

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

% *Reserved on: 28th November, 2022*

Pronounced on: 27th January, 2023

+ **O.M.P. (COMM.) No. 70/2021**

AIRPORTS AUTHORITY OF INDIA

Rajiv Gandhi Bhawan,
Safdarjung Airport,
New Delhi – 110003

..... Petitioner

Through: Mr. K.K. Rai Sr. Advocate along with
Mr. Vaibhav Kalra and Ms. Neha
Bhatnagar, Advocates.

versus

M/S TDI INTERNATIONAL INDIA PRIVATE LIMITED

42, Rani Jhansi Road,
New Delhi – 110055

..... Respondent

Through: Mr. Ashish Mohan and Mr. Samarth
Chowdhary, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T

I.A. No.2572/2021

1. This is an application under Section 5 of the Limitation Act, 1963 has been filed on behalf of the petitioner seeking condonation of one (1) day delay in re-filing the petition.

2. It is submitted in the application that the petitioner has filed the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (*hereinafter referred to as "A&C Act, 1996"*) against the impugned order dated 17.10.2020 on 14.01.2021 vide Diary No. 83064/2021, which is within 90 days from the date of receiving the Award on 17.10.2021.

3. Certain objections were raised by the Registry, which were removed and the petition was re-filed. Subsequently, certain other objections were taken, which were removed and the petition was finally accepted. However, there was a delay of one (1) day in re-filing the petitioner. Hence, a prayer is made that the same may be condoned.

4. **Submissions heard.**

5. Section 34 (3) of the A & C Act, 1996 prescribes the limitation for filing the objections against the Arbitral Awards and reads as under:

"(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"

6. In *Ashok Kumar Parmar Vs. D.C. Sankhla* 1995 RLR 85, the Single Judge of this Court held that the emphasis should be on the nature of defects found in the plaint. If the defects are of such character that would render a plaint a non-plaint in the eye of law, then the date of presentation would be

the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not affecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit. The Division Bench upheld this view in D.C Sankhla Vs. Ashok Kumar 1995 (1) AD (New Delhi) 753

7. In Executive Engineers Vs. Shree Ram Construction and Company 2011 (2) R.A.J. 152, it was held that the conduct of the party must pass the rigorous test of diligence as the purpose of prescribing the definite and un-elastic period of limitation is rendered futile. However, it was also said that each case needs to be examined on its own facts and merits to ascertain whether or not to condone the delay in re-filing the objection petition when the initial filing is within the period of limitation. If the delay in re-filing is substantially beyond the period of three months and 30 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.

8. In DDA Vs. Durga Construction Company 2013 SCC OnLine Del 4451, Division Bench of this Court explained the distinction between *non-est* filing and re-filing. It was observed that the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respect, however certain documents may not be clear and may require to be retyped. In such a case where the initial filing is within the period of 120 days as specified in Section 34 (3) of the A&C Act, but the re-filing is beyond this period it cannot be said that the Court lacks jurisdiction to condone the delay in re-filing. Section 34 (3) of the A&C Act only prescribes limitation with regard to filing an application to challenge the Award and not for re-filing. The question whether the court

should in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevented re-filing the petition/ application within time. It was also held that the cases of delay in re-filing are different from the cases in delay in filing in the first instance in as much as the party has already evinced its intention to take recourse to the remedies available in the Courts and also taken steps in this regard. It cannot be thus, assumed at the stage of re-filing that the party has given up its rights to avail the legal remedies. In the absence of any specific statute that limits the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the Courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing of the application.

9. In the light of the above law, the log information is produced below to ascertain whether the first filing suffered from formal defects or was a *non-est* filing.

10. The **first filing** was done on 14th January 2021. The registry gave a notice for the following defects on 16th January, 2021:

“total 850 pages filed, specified value w.r.t to pecuniary value be given in para of pecuniary jurisdiction. documents be made true copy duly signed each page”

11. The **first re-filing** was done on 01st February, 2021, and the defects were noted on 11th February, 2021 as under:

“Cannot raise objections as not as per the format given for e filing on the web portal of delhi high court, be filed properly for scrutiny and listing.”

12. The **second re-filing** was done on 15th February, 2021, and the defects were noted on 16th February, 2021 as under:

“total 853 pages filed, objections dated 16/01/2021 still stands unrectified. condone delay in refiling be given. each page of the documents be made true copy duly signed.”

13. The **third re-filing** was done on 16th February, 2021, and the defects were noted on 17th February, 2021 as under:

“total 867 pages filed, please clarify that the petitioner is a government entity or not and be filled appropriate option while filing of the case. affidavit of party be given in condone delay application.”

14. The fourth re-filing was done on 17th February, 2021, and then on the same day, the re-filing was accepted, and the case was sent before this court.

15. The short question is whether the petitioner has been able to establish a ground for condonation of delay in re-filing the petition. The entire issue hinges on the determination that whether the first filing on 14th January, 2021 (which was admittedly within the period as prescribed under Section 34 of A&C Act, 1996) can be considered as a filing or is it a *non-est* filing. The main objections taken to the first filing were that *“total 850 pages filed, specified value w.r.t to pecuniary value be given in para of pecuniary jurisdiction. documents be made true copy duly signed each page”*. It is evident from the nature of defects that they were only technical in nature and otherwise it was a valid filing, which date has to be reckoned for calculating the limitation period. The first filing was within the period of limitation.

16. The delay of one day in re-filing is sought to be explained by asserting that there was a technical software error.

17. Considering that the initial filing had been done within the prescribed limitation which was not *non-est* and the defects found were formal in nature and consistent steps were taken thereafter to remove the defects, the delay of one day in re-filing of the petition is hereby condoned.

18. The application is accordingly allowed.

O.M.P. (COMM.) No. 70/2021, I.A. 2570/2021 & 2571/2021

19. List before Roster Bench on 20.02.2023.

JANUARY 27, 2023

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