner Company is also a registered MSME Enterprise under the provisions of Micro, Small and Medium Enterprises Development Act, 2006. The respondent Company is a civil contractor carrying out its business activities in the construction industry in New Delhi.

4] The respondent was awarded contract by the Central Public Works Department (CPWD) on behalf of Government of India relating to upgradation and renovation of Dr. SPM Swimming Pool Complex at Mother Teresa

Crescent, New Delhi for Commonwealth Games, 2010.

5] The petitioner approached the respondent for supply, installation, testing and commissioning for Ozonisation System as per the standards and specifications of CPWD for its swimming pool complex project. After due discussions and deliberations between the parties, a Letter of Intent (LOI) dated 02.03.2010 was issued in favour of petitioner for the following work.

A) Supply of brand new Ozonization System at Dr. SPM Swimming Pool Complex at New Delhi and related materials vide Purchase Order (PO) No.5085 dated 22.05.2010 at a price of Rs.3,56,17,130/-.

B) Installation, Testing and Commissioning of brand new Ozonization System vide Work Order (WO) No.ACIL/Elect./SPM-Ozone/648 dated 22/05/2010 at a price of Rs.8,00,000/-.

6] The respondent alleged that the petitioner did not abide by the terms and conditions stipulated in the work

order and completely failed to adhere to its contractual obligations. CPWD time and again requested the respondent to inform the petitioner to rectify the defects, failing which CPWD will get the same executed at the risk and cost of respondent. In view of the aforesaid, payment of respondent from CPWD for the awarded project could not be settled. The dispute was referred to arbitration, and award was passed in favour of respondent on 18.06.2020. CPWD challenged the same before the High Court of Delhi which is pending adjudication.

7] In the meanwhile, the petitioner also filed an application under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSME Act') before the learned Micro and Small Enterprises Facilitation Council, Nagpur. After completion of pleadings and arguments of the parties, the learned Council passed an arbitral award dated 17.06.2017 in favour of the petitioner. The claim balance amount of Rs.88,17,160/- was made payable to petitioner by respondent along with the

statutory interest prescribed under the MSME Act.

8] Respondent claims that the award was received to it on 24.06.2017. On 08.09.2017, the respondent filed an application bearing number O.M.P. (COMM) 343/2017 under Section 34 of the Act of 1996 before the High Court of Delhi for setting aside the arbitral award dated 17.06.2017. However, on 30.01.2023, the Delhi High Court rejected the application under Section 34 of the Act for want of jurisdiction since the seat of arbitration conducted by the Facilitation Council was in Nagpur. Accordingly, respondent was granted liberty to file a petition on the same cause of action before the appropriate Court in accordance with law.

9] After procuring the certified copy of order dated 30.01.2023, the respondent filed an application under Section 34 of the Act on the Online Portal of District Court, Nagpur on 24.03.2023 for setting aside the arbitral award dated 17.06.2017 before the District Judge, 2 Nagpur. After hearing the parties at length, the District Judge vide its order dated

17.02.2024 was allowed the application of respondent and condoned the delay of 27 days in filing application under Section 34 of the Act subject to payment of costs of Rs.10,000/- to petitioner within 15 days from the date of order. The aforesaid order is the subject matter of challenge in the present Writ Petition.

10] The learned Senior Counsel for the petitioner relied on the following citation:-

i) Union of India V/s. Popular Construction Co. [(2001) 8 SCC 470]

ii) Ircon International Ltd. V/s. PNC-Jain Construction Co. (JV) [2023 SCC OnLine Del 534]

11] On the contrary, the learned Counsel for the respondent contended that, the embargo cast upon the Conciliators from acting as Arbitrators is intentionally created by the Legislature to obliterate bias and discrimination as against one party. In the present case, the Conciliators by continuing to act as Arbitrators have manifestly acted

contrary to the statute thus vitiating the entire award. The act of the Conciliators by acting as Arbitrators have destroyed the purity of the award thus making the Award perverse and bad in law.

12] It is further contended that the learned trial Court has rightly condoned the delay in filing application under Section 34 of the Arbitration and Conciliation Act, 1996. In the view of the submissions made in the reply, the present Petition is without merits and, therefore, prayed for the dismissal of the same.

13] I have heard learned Counsel for both the parties, perused impugned order and considered citations relied on by both the parties. The petitioner has given in paragraph No.9 of the petition at page 10, the datewise events for calculation of limitation. The arbitral award passed by MSME Nagpur on 17.06.2017. The award received on 24.06.2017. The application before the Delhi High Court under Section 34 was filed on 08.09.2017. The learned Counsel for petitioner submitted that in view of Section 34(3) which reads as under:

"34. Application for setting aside arbitral award.-

(1)

(2)

(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."

14] In view of this provision, 75 days of limitations have lapsed, as on 08.09.2017, out of 90 days and 15 days remained along with the discretionary period of 30 days. The Delhi High Court dismissed the application due to lack of jurisdiction on 30.01.2023. Thus balance limitation of 15 days commenced from 31.01.2023 and run till 14.02.2023. From 15.02.2023, the discretionary period of 30 days commenced. The application for certified copy of order dated 30.01.2023 of

Delhi High Court was made on 04.03.2023, which was received on 14.03.2023. Thus it is contended that on 04.03.2023, period of 90 days and 16 days out of the discretionary period of 30 days have lapsed. Excluding the time period for procuring the certified copy of order dated 30.01.2023 from 14.03.2023 the respondent had 14 days of discretionary period to file the application i.e. till 28.03.2023. The documents for e-filing were uploaded by the respondent on the portal on 24.03.2023. On 31.03.2023, Section 34 application was finally submitted verified by CIS and registration number was provided. The contention of the petitioner is that there was delay of 3 days beyond the permissible limit prescribed by the statute.

