

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 2416 of 2021 (O&M)
Date of decision: 31st January, 2023

M/s Proflex System

Petitioner

Versus

Haryana State Warehousing Corporation & another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Salil Sagar, Senior Advocate with
Mr. Sankalp Sagar, Advocate for the petitioner.
Mr. Randhir Singh, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This revision petition is filed aggrieved of the order dated 20.9.2021 condoning the delay in filing objections under Section 34 of the Arbitration & Conciliation Act, 1996 (for brevity, 'the Act').

2. The brief facts are that respondent No. 1 (for short, 'the respondent') was allotted a tender for supply and installation of Galvalume Sheet for Roofing Top of various Food storage godowns. The general terms and conditions provided for dispute resolution through arbitration. To resolve the dispute between the parties, arbitration proceedings were initiated which culminated in award dated 8.6.2016. Respondent filed objections under Section 34 of the Act accompanied by an application for condonation of delay. The delay was condoned, hence the present petition.

3. Learned senior counsel for the petitioner submits that the

application filed for condonation of delay was vaguely drafted, even the date of receipt of award was not mentioned and the period of delay was wrongly calculated. It is argued that the objections raised by the petitioner for opposing the application for condonation of delay were not adjudicated. The contention is that the pleadings of the application for condonation of delay cannot be supplemented by filing affidavit in this court. Reliance is placed upon the decisions in **New & Renewable Energy Department v. Andy Solar Private Ltd. and another, 2020(3) Arb. LR 307 (P&H) (DB); SPML Infra Limited v. Graphite India Limited, 2020(3) Arb. LR 439 (Delhi), Simplex Infrastructure Limited v. Union of India, (2019) 2 SCC 455** and **Mahindra and Mahindra Financial Services Ltd. v. Maheshbhai Tinabhai Rathod and others, (2022) 4 SCC 162.**

4. Learned counsel for the respondent submits that on receipt of copy of award on 9.6.2016 the objections under Section 34 of the Act were filed on 6.10.2016 and the delay was of less than thirty days. The contention is that the delay occurred as approval for filing objections was awaited and that the official concerned went on leave and could not hand over the file to the counsel.

5. Section 31(5) of the Act provides that signed copy of the arbitral award shall be delivered to each party. Section 34(3) of the Act stipulates the limitation for filing objections i.e. three months from the date of receipt of the arbitral award. Proviso to Section 34(3) of the Act provides that delay upto period of thirty days can be condoned if sufficient cause is shown.

6. The contention raised by learned senior counsel for the

petitioner that date of receipt of award was not mentioned in the application for condonation of delay does not enhance the case of the petitioner. As per the case of the respondents, the award was received on 9.6.2016, be that as it may, even if limitation is calculated from the date of award i.e. 8.6.2016, the delay is not more than thirty days as the objections under Section 34 of the Act were filed on 6.10.2016 and registered on 7.10.2016.

7. Law is well settled that a liberal view is to be taken for condoning delay of short period. Reliance is placed on the decision of the Supreme Court in ***Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation and another, 2010 (5) SCC 459.***

8. The facts with regard to date of award, filing and registering of the objections are not in dispute. The respondent is a corporation and without prior approval from the sanctioning authority could not have filed objections under Section 34 of the Act. The administrative laxity itself cannot be a ground to condone the delay but at the same time, it cannot be lost sight of that the institution like the respondent-Corporation work through the officials. Failure of an official to hand over the file to counsel before proceeding on leave cannot be made basis for denying the statutory remedy to corporation.

9. The arguments raised for opposing the condonation of delay have been dealt with on merits by this court. The grievance that the contentions of the petitioner were not dealt with by the Additional District Judge while condoning the delay need not be dwelled upon further.

10. The citations relied upon by learned senior counsel for the

petitioner are not applicable in facts of the present case and are distinguishable on facts. In the case of *New & Renewable Energy Department, Simplex Infrastructure Limited (supra)* and *Mahindra and Mahindra Financial Services Ltd. case (supra)* the issue dealt was as to whether delay beyond thirty days in filing the objections under Section 34 of the Act can be condoned by invoking Section 5 of the Limitation Act, 1963, whereas in the present case, admittedly delay is less than thirty days. Delhi High Court in *SPML Infra Limited's case (supra)* in the facts of that case concluded the explanation that signatory conversant with case was pre-occupied , was not a sufficient cause for condoning the delay.

11. No case is made out for interference in the impugned order. The petition is dismissed.

12. Since the main case has been decided, pending application, if any, is rendered infructuous.

[AVNEESH JHINGAN]
JUDGE

31st January, 2023

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |