IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 08.04.2021

\+ **O.M.P. (COMM.) 489/2019**

DELHI STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. ..... Petitioner

versus

M/S MAPSA TAPES PVT LTD ..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Anuj Chaturvedi, Advocate.

For the Respondent : Mr Ajay Kohli and Ms Shrivalli Kajaria,
: Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner (hereafter 'DSIIDC') has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1966 (hereafter the 'A&C Act'), *inter alia*, impugning an Arbitral Award dated 24.12.2018 passed by the Arbitral Tribunal (hereafter the 'impugned award') comprising of a Sole Arbitrator. Further, the petitioner prays that the respondent (hereafter 'Mapsa') be directed to

pay the outstanding ground rent amounting to ₹1,57, 87,606/- (up to 05.07.2018) for the execution of the Supplementary Lease Deed.

2. DSIIDC is a Government of NCT of Delhi undertaking, established in 1971, tasked with aiding, counseling, assisting and financing promoted projects to transform the face of Delhi. Mapsa is a company registered under the Companies Act, 1956. The impugned award was rendered in respect of the disputes that had arisen in relation to a commercial plot measuring 1000 sq.m. located at the Bawana Industrial Area, which was purchased by Mapsa from DSIIDC in an open auction on 30.10.2006 bearing Plot No. 1/07, Sector – 1, Cluster – O (1000 sq.m.), Bawana Industrial Area, Delhi (hereafter 'the Plot').

3. The Plot was purchased by Mapsa for a consideration of ₹6.81 crores and Mapsa deposited ₹1,70,25,000/- with DSIIDC on the date of the auction (that is, on 30.10.2006). In terms of the auction, the total consideration was to be paid by Mapsa in two tranches of 25% and 75%. On 13.11.2006, DSIIDC issued an Allotment cum Demand Letter (hereafter the 'Letter of Allotment'), directing Mapsa to pay the balance sum amounting to ₹5,10,75,005/- within ninety days from the receipt of the said letter. In accordance with Clause 7 (i) of the General Terms and Conditions of Auction (hereafter GTCA), Mapsa was required to pay ground rent for the Plot allocated to it from the date of issuance of the Letter of Allotment, that is, from 13.11.2006.

4. Mapsa responded to the Letter of Allotment on 16.01.2007, stating that in terms of Clause 5 (i) of the GTCA, DSIIDC was required to attach four copies of the Perpetual Lease Deed along with a copy of

the site plan. A reminder to the aforesaid effect was sent by Mapsa to DSIIDC on 22.01.2007. DSIIDC did not accede to the said request. On 12.02.2007, Mapsa deposited the balance amount due in terms of the GTCA – 75% of the purchase amount, that is, ₹5,10,75,005/-.

5. On 14.02.2007, DSIIDC informed Mapsa that the finalisation of the Lease Deed format will take some time and sought certain additional details from Mapsa. On 08.06.2007, Mapsa complied with the said directions.

6. Thereafter, on 19.06.2007, Mapsa was handed over possession of the Plot, however, the execution of the Lease Deed was deferred on the ground that the format for the Lease Deed was yet to be finalised. Mapsa followed up with DSIIDC for the execution of the lease deed and sent a number of letters in that regard.

7. On 31.07.2009, DSIIDC supplied Mapsa four copies of the Lease Deed, which was returned to DSIIDC duly filled out by Mapsa on 07.07.2010. The said Lease Deed was registered on 19.10.2010. Thereafter, by letters dated 29.08.2011 and 05.09.2011, Mapsa pointed out certain inaccuracies in the Lease Deed and requested that a corrigendum be issued. Thereafter, by a letter dated 03.08.2011, Mapsa sought a No Objection Certificate (NOC) from DSIIDC for the approval of building plans by the Municipal Corporation of Delhi (MCD). On 24.11.2011, DSIIDC conveyed a demand of ₹2,41,972/- on account of arrears of ground rent till 30.11.2011. This amount was disputed by Mapsa, however, it deposited the aforesaid amount under protest on 30.11.2011.

8. Aggrieved by the demand of ground rent, Mapsa filed a Writ Petition before this Court [W.P.(C) 1831/2012 captioned '*M/s Mapsa Tapes Pvt Ltd v. DSIIDC Ltd*.'] praying that the aforesaid sum of ₹2,41,972/- be refunded to it and further, that DSIIDC produce the Architectural Control Drawing (ACD). According to DSIIDC, during the course of those proceedings, it was placed on record that the format for a Lease Deed had been modified with the approval of the competent authority and thereby, the requirement of submission of the ACD had become redundant. The said petition was disposed of by this Court by an order dated 06.05.2015, with liberty to Mapsa to avail alternative remedies. Thereafter, Mapsa filed an appeal (bearing LPA No. 611/2015) impugning the aforesaid order dated 06.05.2015. The said appeal was disposed of by an order dated 09.09.2015, whereby the order dated 06.05.2015 was upheld.

