

Bharat Sanchar Nigam Limited vs M/S Vindhya Telelinks Pvt Ltd on 13 August, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

\$~2.

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO(OS) (COMM) 17/2020

BHARAT SANCHAR NIGAM LIMITED

Through: Mr. Ruchi Gour Nar

versus

M/S VINDHYA TELELINKS PVT LTD

Through: Mr. Narendra Sharm

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 13.08.2021

1. This application has been filed by the appellant under Order XLI Rule 27 CPC to bring on record additional evidence.

2. The appellant had preferred objections under Section 34 of the Arbitration & Conciliation Act to assail the award dated 13.06.2019. The objections were preferred 26 days after expiry of the period of limitation of three months (we may observe that the learned Single Judge has proceeded on the basis that the delay was 28 days. However, Ms. Narula submits that the delay was 26 days). The learned Single Judge dismissed the application seeking condonation of delay of 26/28 days on the ground that the appellant/ objector had failed to disclose sufficient cause for the said delay. Consequently, the objection petition was also dismissed and the award was not put to even the limited scrutiny which the appellant was entitled to seek under Section 34 of the Arbitration & Conciliation Act.

3. The appellant has placed on record as Annexure 5 (Colly.) the correspondence undertaken by the appellant with its then advocate Mr. D.S. Mahindro starting from 09.07.2019. The said correspondence goes right up to 17.09.2019 - when the appellant conveyed the approval of the Competent Authority to prefer objections to the award in question and instructed the counsel to prepare the objection petition.

4. Ms. Narula submits that these documents should have been filed along with the application seeking condonation of delay before the learned Single Judge, however, they were not so filed due to inadvertence. She submits that the documents sought to be placed on record are genuine inasmuch, as, they are the e-mail correspondence undertaken by the appellant with their counsel Mr. D.S. Mahindro.

5. The application is opposed by the respondent. Mr. Sharma - who appears for the respondent, submits that the said documents could and should have been produced along with the application seeking condonation of delay. He also raises a doubt with regard to the authenticity of the said documents.

6. Even before we consider the said aspect as to whether, or not, the present application should be allowed, we may observe that the delay in the present case was 26/28 days before the expiry of three months limitation period. Delay can be condoned up to 30 days post the expiry of the limitation period of three months on disclosure of sufficient cause.

7. Considering the fact that the only remedy available to the aggrieved party against the arbitral award is by way of objection petition under Section 34 of the Arbitration & Conciliation Act, generally speaking, the approach of the Courts while dealing with the applications seeking condonation of such delay has been liberal. It is only in cases where a party prefers objections either in time, or within the extended period of 30 days, and thereafter keeps delaying the matter by keeping the objection petition under office objections for months on end, that the Courts have taken a strict view keeping in mind that the object of expeditious disposal of the objection petition for conclusion of arbitral process is defeated.

8. No doubt, the appellant could and should have produced the correspondence now filed as Annexure 5 (Colly.) in the present appeal along with the appellant's application under Section 34(3) of the Arbitration & Conciliation Act. It appears that the appellant took the matter for granted and proceeded on the assumption that the learned Single Judge would condone the delay since it was 26/28 days.

9. Keeping in mind the fact that the documents sought to be produced are e-mail correspondence undertaken by the appellant with the practising advocate of this Court, we are not willing to accept the submission of Mr.Sharma that the said correspondence has been manufactured, or fabricated. In our view, equities can be balanced by directing the appellant to pay costs for the inconvenience and loss of time suffered by the respondent.

10. Accordingly, we allow the application, subject to payment of costs of Rs.20,000/- to the respondent. The costs be paid within four weeks.

FAO(OS) (COMM) 17/2020 and C.M. No. 2240/2020

11. The present appeal is directed against the order dated 02.12.2019 passed by the learned Single Judge in O.M.P.(Comm.) No.503/2019 titled Bharat Sanchar Nigam Limited Vs. M/s Vindhya

Telelinks Pvt. Ltd., whereby I.A. No.16875/2019 preferred by the appellant/ objector to seek condonation of 26 days delay in filing the petition under Section 34 of the Arbitration & Conciliation Act to assail the award dated 13.06.2019 has been dismissed on the ground that the appellant had failed to file sufficient cause and justification to condone the delay.

