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

Date of Decision: 09.03.2021

+ O.M.P. (COMM) 407/2020

DELHI DEVELOPMENT AUTHORITY Petitioner

Through: Mr. Rajiv Bansal, Senior Advocate
with Ms. Kanika Singh, Ms. Jasmeet
Kaur Ajimal and Mr. Abhishek
Pandey, Advocates.

versus

VARINDERA CONSTRUCTION LIMITED Respondent

Through: Mr. Bhupesh Narula, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

I.A. 3203/2020 (for exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

**I.A. 3205/2020 (for delay in re-filing on behalf of the Petitioner) &
I.A.9421/2020 (delay in filing of petition on behalf of the Petitioner)**

3. By way of the present applications, the Petitioner has sought condonation of 2 days delay in re-filing the petition and 28 days in filing the petition. The factual background is necessary to be noted for deciding the present applications. The award impugned is dated 2nd November, 2019. The date of

the receipt of the award is not in dispute as the Petitioner confirms the date of award to be the date of receipt. The petition before this Court came to be filed first on 28th January, 2020. It was re-filed on 27th February, 2020, and then again on 29th February, 2020 and finally on 2nd March, 2020. On 2nd March, 2020, the petition as filed was accompanied by an application being I.A 3205/2020 seeking condonation of delay in re-filing. Later, another application [I.A. 9421/2020] was filed seeking condonation of delay in filing of the petition. These two applications are under consideration.

4. Mr. Rajiv Bansal, learned Senior Counsel for the Petitioner submits that the petition was filed within the period of limitation and was a proper filing. Further, without prejudice to Petitioner's rights and contentions, Mr. Bansal submits that the filing before this Court as on 27th February, 2020, and certainly the one re-filed on 29th February, 2020 was complete in all respects and all the defects had been removed. He submits that if for any reason the first filing on 28th January, 2020 is considered to be deficient or *non est*, then the re-filed petition as on 27th February, 2020, being entirely in compliance with the rules, was within the prescribed period of 30 days under Section 34(3) of the Act. Since the Petitioner was prevented by sufficient cause from making the application within the prescribed time, the Court may condone the delay and entertain the petition.

5. Mr. Bhupesh Narula, learned counsel for the Respondent vociferously opposes the prayer made in the application. Mr. Narula submits that there is a complete abuse of process of law at the hands of the Petitioner. He submits the petition, in its original form is a *non-est* filing, and the same is evident from a perusal of the objection sheet/defect sheet issued by the Registry. It

had several deficiencies that were non-curable, as it did not contain the name of the person filing on behalf of the Petitioner; signature of Petitioner; not accompanied with a *vakalatnama* etc. amongst several other defects. The petition that was re-filed is not the same. It is an entirely a different petition in comparison to the one filed on 28th January, 2020. The grounds urged in the original petition have been entirely transformed. If the Petitioner had to amend the grounds, an appropriate application for amendment ought to have been filed and amendments should have carried out with the leave of the Court. The Petitioner cannot in the process of re-filing, alter the grounds and file a completely different petition. He further submits that the petition filed on 28th January/29th January, 2020, should have been listed before the Court in accordance with the Delhi High Court Rules for the purpose of rejecting the same but the same was not done. Instead, under the same filing number the amended petition was re-filed on 27th February, 2020. Mr. Narula further submits that the Petitioner has not been able to show sufficient cause for seeking condonation of delay. He submits that the reasons stated in I.A. 3205/2020 are entirely different from what has been stated I.A. 9421/2020. In the first application seeking condonation of delay, it has been stated that the record was voluminous and the process of removing defects took some time and the concerned associate of the counsel for the Petitioner had left the office. In the second filing, an altogether different plea has been raised. The health reasons of the counsel cited for seeking condonation of delay are an afterthought and are not genuine. The first petition was filed for the purpose of stopping the period of limitation from expiring and thereafter when the Petitioner gathered all the requisite documents and framed the petition as is required for filing, the said application was filed seeking condonation of

delay. The facts and events narrated in the applications reflect that the petition is an abuse of process of the Court. The Petitioner is playing a fraud on this Court by making false statements and suppressing facts. In support of this submission, Mr. Narula relies upon the judgment of this Court titled as ***Lalit Kala Akademi v. Svapn Constructions and Anr***¹. The relevant portion whereof as extracted hereinbelow:

“30. The petitioner has given only one explanation for the delay in re-filing and that is that he was unable to remove the objections and the defects as the fresh typing of voluminous documents and annexures took lot of time. No explanation has come forward from the petitioner regarding his inability to file the petition in a proper format as mentioned in the objections dated 16th February, 2013. On 16.02.2013, registry did not ask petitioner to refile its documents after retyping it. Objection was that Plaint was not as per the new format. It was only on re-filing the petition in new format that registry took 12 objections (reproduced above) and petitioner took 60 mere days to remove all those objections. No cogent explanation is forthcoming from petitioner for such delay. It was the petitioner who has to give reasonable grounds or reasons which prevented him from filing or refiling the petition within the specified period. In view of Asha Sharma case (supra) the date of filing of present petition is 18.05.2013, on which it was presented after removal of defects.”