9. On 10.07.2013, DSIIDC provided Mapsa with four sets of the Supplementary Lease Deed. Under the cover of a letter dated 14.10.2013, Mapsa forwarded a photocopy of the original Lease Deed for the preparation of the Supplementary Lease Deed. On 16.12.2013, DSIIDC sent a letter demanding ₹37,12,915/- as ground rent till 31.12.2013 in order to execute the Supplementary Lease Deed.

10. On 12.06.2017, an Arbitral Tribunal comprising of a Sole Arbitrator was appointed, which rendered the impugned award dated 24.12.2018. Before the Arbitral Tribunal, Mapsa filed its Statement of Claims, claiming the following: (i) business and financial losses totaling

to ₹30,01,34,501/-; and (ii) payment of interest at the rate of 18% over and above the aforesaid claim amount.

11. Mapsa contended before the Arbitral Tribunal that the rent-free period must commence from the date on which the rectified Lease Deed between Mapsa and DSIIDC is executed. The Arbitrator held in favour of Mapsa and directed that the ground rent payment shall be calculated only from the date of execution of the Supplementary Lease Deed. However, the Arbitral Tribunal denied Mapsa's claim that it was liable to be compensated by DSIIDC for the delay in enabling Mapsa tp carry out any construction on the Plot. The Arbitral Tribunal observed that Mapsa was trying to sneak in a claim based on an increase in construction costs. It also reasoned that the agreement between the parties did not contemplate liquidated damages to be paid by a party as compensation in the eventuality of a default by the other. In addition, the Arbitral Tribunal also found that that Mapsa's calculation of damages was hypothetical and based on guesswork. The Arbitral Tribunal also held that Mapsa had benefitted considering that the cost of the Plot had increased substantially since the date of allotment and business opportunities too had increased in the area. Regarding the question of the ACD, the Arbitral Tribunal found in favour of Mapsa inasmuch as, Mapsa had pursued DSIIDC to provide the same but DSIIDC had failed to respond. And, therefore, Mapsa was required to be compensated in this regard.

12. The Arbitral Tribunal also held DSIIDC liable to pay interest to Mapsa against the land cost deposited with DSIIDC at the time of the

auction and on the monies deposited by Mapsa with DSIIDC at the time of signing the Lease Deed. In view of this, the Arbitrator awarded interest at the rate of 6% per annum, till the signing of the Lease Deed.

13. The Arbitral Tribunal directed DSIIDC to execute the modified Supplementary Lease Deed within thirty days from the date of the impugned award. And, further held that Mapsa would be liable to pay ground rent from the date on which the said Supplementary Lease Deed is executed. Next, the Arbitral Tribunal directed that the period between 04.06.2018 till 24.12.2018 be excluded from the period allowed for the completion of the construction, since it found Mapsa had not been forthcoming in this regard. The Arbitral Tribunal further clarified that if there is any further delay by Mapsa in implementing the Award, the period shall be excluded from the rent-free period.

14. Aggrieved by the same, DSIIDC has challenged the impugned award.

Submissions

15. Mr. Anuj Chaturvedi, learned counsel appearing for the petitioner (DSIIDC) advanced arguments on two broad fronts. First, related to the condoning of delay in filing (seventeen days) and re-filing (totalling to 184 days) the petition. And second, he contended that the impugned award ought to be set aside by this Court since the same is contrary to the provisions of the contract between the parties.

16. Regarding DSIIDC's challenge to the impugned award, Mr. Chaturvedi submitted that the same ought to be set aside since it is

contrary to the express provisions of the Contract between the parties. He submitted that as per Clause 7 of the GTCA, every successful bidder/allottee was liable to pay, in addition to the premium payable, ground rent for the land allotted at the rate of ₹1 per annum per plot for the first five years from the date of allotment and thereafter, at the rate of two and a half percent of the premium originally payable per annum.

17. He contended that since Mapsa was handed over the possession of the plot in 2007, it was bound to pay the enhanced ground rent as per the contract between the parties (GTCA) after completion of five years. He contended that the impugned award had altered the provisions of the contract, which is impermissible. The impugned award that the ground rent should be calculated from the date of execution of the Supplementary Lease Deed and not the date of allotment, is against provisions of Clause 7 (i) of the GTCA. In support of his contention, he relied upon the decision of the Supreme Court in ***Rajasthan State Mines & Minerals Ltd. v. Eastern Engg. Enterprises & Anr.: (1999) 9 SCC 283*** and the decisions of this Court in ***Mapsa Tapes Pvt Ltd v. DSIIDC: (2015) SCC OnLine Del 9369*** and ***Suraj Mal Yadav v. DSIIDC: Rev. Pet. 364 of 2018 decided on 27.09.2018***.

