

# M/S The Marwah Company & Anr vs Union Of India Through Directorate Of ... on 3 March, 2020

**Author: Rekha Palli**

**Bench: Rekha Palli**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

ARB.P. 872/2019

M/S THE MARWAH COMPANY & ANR.

..... Petitioners

Through: Mr.Ashok Gurnani, Adv.

versus

UNION OF INDIA THROUGH DIRECTORATE OF CONTRACT

MANAGEMENT

..... Respondent

Through: Mr.Vikram Jaitley, CGSC with

Mr.Mimansak Bhardwaj, GP.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

% 03.03.2020 IA No.18435/2019 (for delay of 32 days in re-filing)

1. This is an application filed by the petitioner seeking condonation of 32 days delay in re-filing the present petition.

2. Issue notice. Learned counsel for the respondent accepts notice and does not oppose the application.

3. For the reasons stated in the application, the same is allowed and delay of 32 days in re-filing the present petition is condoned.

4. The application is disposed of.

5 This is a petition under Section 11 of the Arbitration and Conciliation Act seeking appointment of an Arbitrator to adjudicate the disputes and differences which have arisen between the parties out of the Contract Agreement bearing no.CEB/MRT/11 of 89-90.

6. Learned counsel for the petitioners submits that upon the respondent inviting tenders for provision of RCC Overheads Storage Reservoir at Meerut, the petitioner had submitted a tender which was accepted on 13.05.1989. Even though the petitioner completed the work on 03.06.1993,

certain disputes arose between the parties regarding the manner in which the work had been carried out and the payment of the petitioner's dues. As a result, the respondent appointed Brigadier T.K. Mittal as the sole Arbitrator to adjudicate upon 9 out of the 11 disputes raised by the petitioner. This compelled the petitioner to approach this Court seeking appointment of an Arbitrator to decide the remaining two claims, whereafter Shri S.K. Gupta was appointed as an Arbitrator for adjudication of the remaining two claims raised by the petitioner. He further submits that Brigadier T.K. Mittal, passed an award on the nine claims before him on 30.07.2001, which he amended subsequently on 14.08.2001. This award was challenged by the respondent/UOI before the learned District Judge, Meerut which set aside the same on 13.05.2003. Though the petitioner preferred an appeal before the Hon'ble High Court of Judicature at Allahabad challenging the order dated 13.05.2003, the same came to be rejected on 03.11.2016. Thus, the claims of the petitioner were required to be adjudicated afresh through arbitration.

7. Learned counsel for the petitioners submits that thereafter, even though the petitioner expected the respondent to expeditiously appoint an Arbitrator on its own accord, the respondent failed to do so. This has compelled the petitioner to prefer the present petition after issuing a legal notice dated 21.08.2019 to the respondent. He thus, contends that in view of the admitted position that disputes have arisen between the parties and that an arbitral clause exists between them to adjudicate the present dispute, this Court ought to appoint an independent Arbitrator.

8. Issue notice. Learned counsel for the respondent accepts notice and while fairly not disputing the existence of the arbitral clause or of disputes between the parties, opposes the petition primarily on the ground of delay. He submits that since the petitioner's claim relates to construction work which was completed in the year 1993, the same would be barred by limitation at this stage.

9. Having heard learned counsel for the parties, what emerges from the record is that even though the dispute pertains to the year 1993-94, it is not as if the petitioner is invoking arbitration for the first time by way of the present petition. In fact, evidently, the disputes had previously been referred to arbitration in the year 1999, whereupon an award had been rendered in the year 2001. The said award came to be set aside in the year 2003 and the petitioner's challenge to the same was rejected by the Allahabad High Court in the November 2016. Thereafter, it was incumbent on the respondent to appoint an arbitrator at the request of the petitioner, which it failed to do until the institution of the present petition in the year 2019. Even otherwise, once the parties are ad idem on the existence of the arbitral clause and pending disputes between them which date back to the year 1993-1994, the respondent's plea of limitation cannot be a valid ground to refuse appointment of an Arbitrator. In these circumstances, I am inclined to accept the petitioner's prayer for appointment of an arbitrator.

10. The petition is accordingly allowed. Mr.N.P. Kaushik, ADJ (Rtd.) (Mob: 9910384663) is appointed as the Arbitrator to adjudicate the disputes and differences which have arisen between the parties. It is made clear that this Court has not considered the rival contentions of the parties on merits. It will, therefore, be open for the learned Arbitrator to deal with the contentions of both the parties including the plea of limitation sought to be raised by the respondent.

11. The arbitration shall be conducted under the aegis of Delhi International Arbitration Centre (DIAC). The fees of the learned arbitrator shall be in accordance with the Schedule of fees prescribed under the Delhi High Court Arbitration Centre (Administrative Costs and Arbitrators' Fees) Rules.

12. Before commencing arbitration proceedings, the Arbitrator will ensure compliance of Section 12 of the Arbitration and Conciliation Act, 1996.

13. A copy of this order be sent to Delhi International Arbitration Centre (DIAC) as also to the learned Arbitrator.

14. The petition is disposed of in the aforesaid terms.

REKHA PALLI, J MARCH 03, 2020 gm