6. Mr. Narula also relies upon the judgment titled as ***Three C Universal Developers Private Limited & Ors. v. Horizon Crest India Real Estate & Ors.***², and the relevant portion of the same reads as under-

“47. Drawing inference from the above referred judgments, in the given facts, the petition having been filed only on October 23, 2019 (as a fresh petition and also not as a proper petition) which

¹ OMP No. 509/2013

² OMP(COMM) No. 461/2019

is beyond period of 3 months, which is the period of limitation for filing a petition for setting aside an arbitral award and in the absence of an application seeking condonation of delay showing sufficient cause, the period beyond 3 months cannot be condoned. The plea raised by Mr. Mukhopadhaya that the petition is barred by limitation needs to be accepted and as such the petition filed under Section 34 of the Act of 1996 challenging the award dated July 2, 2019 is not maintainable and the same is dismissed with costs of Rs. 2 lacs to be paid by the petitioners to the Delhi High Court Advocates Welfare Fund within two weeks from today.”

7. The Court has heard the counsels at length and considered the submissions put forth by the counsels.

8. Firstly, the Court is of the view that the judgments relied upon by the Respondents during arguments, are clearly distinguishable. The judgment in ***Lalit Kala Akademi*** (supra) would not apply to the present factual matrix as in the said case the filing and re-filing was beyond the prescribed period of 30 days and thus, could not be condoned. Similarly, ***Three C Universal Developers Private Limited*** (supra) is also distinguishable on the basis of one very important fact being, the absence of an application for condonation of delay showing sufficient cause.

9. The period of limitation from filing an application for setting aside the award is three months which can be extended by another period of 30 days, on sufficient cause being shown to the satisfaction of the Court. In ***Northern Railway v. Pioneer Corporation Private Limited***³, the Supreme Court held that re-filing of application after curing the defects in the main application

³ (2017) 11 SCC 234

does not amount to fresh filing for counting limitation.

10. Be that as it may, the undisputed fact before the Court is that the petition as on 27th February, 2020/29th February, 2020 was complete in all respects, *sans* the application for condonation of delay. We may also note that although the petition on 27th February, 2020, had some procedural defects, however such defects were minor and not of such a nature that it can be held that the filing was a *non-est* filing. Thus, without going into the question whether the petition in its original form was *non-est* or not, if the date of re-filing i.e., 27th February, 2020 is construed to be the date of first filing, one can notice that the said filing is although delayed, being beyond the stipulated period of three months, but is still within 30 days, as contemplated under Section 34(3) of the Act. This delay in filing if computed from 27th February, 2020 is less than 30 days and the Court can thus entertain the petition, provided the Court is satisfied that the Petitioner was prevented by sufficient cause in filing the Petition within the time allowed. This Petition was re-filed on 29th February 2020 and then on 2nd March, within the time prescribed under Delhi High Court Rules.

11. This brings us to the question, whether indeed a sufficient cause has been disclosed by the Petitioner to condone the delay. In the application it has been stated that the petition was filed on 28th January, 2020 (wrongly mentioned as 29th January, 2020), and that the Petitioner is a government department and has several levels/ departments at which the award has to be considered, including taking an opinion from the panel counsel representing the Petitioner before this Court. Further, it has been stated that this decision making is time consuming and therefore the delay had occurred. It is further

explained that keeping in view the high value of the award and the technical issues involved therein, the decision to challenge the award took time at the end of the Petitioner. Accordingly, the petition was filed, though under objection, on 28th January, 2020.

12. It has been further explained that the counsel representing the Petitioner was suffering from viral fever and was indisposed for the second week of February and in the meantime, the process of collating all the papers and seeking clarification was done and the petition was accordingly re-filed on 27th February, 2020, alongwith the statement of truth, the requisite affidavits duly attested with signatures on all pages. The further defects pointed out by the Registry were removed and petition was re-filed on 29th February, 2020.