15] Learned Counsel for respondent has fairly submitted that there is no dispute over the dates. However, which is the date to be considered as filing of application under Section 34 is material. It is his considered opinion that the date of uploading the application is the date of filing. Section 34 (3) the proviso of which makes it clear that the

award can be challenged under Section 34, within 90 days from the receipt of copy of the award or with a request, had it been made under Section 33 for correction, interpretation of award and additional award from the date on which that request had been disposed of. If the Court is satisfied that applicant was prevented by sufficient cause from making the application during the said period of 3 months. It may entertain the application within a further period of 30 days, but not thereafter.

16] Learned Counsel for petitioner strongly objected to the observation by the learned Commercial Court that the Court should be liberal while accepting the reasons given by the applicant for its failure to approach within 3 months period as provided by Section 34 (3) of the Act, however, this observation in context that those 30 days period has provided as per proviso to Section 34(3) of the Act. The Court should liberal while accepting the reasons given by the applicant for failure to approach within 3 months period as provided by Section 34(3) of the Act. It is held that there is sufficient reason

with the applicant for not approaching within 3 months period as provided under Section 34 (3) of the Act. However it can be extended for further 30 days, if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of 3 months. There is no dispute over the fact that the applicant uploaded the application on 24.03.2023 under Section 34 of the Act with present application to condone the delay. Thereafter only physical verification was done and physically it was registered on 31.03.2023.

17] Learned Counsel for respondent/applicant relied on judgment of this Court in Interim Application (L) No.8410 of 2023 in Commercial Suit No.178 of 2022 dated 18.01.2024, this Court in the said judgment relied on e-filing Rules of the High Court of Bombay 2022, which applies to the High Court of Judicature at Bombay and its benches, the District Court and Tribunal under the control and supervision of High Court of Bombay. Rule 2.1 defines what is 'action' which includes all proceedings instituted in this Court such as suits,

criminal complaints, appeals, civil or criminal writ petitions, revision petitions, contempt petitions, execution petitions, arbitration petitions, probate cases and interlocutory applications. Rule 14 provides for computation of time/limitation shall be computed for actions through e-filing. Rule 14.1 reads as under:

“14.1 Wherever limitation/time limits apply, it will be the responsibility of the party concerned to ensure that the filing is carried out well before the cut-off date and time. The date of e-filing will be taken as that date when the Action is electronically received in the Registry within the prescribed time on any working day. For computing the time at which e-filing is made, Indian Standard Time (IST) will apply.”

18] The provisions for limitation governing online e-filing will be the same as those applicable to physical filing. Thus, the Rule makes it clear that the date of e-filing will be taken as that date when the ‘Action’ is electronically received in the registry, within the prescribed time or any working day. This Court held that when ‘action’ is electronically received in the registry, it shall be considered as the date of e-

filing. It may be possible that on an 'action' being generated, there maybe certain objections which will have to be notified on a subsequent date, as in case of physical filing of any proceeding, the date of its filing, is the date when it is tendered in the Registry of the Court. The objections maybe notified at a subsequent point of time and time shall be given to cure the objections, but the filing date do not get postponed till the removal of office objections and for all purposes it shall be the date on which the proceedings are for the first time tendered in the Registry.

19] On perusal of the case details from extract of a Court website for Civil M.A. No.287/2023 is perused, e-filing case stages shows that case entry initiated on 24.03.2023. E-filing case final submission shown on 31.03.2023 and case status in CIS verified on 31.03.2023. Clause (III) case details shows that cause of action relief claimed is set aside and permission is granted to the applicant to file the present appeal under Section 34 of the Arbitration and Conciliation Act, 1996 beyond a period of 90 days. However, documents

are sufficient to demonstrate that e-filing of documents was done on 24.03.2024. As such, it is within discretionary period of 30 days as provided under Section 34(3) of the Act.

20] Learned Counsel for petitioner relied on *Union of India (supra)*, wherein the Hon'ble Apex Court held in para 12 as under:

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

However, there is no dispute over this proposition. In fact application is for condonation of delay as per proviso to Section 34(3) by invoking discretion to condone the delay after a period of 90 days to the extent of 30 days by the

District Court.

21] Learned Counsel for petitioner also relied on *Ircon International Ltd (supra)*, in support of his contention that there cannot be any liberal approach in condoning the delay. In view of Section 34(3), condonation of delay cannot be granted liberally. However, as observed earlier the learned Commercial Court, considering the fact that application is filed within discretionary 30 days and in the opinion of District Judge, there was sufficient cause for not filing application within 90 days. Such observation is made, however, learned Commercial Court to keep in mind that this time limit prescribed under the Act is laid down considering the nature of dispute for speedy disposal of the matter. So it may take care in future for using the word “liberally” in the commercial matters.

22] The learned Counsel for petitioner, lastly submitted that the respondent be directed to deposit 75% of award amount in view of Section 19 of MSME Act.

23] As discussed above, I am of the considered opinion that the order passed below by the learned Commercial Court so far as condonation of delay is concerned, there is no error or illegality in the said application for condonation of delay along with application under Section 34 of the Act is filed within the extended limitation of 30 days and considering the reason, the Writ Petition is allowed.

24] This claim of the petitioner that it is not within limitation is rejected. However, in view of provision of Section 19 of MSME Act, the respondent is directed to deposit 75% of amount of award by 25.06.2025 before the Commercial Court i.e. District Judge No.2 Nagpur.

25] The Writ Petition is disposed of in above terms.

(Smt. M.S.Jawalkar, J.)