18. Next, he contended that the learned Arbitrator had taken contradictory stands in similar matters decided by him. In another proceeding, but arising from a similar cause of action, between DSIIDC and a third party, the learned Arbitrator on being faced with similar claims, upheld the express provisions of the contract therein.

19. Mr. Kohli, learned counsel appearing for Mapsa countered the aforesaid submissions. He submitted that it is settled law that the construction of terms of a contract is primarily for an Arbitrator to decide and unless the interpretation is found to be perverse and that no reasonable person would take such a view, there would be no ground to interfere with the award under Section 34 of the A&C Act. Mr. Kohli submitted that the impugned award is well reasoned, based on evidence and thus, ought not to be interfered with by this Court. He contended that the delay in handing over possession of the plot and in execution of the Lease Deed was attributable solely to DSIIDC. Though possession was given to Mapsa on 19.06.2007, Mapsa could not carry out any construction activity on the same before the execution of the Lease Deed. Further, the construction also required that the sanction of the building plans Municipal Corporation of Delhi (MCD) to be in terms with the ACD, which was never supplied by DSIIDC.

20. A perpetual lease deed was executed between the parties on 26.08.2010. The application for sanctioning the building plans was submitted to the MCD on 29.09.2011. However, these were rejected for the want of ACD. Although DSIIDC had included a condition that the development be in accordance with ACD, the same had not been prepared and thus were not available with DSIIDC. He submitted that on 27.07.2020, the Supplementary Lease Deed was registered and the ACD requirement removed. The same was registered on 13.08.2020. Thus, Mapsa was unable to develop the said plot in any manner prior to that date.

Reasons and Conclusion

21. The controversy that falls for consideration before this Court is twofold. The first and foremost is whether the delay in filing/re-filing of the petition ought to be condoned. The second question to be considered by this Court, which is contingent on the delay being condoned, relates to the merits of the dispute. DSIIDC claims that the impugned award is patently illegal as the Arbitral Tribunal has directed the parties to enter into a Supplementary Lease Deed entailing payment of ground rent from the date of the lease instead of the date of the Allotment Letter. The terms and conditions of the auction (GTCA) provide for ground rent to be payable from the date of allotment of the Plot. Thus, according to the DSIIDC the impugned award is contrary to the terms of the contract and beyond the jurisdiction of the Arbitral Tribunal.

Delay in filing/re-filing the petition

22. The impugned award was delivered on 24.12.2018. DSIIDC filed the petition challenging the impugned award on 12.04.2019. This was beyond the period of three months from the date of the award but was within the period of further thirty days, which could be condoned by this Court. However, the said filing was defective. Amongst other defects, it was not accompanied by a Statement of Truth and was, accordingly, returned as such. The petition was once again filed/re-filed on 02.08.2019. Whereas the petition filed on 12.04.2019 was filed under the login ID – D82592018; the petition was filed/re-filed on 02.08.2019 by using another login ID – D13762002. A new Diary

Number was given (Diary No. 728623/2019) and the said filing was treated as a fresh filing by the Registry of this Court. Concededly, the counsel filing the petition on 02.08.2019 was also not aware that the petition assailing the impugned award had been filed earlier on 12.04.2019.

23. The petition was accompanied by an application (IA No. 16412/2019) seeking condonation of delay of 129 days. The calculation of the said delay was premised on the basis that the petition was filed for the first time on 02.08.2019.

24. The petition filed on 02.08.2019 was also defective and thus, was returned on 06.08.2019. The said petition was, thereafter, re-filed on 23.09.2019, that is, after one month and seventeen days. This too was defective. It is to be noted that some of the earlier defects had not been cured. The petition was marked as defective on 25.09.2019 and was returned. It was, thereafter, re-filed after twenty-three days. But the petition, as filed, was also defective and marked as such on 21.10.2019. It was re-filed on 08.11.2019. However, the defects had not been cured and therefore, it was again marked as defective and sent for re-filing on 13.11.2019. It was, thereafter, re-filed on 16.11.2019. It was marked as defective yet again and was sent for re-filing on 18.11.2019. It was once again re-filed on the next day, that is, on 19.11.2019. The petition was still defective and was returned on 20.11.2019. It was re-filed on the same date and was listed before this Court on 25.11.2019.

25. The Registry of this Court had calculated the delay in filing the petition as 130 days. In addition, there was a delay of seventy-six days in re-filing the petition.