13. Mr. Bansal, during the course of arguments has drawn the attention of this Court to the decision in *Tirupati Structural Ltd. v. Indian Oil Corporation Ltd. and Ors.*⁴, wherein it has been held as under:

“3. In my opinion, once the law is harsh that there cannot be condonation of delay after three months plus 30 days then if there is any delay beyond three months upto 30 days, Courts should be liberal in allowing condonation of delay upto 30 days, otherwise vested rights and valuable rights of an objector to file objections to the Award would be rejected only on the ground of limitation, though every endeavour should be made to decide the objections on merits.”

14. Besides, Mr. Bansal has also drawn the attention of this Court to a judgment of a Division Bench of this Court, though cited by the Respondent, being *The Executive Engineer (Irrigation & Flood Control) v. Shree Ram*

⁴ 2017 SCC Online Del. 11657

*Construction Co.*⁵. Though this judgment was in a different context, however the observations made which are pertinent are as follows-

“11. Learned counsel for the Respondent has vociferously and repeatedly reminded us that no application has been filed by the Appellant under Section 34(3) of the A&C Act. This provision, we think, ought to be reproduced for a comprehensive analysis of the law: -

Section 34: Application for setting aside arbitral award

....

(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.

In contradistinction to the opening words of sub-section(3), the proviso does not postulate the filing of an application. It only contemplates the Court’s satisfaction that the Applicant/Objector was prevented by sufficient cause from making the application/Objections within the said period of three months. We do not find ourselves constrained in any manner whatsoever from doing complete justice because of the absence of an application seeking condonation of delay if we are otherwise satisfied that sufficient cause exists. While doing so, we are fully mindful of the fact that we are not expanding the scope of the main provision. We say this despite the fact that learned counsel for the Appellant had argued that Section 34(3) of the A&C Act has no application to the present case for the reason that the initial filing had been carried out within the prescribed period of three months, albeit in the wrong Court. It also appears to us that

⁵ 2010 (120) DRJ 615

where a remedy of an appeal has been provided for, the interpretation of the provision for computation of the period should be carried out liberally so that the remedy is not rendered illusory (See State of Bihar –vs- Kameshwar Prasad Singh, (2000) 9 SCC 94, Bhag Mal –vs- Munshi, (2007) 11 SCC 285 and Sandhya Rani Sarkar –vs- Sudha Rani Debi, (1978) 2 SCC 116. This is why the Hon’ble Supreme Court has, time and again, condoned the delay in filing appeals sometimes even beyond a period of a year.”

15. In *Perumon Bhagvathy Devaswom, Perinadu Village v. Bhargavi Amma (Dead) by LRs*⁶, the Supreme Court has observed that the words “sufficient cause” for not making the application within the period of limitation should be understood and applied in a reasonable, pragmatic, practical and liberal manner, depending upon the facts and circumstances of the case, and the type of case. The Petitioner has also filed before this Court, a medical certificate to show that the counsel appearing on its behalf was indeed indisposed. Though the Respondent has attempted to contradict the same by citing orders of the Court to show that the counsel was indeed appearing before another bench and therefore, this is just a convenient excuse for explaining the delay, however, the Court cannot see any dilatory tactics, want of bona fides, and deliberate negligence on the part of the Petitioner. Moreover, the delay is reasonable and not excessive. Keeping that in view, in the opinion of this Court, ground of illness of the counsel as stated in the application for condonation of delay seems to be a good reason for the Court to condone the delay. In these circumstances, the Court has no hesitation to say, the Petitioner has satisfactorily explained the reason for the delay. The delay of 28 days in

⁶ (2008) 8 SCC 321

filing the present petition and the delay of 2 days in re-filing stand condoned. The applications are allowed.

I.A. 3204/2020 (under Section 36(2) & (3) seeking stay of the arbitral award)

16. Issue notice. Mr. Narula, learned counsel for the Respondent accepts notice.

17. Subject to the Petitioner depositing the 75% of the principal amount awarded of Rs. 3,23, 01,411/- in the name of Registrar General of this Court within a period of six weeks, the execution of the award shall remain stayed. (There is a dispute regarding adjustment of the amount which shall be considered at a later stage).

18. List on 7th July, 2021.

OMP (COMM.) 407/2020

19. Issue notice. Mr. Bhupesh Narula, learned counsel for the Respondent accepts notice.

20. Reply be filed within two weeks. Rejoinder, if any, within two weeks thereafter.

21. List on 7th July, 2021.

SANJEEV NARULA, J

MARCH 9, 2021

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(corrected and released on 26th March, 2021)