

M/S Hi Teach Systems vs Union Of India on 8 February, 2023

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ O.M.P. (COMM) 54/2023 and I.A. Nos.2423/2023, 2424/2023,
2425/2023 and 2426/2023

M/S HI TEACH SYSTEMS

Through:

..... Petition
Mr. Sumit Chandra and Ms. Antim
Advocates

versus

UNION OF INDIA

Through:

Nemo

..... Respond

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH
ORDER

% 08.02.2023 I.A. 2424/2023 (Condonation of Delay)

1. The present application under Section 151 of the Code of Civil Procedure, 1908 has been filed by the petitioner seeking condonation of 3301 days' delay in filing the present petition.

2. The petitioner, by way of filing the captioned petition, has sought relief from this Court under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter "Arbitration Act") against the ex-parte Arbitral Award dated 12th September 2013. For the challenge against the Award pertaining to the year 2013, the petitioner has approached this Court in the year 2023. Therefore, the instant application has been filed seeking condonation of delay.

3. Learned counsel appearing on behalf of the petitioner submitted that the parties before this Court transacted with each other through various Memorandums of Understanding from time to time.

4. It is submitted that a letter dated 14th November 2005 was issued by the respondent to the petitioner stating therein that the machine provided by the petitioner to the respondent, in terms of the Contract executed between them, was rejected. The respondent also demanded the deposition of an amount of Rs. 27,71,404/- in favour of FA&CAO, COFMOW, and asked the petitioner to lift the rejected machine lying with the respondent.

5. It is submitted that, after 17 years of receipt of the letter dated 14 th November 2005, the petitioner received an Execution Petition dated 26th July 2022 filed by the respondent before this

Court seeking execution of the ex-parte Award dated 12th September 2013 passed by the Sole Arbitrator in the matter relating to Tender No. COFMOW/OP-1169/2K1 for the procurement of Bogie Load testing machine.

6. It is submitted that only thereafter the petitioner approached this Court for challenging the same. The learned counsel also prayed that the delay of 3301 days in filing of the instant petition may be condoned and the instant petition may be heard on merits.

7. Heard the learned counsel for the petitioner and perused the application.

8. It is pertinent to see that limitation for a petition under the Arbitration Act is not only subject to the provisions under the Limitation Act, 1963 but is also to be examined in accordance with the provisions of the Arbitration Act, especially Section 34.

9. Section 34 of the Arbitration Act is a comprehensive provision prescribing the remedy to the parties to challenge an Arbitral Award and also providing the procedural technicalities thereto. For the instant case and the application filed by the petitioner, Section 34(3) of the Arbitration Act is the relevant provision which will lead the way for this Court to adjudicate the plea raised by and on behalf of the petitioner. The provision is reproduced hereunder for perusal:-

"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."

10. At the outset, the bare language of the provision clarifies that the limitation for filing a petition seeking setting aside of an Arbitral Award is three months. The Act also provides for and allows extension of this period by another thirty days, but not thereafter, subject to the conditions as stated in the provision.

11. Thus, it is pertinent to note that the legislative intent behind this provision is to be just and considerate towards the litigants if there is an emergent and justifiable reason for such delay caused in filing of the petition. It is also essential to note that an application for setting aside the Arbitral Award must be filed within a total period of 120 days provided that the court is satisfied of the reasons stated for the delay beyond three months.

12. In the instant petition, the petitioner has filed the challenge to the Arbitral Award after over 9 years have elapsed since the passing of the Award. It is difficult to accept the grounds invoked by the petitioner that only because the respondent has sought execution of the Arbitral Award, it is

justifiable for the petitioner to file the petition after the extraordinary delay of 9 years.

13. Therefore, it is evident that the strict interpretation of the provision completely bars the petitioner from being granted the relief it has sought.

14. Moreover, the principles of law pertaining to condonation of delay under the Act have been reiterated time and again in a catena of judgments by the courts. In the case of Delhi Development Authority vs. Durga Construction Co., 2013 SCC OnLine Del 4451, the Division Bench of this Court has held 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. A Division Bench of this High Court in Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman, 2011 (2) RAJ. 347 (Del) has held as under:--

"9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in refiling are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for refiling the petition."

15. It is significant to see that even the objective of the law of limitation is to prevent the outdated, fictitious, or fraudulent claims while also requiring a person to exercise his rights to action within the prescribed time. The principle „Vigilantibus Non Dormientibus Jura Subveniunt which means that law serves the vigilant, is also applicable to the case of the petitioner. Law certainly cannot become a medium to assist and/or come for rescue for those who sleep over their rights.

16. The Hon'ble Supreme Court in Bharat Barrel and Drum Mfg. Co. Ltd. vs. ESI Corpn., (1971) 2 SCC 860 has observed as under-

"The law of limitation appertains to remedies because the rule is that claims in respect of rights cannot be entertained if not commenced within the time prescribed by the statute in respect of that right. Apart from Legislative action prescribing the time, there is no period of limitation recognised under the general law and therefore any time fixed by the statute is necessarily to be arbitrary. A statute prescribing

limitation however does not confer a right of action nor speaking generally does not confer on a person a right to relief which has been barred by efflux of time prescribed by the law. The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing them when challenged or disputed to remain dormant without asserting them in a court of law. The principle which forms the basis of this rule is expressed in the maxim *vigilantibus, non dormientibus, jura subveniunt* (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims. While this is so there are two aspects of the statutes of limitation the one concerns the extinguishment of the right if a claim or action is not commenced within a particular time and the other merely bars the claim without affecting the right which either remains merely as a moral obligation or can be availed of to furnish the consideration for a fresh enforceable obligation."

17. Therefore, upon a conjoint reading of the abovementioned statutory provisions and pronouncements, this Court is of the opinion that even though the power to condone the delay is conferred upon the Court, the condonation under Section 34(3) cannot be granted liberally as the same would defeat the very purpose of the enactment of the Arbitration Act, that is, the expeditious resolution of disputes.

18. In the instant matter, the delay in filing the petition is not a usual or even a reasonable delay. The petitioner has sought condonation of an inordinate, extraordinary, and unreasonable delay of 3301 days without any sufficient cause. There is nothing in the application of the petitioner which would allow the conscience of this Court to condone the delay of over 9 years in filing a challenge to the Arbitral Award. The interference is even unwarranted in the background of the scope of intervention of Court in arbitral proceedings, especially once an Award has been made.

19. Therefore, keeping in view the facts, circumstances, the principles and position of law and the submissions made on behalf of the petitioner in the Application as well as during the course of arguments, this Court is not inclined to condone the extraordinary delay of 3301 days in filing the captioned petition.

20. Accordingly, the instant application, for being completely devoid of merit, stands dismissed.

O.M.P. (COMM) 54/2023

1. The petitioner, by way of filing this petition, has sought setting aside of the Arbitral Award dated 12th September 2013.

2. Without entering into the merits of the case, in light of the observations made in I.A. No. 2424/2023 filed on behalf of the petitioner seeking condonation of 3301 days' delay, at this juncture, this Court is not inclined to entertain the challenge and interfere with the Award dated 12th September 2013.

3. The instant petition, accordingly, also stands dismissed and disposed of for the reason that the petitioner has not been able to show and establish the grounds for the extraordinary delay of 3301 days in approaching this Court.

4. All other pending applications also stand dismissed.

CHANDRA DHARI SINGH, J FEBRUARY 8, 2023 SV/MS [Click here to check corrigendum, if any](#)