26. The application seeking condonation of delay of 129 days in filing the petition (IA No.16412/2019) and the application seeking condonation of delay of seventy-six days in re-filing the petition (IA No.16414/2019) were dismissed by this Court by an order dated 26.11.2019, *inter alia,* on the ground that the Court has no jurisdiction to condone the delay beyond a period of 120 days in terms of Section 34(3) of the A&C Act.

27. Consequently, the above captioned petition was also dismissed.

28. DSIIDC sought a review of the above mentioned order and filed an application (IA No.5982/2020) pointing out that DSIIDC had filed the petition assailing the impugned award for the first time on 12.04.2019 and therefore, the delay in filing the petition was only seventeen days and therefore, this Court had the jurisdiction to condone the same. Although the said application seeking review of the order dated 26.11.2019 was filed after almost eight months of the said order; this Court allowed the same since it was found that DSIIDC had filed a petition to set aside the impugned award for the first time on 12.04.2019 and thus, the same was required to be accepted as the date of initial filing of the petition. Consequently, the reason for dismissing the petition – that is the Court did not have the jurisdiction to condone the delay – did not hold good.

29. It is apparent from the above that the delay on the part of DSIIDC in proceeding with the matter can be classified into three parts. The first is a delay of seventeen days in filing the initial petition. The second is a delay in re-filing the petition from 12.04.2019 to 02.08.2019, that is, a delay of 113 days. The third is a delay re-filing the petition that was filed/re-filed on 02.08.2019 till 20.11.2019, that is a delay of 117 days.

30. Although the petitioner had sought condonation of delay of 129 days in filing the petition (IA No.16412/2019); however, the same was under the misconception that the petition was filed for the first time on 02.08.2019. There is no application seeking condonation of delay in re-filing for the period 12.04.2019 to 02.08.2019. However, DSIIDC has filed an application (IA No.16414/2019) seeking condonation of delay of seventy-six days in re-filing the petition.

31. Since there is delay of only seventeen days in filing the petition, it is not disputed that this Court would have the jurisdiction to condone the same. The only question to be addressed is whether DSIIDC has provided reasons to satisfy this Court that it "*was prevented by sufficient cause from making the application within a period of three months*".

32. According to DSIIDC, since it is a Government corporation, certain delays are intrinsic in its functioning and therefore, this Court should not take an adverse view in respect of the said delay. The learned counsel appearing for the DSIIDC referred to the decision of the Supreme Court in ***State of Manipur & Ors. v. Koting Lamkang: (2019) 10 SCC 408*** and submitted that functioning of the Government is of impersonal nature and therefore, it is necessary for the Courts to be

conscious of the bureaucratic delay and the slow pace in decision making as well as the routine way in deciding whether the State should appeal against a judgment adverse to it. He submitted that the said decision had been rendered by a Bench of three judges and therefore, would overrule other decisions rendered by the Supreme Court (including the decision in ***Office of the Chief Post Master General v. Living Media India Ltd. & Ors.: (2012) 3 SCC 563***, which had been rendered by a Bench comprising of two judges).

33. The only averment made by DSIIDC in its application seeking condonation of delay in filing the petition (IA No.16412/2019), as stated in the application, is set out below:-

> "4.It is respectfully submitted that the Petitioner herein is the State and it is in the common knowledge that the departmental procedures involved in the State Machinery makes it difficult to prepare a petition within the stipulated period as sanctioned by limitation. That there are different branches of State offices involving senior officers and hence decision making consumes a lot of time besides the work pressure, which already exists in the State Departments."

34. DSIIDC had also filed an affidavit on 24.12.2020, seeking to explain the delay in filing the petition. It had explained that the impugned award was received on 24.12.2018 and was then forwarded to the office of the Managing Director, DSIIDC on 26.12.2018. It was received in the REM Division, DSIIDC on 31.12.2018. It was, thereafter, examined and it was put up before the Competent Authority for necessary directions on 03.01.2019. Thereafter, on 08.01.2019, the

file was put up to the Executive Director, DSIIDC for necessary approvals. Some queries were raised by the Executive Director and they were answered by Divisional Manager (REM) on 16.01.2019. Thereafter, the file was forwarded to the Managing Director for approval on 22.01.2019. It was, thereafter, marked to the Divisional Manager (Legal) on 23.01.2019 and was entrusted to the counsel and erstwhile counsel on 25.01.2019. The counsel forwarded a draft of the petition on 14.03.2019. It was then returned to the office of the erstwhile counsel with certain comments on 15.03.2019. The above petition was received from the office on 25.03.2019. It was approved by the Competent Authority on 29.03.2019 and a signed copy of the same was handed over to the counsel on 01.04.2019. It was, thereafter, filed on 12.04.2019, but was returned as defective on 15.04.2019.

