

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

% *Order Delivered on: March 22, 2013*

+ **OMP No.311/2013**

GOVT. MEDICAL STORES DEPOT, UOI Petitioner
Through Mr.Ruchir Mishra, Adv.

versus

M/S. CENTURION LABORATORIES Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

I.A.No.5000/2013 & I.A.No.5001/2013

Exemption allowed, subject to all just exceptions.

The applications are disposed of.

I.A.No.5002/2013 (for condonation of delay of 270 days in re-filing the petition)

1. The abovementioned objections petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 (in short called the “Act”) against the Award dated 31st January, 2012 passed by the sole Arbitrator Mr.M.K. Sharma in the matter of M/s Centurion Laboratoreis v. Govt. Medical Stores Depot in Arbitration Case No.01/BNK/JS/LA/2009.

2. Along with the petition, the petitioner filed an application under Section 151 CPC for condonation of delay of 270 days in re-filing the petition. The only ground for such delay stated in the application is that the petition was filed on 7th May, 2012. As there were certain objections, the petition was received back. The counsel for the petitioner requested the petitioner to supply the documents which were referred in the petition for filing along with petition as annexures. Since the concerned depot is located in Kolkata, therefore, it took some time to arrange the said documents which were necessary for proper adjudication of the petition. Thereafter, upon receipt of the documents, as it was noticed that the documents supplied by the petitioner were incomplete, the petitioner was requested to supply remaining documents for removing defects. In that process a lot of time lapsed for completing the necessary formalities.

3. The point of delay of re-filing been discussed in detail by the Division Bench of this Court in the case **Delhi Transco Ltd. & Anr. Vs. Hythro Engineers Pvt. Ltd.**, 2012(6) R.A.J. 299 (Del.), the relevant paragraphs of which read as under:-

8. The Division Bench in *Shree Ram Construction Co.* (supra) (which, we may note has been upheld by the Supreme Court with the dismissal of the SLPs) in para 29 and 41 observed as follows:

“29. Reliance on the decision in *Improvement Trust, Ludhiana Vs. Ujagar Singh*, (2010) 6 SCC 786 to the effect that “justice can be done only when the matter is fought on merits and in accordance with law rather than to dispose it off on such technicalities and that too at the threshold” is of no avail in the backdrop of the A&C Act which decidedly and calculatedly shuts off curial

discretion after the expiry of thirty days beyond three months having elapsed from the date on which a copy of the Award had been received by the appealing party. In the context of the A&C Act, it appears to us that liberality in condoning delay in refiling would run counter to the intention of Parliament which has employed plain language to facially prescribe a cut-off date beyond which there is no latitude for condonation of delay. And this is for very good reason. Across the Globe, it has been accepted that there is a pressing need to bring adjudicatory proceedings to a prompt and expeditious conclusion, especially where commercial and business conflicts arise. We think it wholly impermissible to extend or expand the time for concluding judicial proceedings at the second stage, that is, that of refiling, when this is impermissible at the very initial stage, that is, of filing objections to an award. It will be apposite to immediately recall the dicta of *Union of India Vs. Popular Construction Company*, (2001) 8 SCC 470. We can do no better than reiterate the words therein – “the history and scheme of the 1996 Act supports the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by Court under Section 5 of the Limitation Act”. This very reasoning has also been clarified and followed in *Chief Engineer of BPDP/REO, Ranchi Vs. Scoot Wilson Kirpatrick India (P) Ltd.*, (2006) 13 SCC 622 in these words:-

8. The decision in *Union of India Vs. Popular Construction Company*, (2001) 8 SCC 470 did not deal with specific issues in this case. In that decision it was held that in respect of “sufficient cause cases” the provisions of Section 34(3) of the Act which

are special provisions relating to condonation of delay override the general provisions of Section 5 of the Limitation Act, 1963 (in short “the Limitation Act”). The position was reiterated in *State of Goa Vs. Western Builders*, (2006) FAO(OS)665/2009, 6 SCC 239 and also in *Fairgrowth Investments Ltd. Vs. Custodian*, (2004) 11 SCC 472. There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the Act”.

“41. The question, which still requires to be answered, is whether a reasonable explanation has been given with regard to delay of 258 days in the re-filing of the Objections. Since this delay crosses the frontier of the statutory limit, that is, three months and thirty days, we need to consider whether sufficient cause had been shown for condoning the delay. The conduct of the party must pass the rigorous test of diligence, else the purpose of prescribing a definite and unelastic period of limitation is rendered futile. The reason attributed by the Appellant for the delay is the ill health of the Senior Standing Counsel. However, as has been pithily pointed out, the Vakalatnama contains the signatures of Ms Sonia Mathur, Standing Counsel for the Department; in fact, it does not bear the signature of Late Shri R.D.Jolly. Because of the explanation given in the course of hearing, we shall ignore the factum of the Vakalatnama also bearing the signature of another Standing Counsel, namely, Ms Prem Lata Bansal. We have called for the records of OMP No.291/2008 and we find that the Objections have not been signed by Late Shri R.D.Jolly but by Ms

Sonia Mathur on 9.8.2007, on which date the supporting Affidavit has also been sworn by the Director of Income Tax. In these circumstances, the illness of Late R.D.Jolly is obviously a smokescreen. No other explanation has been tendered for the delay. The avowed purpose of the A&C Act is to expedite the conclusion of arbitral proceedings. It is with this end in view that substantial and far reaching amendments to the position prevailing under the Arbitration Act 1940 have been carried out and an altogether new statute has been passed. This purpose cannot be emasculated by delays, intentional or gross, in the course of refiling of the Petition/Objections. The conduct of the Appellant is not venial. We find no error in the conclusion arrived at by the learned Single Judge and accordingly dismiss the Appeal. CM No.5212/2009 is also dismissed”.

10. It is in *Shree Ram Construction Co.* (supra) that the Court actually examined as to what is the magnitude of delay in re-filing, which the Court may tolerate and permit to be condoned in a given case. Obviously, there cannot be any hard & fast rule in that respect, and the Court would have to examine each case on its own facts & merits and to take a call whether, or not, to condone the delay in refiling the objection petition, when the initial filing of the petition is within the period of limitation. However, what is to be borne in mind by the Court is that the limitation period is limited by the Act to three months, which is extendable, at the most, by another thirty days, subject to sufficient cause being disclosed by the petitioner to explain the delay beyond the period of three months. Therefore, it cannot be that a petitioner by causing delay in re-filing of the objection petition, delays the re-filing to an extent which goes well beyond even the period of three months & thirty days from the date when the limitation for filing the objections

begins to run. If the delay in re-filing is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of more stringent norms while considering the application for condonation of delay in re-filing, and the Court would conduct a deeper scrutiny in the matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and where the re-filing takes place much after the expiry of the period of three months & thirty days and, that too, without any real justifiable cause or reason.

11. A perusal of the impugned order shows that the learned Single Judge has applied his mind to the facts of this case on the basis of the correct legal proposition laid down by the Division Bench in *Shree Ram Construction Co.* (supra). The learned Single Judge rightly observes that the appellant was highly careless in pursuing the matter of re-filing of objections and that the appellant had not been able to satisfy the Court that the delay in re-filing the objections was on account of bona fide reasons. He also observed that the delay was, in fact, on account of carelessness, inaction and negligence on the part of the appellant. The appellant had the benefit of a legal Department whose responsibility it was to see that the objections were filed within the period of limitation. It was also their responsibility to ensure that half baked

objections are not filed and thereafter, in case any objection/defect is raised, the same is removed within the time allotted and to ensure that the same is re-filed as early as possible to safeguard their own interest.

12. In the present case, the objections are stated to have been misplaced by the appellant. In that event, the appellant should have taken appropriate steps at the earliest and not waited for 72 days. A reading of the appellant's application to seek condonation of delay shows that even though the objection petition had been misplaced after the same had been returned under defect by the Registry, the appellant did not take steps to reconstruct the same. It is only, by chance, that the appellant found the misplaced objection petition attached to another file, and upon finding the same, re-filed the objection petition after removing the defects. The learned Single Judge has rightly observed that neither the affidavit of the junior Advocate (who allegedly misplaced the objection petition after taking it back under defect), nor the Clerk had been filed in support of the application. It is rightly held that condonation of delay in re-filing the objection petition in these facts would run against the intention of the Parliament and the statutory scheme under the Act. Moreover, there is no answer with the appellant to the reliance placed by the learned Single Judge on Rule 5, Chapter 'I', Part A of Vol. 5 of High Court Rules and Orders, according to which, the objections should have been refiled within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution."

4. It is rightly held that condonation of delay in re-filing the objection

petition in these facts would run against the intention of the Parliament and the statutory scheme under the Act. According to Rule 5, Chapter 'I', Part A of Vol. 5 of High Court Rules and Orders, the objections should have been re-filed within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/ Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter under Sub-Rule 1, it shall be considered as a fresh institution.

5. The moment it becomes fresh filing, then under the settled law after the expiry of prescribed period, the delay cannot be condoned on any ground.

6. There is a purpose for providing the prescribed period for filing the objections under Section 34 of the Act, i.e. after filing the objections till the disposal of the same, there is automatic stay of the operation of award. No execution under Section 36 is maintainable if the objections are pending disposal. Thus, the provisions of Section 34 of the Act on the issue of period of time as prescribed have to be applied strictly in order to maintain the entire scheme of the Act, otherwise, it would be very difficult for any Court to judge that for how much period or under which ground or sufficient reason, the delay would be condoned and under such circumstances, there would be no end of confusion or to draw the line. Parties who are seeking condonation of delay in filing the objections and delay in re-filing must understand that the Courts are dealing with the statutory provisions of the Act and not the matters of civil cases where different thoughts are applied when such delay happens and sufficient cause is shown. The explanation

given by the petitioner in its application is even not sufficient and reasonable to condone such a long delay.

7. This Court is of the view that for the purpose of limitation of period, the provisions of Section 34 of the Act are mandatory. The delay of this nature cannot be condoned. The application is, therefore, dismissed.

OMP No.311/2013 & I.A.No.4999/2013

In view of the dismissal of the application for condonation of delay in re-filing, being I.A.No.5002/2013, the present petition and the application for stay are dismissed.

**(MANMOHAN SINGH)
JUDGE**

MARCH 22, 2013