12. The learned Single Judge has reproduced the application preferred by the appellant under Section 34 (3) of the Arbitration & Conciliation Act to show the casual manner in which the said application was preferred. The learned Single Judge takes note of the decision of the Supreme Court in *Simplex Infrastructure Limited Vs. Union of India*, (2019) 2 SCC 455, to show that the Court cannot condone the delay beyond the period of 30 days after the expiry of the limitation period of three months to assail the arbitral award. The reason why the learned Judge did not allow the appellant's application was that no effort had been made by the appellant to set out any grounds which prevented it from approaching the Court within the period of limitation of three months. The application did not clearly disclose as to when the appellant BSNL gave final approval for filing of the objections. The details as to when the objections were drafted & sent to the appellant and when the final draft was given by the counsel have also not been disclosed.

13. The appellant has filed e-mail correspondence undertaken by it with its counsel as Annexure 5 (Colly.) along with the present appeal which have been taken on record by us since we have today itself allowed the appellant's application under Order XLI Rule 27 CPC. The said correspondence shows that the appellant was diligent in the matter of examination of the issue whether the award rendered by the learned Sole Arbitrator could be assailed under Section 34 petition.

14. The said correspondence show that as early as on 09.07.2019 (the award is dated 13.06.2019), the appellant first corresponded with Mr. D.S. Mahindro - the then counsel, seeking his opinion for future course of action, i.e. whether the award should be accepted, or should be contested. His opinion was sought on immediate basis to take suitable decision in the matter. This e-mail was responded to by Mr. Mahindro on 24.07.2019, wherein he opined that in his view, the arbitral award should be challenged by filing the objection petition under Section 34 of the Arbitration & Conciliation Act within 90 days from the date of the award. On 01.08.2019, the appellant again requested the counsel to give his detailed legal opinion on the award mentioning the merits/ demerits of the case and has requested to provide the same on immediate basis. On 07.08.2019 Mr. Mahindro gave a detailed legal opinion as desired by the appellant. On 19.08.2019, once again the appellant sent an e-mail to Mr. Mahindro informing that comments of the Legal Cell of the BSNL Co. were sought in the matter on the basis of which Mr. Mahindro was requested to offer his comments on the merits of the arbitral award with respect to certain facts mentioned in the award and as to how, according to him, the issues raised by the learned Arbitrator would be dealt with. The opinion of Mr. Mahindro was sought on immediate basis so that proper action regarding challenging the award under Section 34 of the Arbitration & Conciliation Act may be taken within the statutory time limit. On 20.08.2019, Mr. Mahindro sent a query to the appellant whether any objection petition has been filed against the award given in an identical case decided by another Sole Arbitrator Mr. Justice A.P. Shah (Retd.). On 21.08.2019, the appellant informed Mr. Mahindro that the identical case was decided in favour of BSNL, i.e. the appellant, and the same was not challenged by the vendor in any Court. On 17.09.2019, the approval of the Competent Authority of the appellant

was conveyed to the counsel Mr.Mahindro to prefer objections under Section 34 of the Arbitration & Conciliation Act. He was requested to prepare the draft of the objections and send the same for vetting. Objection petition was itself preferred on 10.10.2019 resulting in delay of 26 days.

15. In our view, the aforesaid correspondence between the appellant and its counsel show that the appellant was all along intent on filing its objections to the arbitral award, and without any significant delay, started corresponding with the counsel to discuss the pros & cons of the challenge in preferring the objections to the arbitral award. The correspondence also shows that sense of urgency was expressed by the appellant time and again. In view of the aforesaid circumstances, we are satisfied that the appellant has been able to disclose sufficient cause to seek condonation of delay of 26 days in preferring the objection petition.

16. Accordingly, we allow the present appeal and set aside the impugned order passed by the learned Single Judge. The delay in filing the objection petition of 26 days is condoned.

17. Accordingly, we restore the objection petition preferred by the appellant. The parties shall appear on 09.09.2021 before the learned Single Judge, who shall deal with the objection petition in accordance with law.

18. The appeal stands disposed of in the aforesaid terms.

VIPIN SANGHI, J JASMEET SINGH, J AUGUST 13, 2021 B.S. Rohella