35. DSIIDC states that it was informed about the defects on 26.04.2019. The information as sought by the counsel was submitted on 29.04.2019.

36. It is stated that the officials of DSIIDC followed up the matter with the counsel during the period 29.04.2019 to 03.07.2019. It received an e-mail on 03.07.2019, forwarding a draft copy of the petition to be re-filed. The same was examined from 04.07.2019 to 08.07.2019 and a signed copy of the petition was handed over on 10.07.2019. However, it was re-filed on 02.08.2019.

37. The contention that the delay should be condoned when it is on the part of a Government department, is unmerited. The Supreme Court in ***Office of the Chief Post Master General v. Living Media India Ltd.***

& Ors. (*supra*) had referred to its earlier decisions including the decision in the case of ***State of Haryana v. Chandra Mani and Others: (1996) 3 SCC 132***, wherein the Supreme Court had observed that considerable delay in procedural red-tape in the process of their decision making is a common feature and therefore, a certain amount of latitude is permissible. The Court had also observed that "*the expression "sufficient cause" should, therefore, be considered with pragmatism in justice-oriented approach rather than the technical detection of sufficient cause for explaining every day's delay*".

38. In ***Pundlik Jalam Patil v. Jalgaon Medium Project: (2008) 17 SCC 448***, the Supreme Court had referred to its earlier decisions and observed as under:-

> "29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a life span for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his *Jurisprudence* states that the laws come to the assistance of the vigilant and not of the sleepy.
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> 30. Public interest undoubtedly is a paramount consideration in exercising the courts' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal

> rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest."

39. The contention that the said decision stands overruled by the decision of the Supreme Court in ***State of Manipur & Ors. v. Koting Lamkang*** (*supra*), is unmerited. The question whether limitation has to be condoned must be examined in the facts of each case. In the present case, DSIIDC had offered no explanation for its delay in filing the petition except making a bald statement that such delays were on account of "*departmental procedures involved in the State machinery make it difficult to prepare a petition within the stipulated period as sanctioned by limitation*". Plainly, such an averment cannot be accepted as 'sufficient cause' preventing DSIIDC from filing the above captioned petition within a period of three months. The A&C Act makes no distinction between a Government department or any other body and the rigors of the law of limitation apply equally. A liberal approach in certain cases to protect public revenue and public interest cannot be

mistaken to be an inherent right in any Government department to ignore the period of limitation.

40. It is also noted that DSIIDC had filed an additional affidavit, which indicates that the delay is largely on account of the time taken by the counsel in drafting the petition. According to DSIIDC, it took approximately one month (from 24.12.2018 to 25.01.2019) for it to entrust the matter to the counsel. According to DSIIDC, the counsel was handed over all requisite documents on 28.01.2019. However, it took the counsel more than one and a half months to draft the said petition and almost a month before it could be filed.

41. Considering the above, this Court is of the view that the initial delay of seventeen days in filing the petition is liable to be condoned.

42. The next aspect is to consider whether further delay in re-filing can be countenanced.

43. The petition was returned under objections on 15.04.2019. However, the Delhi High Court Rules provide a time limit of seven days for clearing the defects. In this case, DSIIDC claims that it was not informed about the defects till 26.04.2019. It had, thereafter, provided the information as required by the counsel on 29.04.2019. There is no explanation for the further delay of two months, thereafter. DSIIDC claims that it kept making telephone calls and sending messages (SMS) to the office of the erstwhile counsel but did not receive any information till 03.07.2019. It further claims that it had, thereafter on 10.07.2019,

handed over a signed copy to the learned counsel and the same was filed on 02.08.2019, that is, almost twenty-two days, thereafter.

44. There is no explanation as to what transpired between 02.08.2019 till 10.10.2019, that is, for more than a period of two months and eight days. It is stated that on 10.10.2019, an e-mail was sent to the office of the erstwhile counsel to apprise about the status of the case. Thereafter, on 14.10.2019, a draft miscellaneous application and an updated version of the affidavit was received from the office of the erstwhile counsel for signatures and a signed copy of the same along with the affidavit was handed over on 16.10.2019. There is no explanation of what happened during the period of one month from 16.10.2019 to 23.11.2019. Apart from stating that DSIIDC had sent an email on 15.11.2019, to seek an appraisal regarding the status of the case, DSIIDC appears to have taken no steps in this regard.

45. Indisputably, there is an inordinate delay in re-filing the petition for which DSIIDC has provided no reasonable explanation.

46. The learned counsel appearing for the DSIIDC had relied on the decision in the case of ***Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.: (2017) 11 SCC 234***, in support of its contention that delay in re-filing is not covered under Section 34(3) of the A&C Act and therefore, can be condoned.

47. In terms of Chapter IV, Rule 3 of the Delhi High Court (Original Side) Rules, 2018 any filing beyond a period of thirty days is to be considered as a fresh filing and if this principle is strictly followed, the

above petition filed on 02.08.2019 would necessarily have to be considered as a fresh filing. However, this principle appears to be diluted by the decision of the Supreme Court in ***Northern Railway v. Pioneer Publicity Corporation*** (*supra*).

48. There is no dispute as to the aforesaid proposition. However, the assumption that the delay in re-filing must be condoned notwithstanding that there is no reasonable explanation for the same must be rejected.

49. The Division Bench of this Court in ***Delhi Development Authority v. Durga Construction Co.: FAO (OS) 485-86/2011 decided on 07.11.2013***, had rejected an application seeking condonation of delay of 166 days. While the court accepted that courts would have the jurisdiction to condone the delay in re-filing even beyond the period of three months and thirty days as specified under Section 34(3) of the A&C Act, the question whether courts should do so would depend on the facts of each case and where sufficient cause has been shown which had prevented re-filing the petition/application within time. The question of condoning any delay in re-filing would have to be considered in the context of explanation given for such delay. The Court had further observed as under:-

> "21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant

> and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute."

50. In the present case, there is delay in re-filing from 12.04.2019 (or 15.04.2019, when the petition was marked as defective) till 20.11.2019, a period of over seven months. This Court cannot lose sight of the fact of the legislative intent of providing a maximum period of three months and thirty days within which a petition under Section 34 of the A&C Act to set aside the award can be filed. The rationale of providing a firm period within which a petition can be filed is to provide an expeditious finality to the disputes between parties. It would debilitate this objective if inordinate delays, such as in this case, are condoned as a matter of course and as canvassed by the learned counsel for the DSIIDC.

51. In view of the above, DSIIDC's prayer for condoning the delay in re-filing is rejected.

Challenge on merits

52. In view of the above, it is not necessary for this Court to consider the present petition on merits. However, this Court had heard the submissions of the parties and thus, considers it apposite to decide the issues on merits as well.

53. The learned counsel appearing for the DSIIDC had relied heavily on the decision of this Court in ***M/s Mapsa Tapes Pvt. Ltd. v. DSIIDC***

Ltd. (*supra*). It was submitted that this Court had rejected Mapsa's prayer to modify the condition of payment of ground rent from the date of allotment to the date when the Lease Deed was executed (that is, from 26.08.2010). He had emphasised that this Court had unequivocally held that it had no jurisdiction to modify and vary the terms of the contract between the parties and accordingly, rejected the Writ Petition.

54. There is merit in DSIIDC's contention that the Arbitral Tribunal is bound by the terms of the contract; however, it is apparent that in this case, the Arbitral Tribunal had moulded the relief by directing that the payment of ground rent would commence on execution of the Supplementary Lease Deed instead of the date of allotment. The said decision must be viewed in view of the claims made by Mapsa and the issues struck in the matter. It was Mapsa's case that DSIIDC had failed to perform its obligations under the contract and therefore, was liable to be compensated. Mapsa had contended that although DSIIDC had handed over the possession of the plot in question on 19.06.2007, it had not executed the Lease Deed and therefore, Mapsa was precluded from fully utilising the said premises. The draft of the Lease Deed was finally handed over by DSIIDC to Mapsa on 31.07.2009. This was finally executed on 19.10.2010. The said Lease Deed contained a covenant which required Mapsa to develop the plot "*strictly based on the Architectural Control Drawings*", which could be obtained from the office of the DSIIDC. However, it is conceded that DSIIDC did not possess any such Architectural Control Drawing (ACD). Mapsa claimed that in view of the said covenant it could not proceed with

obtaining sanction of the building plans by the MCD. In addition to the above, there was also certain inaccuracies in the Lease Deed, which required to be corrected. Mapsa had also sought a NOC from DSIIDC, which was also not released to it, despite several reminders.

55. The terms and conditions as contained in the brochure provide for payment of ground rent from the date of issue of letter of allotment. It is provided that for the first five years, the ground rent would be ₹1 per annum and thereafter, the ground rent would be payable at the rate of 2.5% of the original premium, per annum. The relevant clause – Clause 7 of the brochure – is set out below:-

> "7. Ground Rent
>
> (i). Every successful bidder / allottee shall be liable to pay, in addition to the premium payable, ground rent for holding land allotted to him at the rate of rupee one per annum per plot for the first five years from the date of allotment i.e., the date of issue of the letter of allotment, and thereafter it shall be payable at the rate of two and half percent (2.5%) of the premium originally payable per annum..."

56. While Mapsa did not dispute the said terms, it claimed financial losses to the extent of ₹17,77,42,153/- on account of breach on the part of DSIIDC to fulfil its obligations, which according to Mapsa, had effectively precluded it from availing the benefits of the Plot. In addition, Mapsa also claimed compensation for business losses that it could have earned for a period of ten years, which Mapsa had quantified at ₹12,23,92,348/-.

57. The Arbitral Tribunal accepted Mapsa's contention that DSIIDC had mechanically incorporated clauses relating to ACDs in the Lease Deed. Mapsa had applied for sanction of building plans to the MCD but could not secure the same and therefore, was deprived of the "meaningful use of its plot". Mapsa had continued to pursue DSIIDC for sorting out the issues but the same had remained pending. There was a delay of almost twenty-six months in informing Mapsa that the lease had been finalized and the same had also resulted in the building plans being delayed. While the Arbitral Tribunal did not allow Mapsa's claim for loss of profit, it did accept that DSIIDC's demand for ground rent was unjustified since it had not fulfilled its part of the obligations. The relevant finding of the Arbitral Tribunal is extracted below:-

> "(vi) The argument given by Respondent on this issue however appears to be misconceived. If we take into account the difficulties arising out of deficiency in lease deed format which came out clearly in various stages of these proceedings it is quite acceptable that the issue of Ground Rent be also covered as a natural corollary to this dispute. It may be recalled that the Claimant have despite of various setbacks deposited the above amount against demands raised by respondent. On basis of facts placed on record by the parties it is noted that there is some force in submission of the claimant that the demand of the Ground Rent by the Respondent from the Claimant is unjustified and in violation of the contract since the Respondent never fulfilled his part of obligation as per terms and conditions of the GTC and PLG. That as per contract Act, 1872 the Respondent is responsible for violation of terms and conditions and non-fulfillment of the terms of above mentioned contracts. I agree that Respondent ignore the fact of violation of terms and conditions and non-fulfillment of the terms of above

mentioned contracts. The Claimant deserves appropriate relief on this issue.

(vii) The Claimant have also pleaded that this delay also deprived them of the benefit of Rent free period in construction. It has been established by the documents furnished by the Claimant that he has bene persistently following up this matter with the Respondent. It would therefore be fair that suitable modifications be made in period allowed to allottee for completion of construction. In fairness to Claimant it should be calculated with reference to date of execution of rectified lease deed. As the lease deed format was required to be given at the time of auction itself the Respondent are expected to admit the deficient and ensure that sufferings of the claimant are suitably mitigated and all grievances arising out of this default are redressed.

(viii) Although the Respondent has strongly denied the suggestion that that the liability to pay ground rent ought to start from the date of execution of lease deed on the premise that the allottee became absolute owner of the property only after execution of the lease deed on 26/08/2010, I am constrained to agree with the Claimant to the extent that the demand for ground rent would be justified after the Respondent had finalized and formally intimated the availability of lease to Claimant and come forward for execution thereof. Off course thereafter it was responsibility of Claimant to execute the lease and to comply with the lease conditions. It is noted that there was some delay on part of the Claimant when they were offered the option to execute the supplementary (amended) lease by providing bank guarantee against the outstanding demands. This period can be excluded from the rent free period. Respondent would perhaps be required to approach the Competent Authority to seek modifications for facilitation of execution of lease and regulation of rent free period but this step is necessary in the interest of fair play and justice."

58. The Arbitral Tribunal did not accept Mapsa's claim for damages on account of its being deprived of the financial benefits that it could have earned, as it found that the said claim to be remote and the measure of such damages unsubstantiated. It is, thus, apparent that the Tribunal had moulded the relief. It had not allowed Mapsa's claim for damages on account of failure on the part of DSIIDC to perform its obligations but at the same time also held that DSIIDC would not be entitled to ground rent as it had failed to execute the Lease Deed free of defects. Since the Lease Deed was to be executed immediately after the successful bidders had paid the consideration for the plot, the Arbitral Tribunal considered it apposite to provide that the ground rent would run from execution of the Supplementary Lease Deed. In addition, the Tribunal also held that DSIIDC could not enjoy the fruits of the money deposited by Mapsa and therefore, held that it would be liable to pay interest on the same till the modified Supplementary Lease Deed (excluding the requirement of ACDs) was entered into.

59. The contention that no such relief could be granted by the Tribunal in view of the decision of this Court in ***M/s Mapsa Tapes Pvt Ltd v. DSIIDC Ltd.*** (*supra*), is unmerited. On the contrary, this Court had noted that the relief as sought for by Mapsa was really in the nature of damages and it had remedies against DSIIDC in that regard. The relevant extract of the said decision is set out below:-

> "7.3 Therefore, the question which arises is: whether the court can, in any proceedings, modify by a writ/order/direction the plain terms of the contract. The answer to that, in my view, is clearly that, the court, has

no such jurisdiction to modify and/or vary the terms of a contract obtaining between the parties.

7.4 However, the matter cannot rest here because the petitioner claims that the respondent by its conduct has put the petitioner in a position whereby, it could not utilize the full potential of the plot. In other words, the burden of the petitioner's case is that it suffered injury on account of the acts of omission and/or commission of the respondent. Though, craftly, no relief, is sought in the petition, for damages, the effect of the relief sought in the petition would be to accord to the petitioner a pecuniary relief. Any shift in the holiday period, would immediately result in a revenue loss to the respondent. The question is: Does the petitioner has no remedy in law against alleged breach of obligations by the respondent. The petitioner, to my mind, in an appropriate action, may be able to claim damages, provided it is able to establish that its injury, flowed from the alleged acts of omission and/or commission of the respondent. This petition, however, is not the appropriate action. Any relief granted in this petition would result in according in favour to the petitioner what, in my opinion, it could not have sought directly. Damages and/or recovery of moneys ordinarily cannot be the subject matter of a writ petition. There are exceptions to this general principle. This case, however, does not fall within the exceptions, which courts have crafted in that regard.

XXXX XXXX XXXX XXXX

7.7 To my mind, the reasoning given in ***Videocon Industries Ltd.'s*** case accords with the facts obtaining in the present case. In any event, as stated above, the petitioner in effect is seeking to get pecuniary relief which, in my opinion, cannot be given in the present proceedings. One of the reasons for this is also that if at all pecuniary relief is to be given, the quantification can be done only after the defence the respondent is taken into

account. For this short reason alone, the matter would have to go to trial."

60. The finding of this Court as set out in Paragraph no. 7.3 of its decision as set out above cannot be read in isolation and disjunct from the observations made in Paragraph nos. 7.4 and 7.7 of the said decision as set out above.

61. It is also relevant to mention that the above order dated 06.05.2015 rendered in W.P.(C) 1831/2012 was carried in appeal by Mapsa. The said appeal (LPA No.611/2015 captioned '*M/s Mapsa Tapes Private Limited v. Delhi State Industrial & Infrastructure Development Corporation Limited*') was dismissed by the Division Bench of this Court by an order dated 09.09.2015. The Division Bench clarified that the finding recorded by the Single Judge would have no bearing on the claims to be made by Mapsa before the learned Arbitrator. The Court had also noted that the learned Single Judge had dismissed the Writ Petition as it had not found the petition to be an appropriate remedy but had also clarified that the observations made would not come in the way of the petitioner (Mapsa), if it were to institute a suitable action against the respondent (DSIIDC). The relevant extract of the said decision is set out below:-

"6. It is submitted by Shri Akhil Sibal, the learned counsel appearing for the appellant/writ petitioner that the appellant, in terms of the order under appeal, would invoke the arbitration clause, however, it may be clarified that the findings recorded by the learned Single Judge especially paras 2.1, 7 to 7.8 shall have no bearing on the claims to be made by the appellant before the Arbitrator.

> 7. We found that in the order under appeal itself, it was made clear by the learned Single Judge as under:
>
> > "9. Needless to say the observations made hereinabove, will not come in the way of the petitioner if, it were to institute a suitable action against the respondent as they were made only decide the issue at hand."
>
> 8. Reiterating the same, we dispose of the appeal clarifying that the Arbitrator while deciding the claims of the appellant will not take into account any of the observations/findings recorded by the learned Single Judge, especially paragraphs 2.1 and 7 to 7.8 of the order under appeal."

62. In view of the above, the contention that the impugned award runs contrary to the decision of this Court in W.P.(C) 1831/2020 cannot be sustained and is unmerited.

63. It was contended on behalf of DSIIDC that the Arbitral Tribunal has taken a contrary view in another case and therefore, the impugned award is liable to be set aside. The said contention is also unpersuasive. The scope of examination under Section 34 of the A&C Act is very limited. This Court has to merely examine whether the Arbitral Award falls foul of the fundamental policy of Indian law or is patently illegal on the face of the record. This Court is not called upon to examine the evidence and review the decision of the Arbitral Tribunal on merits in these proceedings. It cannot supplant its view over that taken by the Arbitral Tribunal.

64. In the facts of the present case, this Court is unable to accept that the impugned award is patently illegal or otherwise violates the fundamental policy of Indian law. The fact that the Arbitral Tribunal had taken a different view in another case does not necessarily mean that the present view is patently illegal.

65. In view of the above, the present petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

APRIL 08, 2021
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