

**IN THE COURT OF MS. SANTOSH SNEHI MANN,
DISTRICT JUDGE (COMMERCIAL COURT)-01,
PATIALA HOUSE COURTS, NEW DELHI**

OMP(COMM.) 27/2021

In the matter of:

M/s Vantage Integrated Security Solution Pvt. Ltd.

Through its Authorized Representative

Office at B-11, Sector – 7, NOIDA,

Gautam Budh Nagar (U.P) 201301

...Applicant/Petitioner

Versus

M/s Spark Technologies (P) Ltd.

308-309, Eros Apartments

56, Nehru Place, New Delhi-110019Non-applicant/respondent

Conclusion of arguments : 21.07.2022

Date of Order : 23.07.2022

Appearance:

Applicant/petitioner:Adv. Kshitij Bhardwaj

Non-applicant/respondent:Adv. Vivek Sharma

ORDER

1. By this order I shall dispose of the application of the petitioner under Section 5 of the Limitation Act seeking condonation of delay in filing the application under Section 34 of the Arbitration and Conciliation Act (hereinafter referred as ***The Act***), for setting aside the arbitral award dated 27.10.2020.

2. Facts stated in the application briefly are that though factum of passing of the award was communicated over a call by the Sole Arbitrator on 27.10.2020 itself, the final award was not received by the applicant or its counsel until February 2021, when the counsel for the applicant had called Id. Sole Arbitrator to inquire about the delivery of the physical copy of the award and proof of payment of stamp duty. It was then revealed that physical copy of the award was sent through speed post on 18.11.2020, which never got delivered to the petitioner.
3. Referring to an e-mail of the Sole Arbitrator dated 12.02.2021, it is claimed that physical copy of the award supplied by the Sole Arbitrator to an associate of the counsel for the applicant on 15.02.2021 could not be accepted as the second copy, when Id. Sole Arbitrator refused to provide the physical copy of the award along with the proof of payment of stamp duty by the applicant. It is averred that counsel for the applicant/petitioner then wrote a letter dated 15.02.2021 to D.I.A.C, Delhi High Court, seeking physical copy of the award, which has not been received by the applicant till date.
4. It is contended that delivery of the award has to be assumed from the date when the proper physical copy of the award along with the proof of payment of stamp duty is provided, which is yet to be received by the petitioner or its counsel. On this basis it is claimed that the application under Section 34 of the Act is well within the period of limitation. Alternatively, it is pleaded that in case limitation is assumed from the date of the award i.e.

27.10.2020, there is a bonafide delay of 30 days in filing the application under Section 34 of the Act. Hence, the application for condonation of delay.

5. In reply to the application, it is contended that plea taken in the application is not only false and vexatious, it is complete abuse of process of law. It is averred that on the date of the award i.e. 27.10.2020, Mr. V.S. Dubey, AR of the Claimant/Respondent and Mr. Manveer Singh, AR of the petitioner were personally present and duly received their copies of the award under their signatures. Since hard copy of the award was duly delivered by the Sole Arbitrator to the AR of the applicant, when petitioner asked for hard copy again, Id. Sole Arbitrator made an endorsement on hard copy being the second copy, which the junior of the counsel for the applicant/petitioner did not take. In this context print out of one e-mail dated 22.02.2021 of Justice Muneendra Kumar Mittal, Sole Arbitrator, Former Judge, Allahabad High Court, addressed to Adv. Kshitij Bhardwaj counsel for the petitioner is filed, copy of which was endorsed to The Coordinator, DIAC, Delhi High Court and Advocate Vivek Sharma, counsel for the claimant/respondent.
6. I have heard the counsels for the parties and carefully perused the record.
7. As per Section 34 of the Act, a party aggrieved by an Arbitral Award can challenge the award in the Court within 03 months from the date of receipt of arbitral award. This period of 03 months can be extended further for a period of 30 days, if the

Court is satisfied that applicant was prevented by sufficient cause from making application within the said period of 03 months.

8. Award was passed on 27.10.2020. Ld. Counsel for the respondent has demolished the plea of non-receipt of the award on 27.10.2020, on the basis of the letter of Sole Arbitrator dated 22.02.2021, the content and context of which is not disputed. There is no reason to disbelieve this letter, according to which physical copy of the award was given to the ARs of the parties on 27.10.2020. In these facts and circumstances, plea of the non-applicant/respondent that averments made in the application are false and vexatious, cannot be ignored.
9. However during the course of arguments, ld. counsel for the applicant/petitioner referred to the Judgment of Hon'ble Supreme Court in ***"Prakash Corporates Vs. Dee Vee Projects Limited (2022) 5 Supreme Court Cases 112"*** and submitted that in view of this judgment, the application filed under Section 34 of the Act is within the period of limitation. Ld. counsel for the non-applicant argued that there is no such plea in the application and hence, cannot be considered.
10. Orders passed by the Apex Court in ***"Suo Motu Writ Petition (C) No. 3 of 2020 In re: Cognizance for extension of limitation" dated 10.01.2022*** and ***Prakash Corporates (Supra)*** in very extraordinary circumstances during COVID pandemic with respect to the limitation, is the law on the subject. Even if no specific averment in this regard has been made in the application, for condonation of delay, it can be orally argued and has to be

11. Though the petitioner fails to substantiate the plea taken for condonation of delay in the application, it gets the life of limitation on the basis of aforementioned Apex Court decisions. Accordingly, application/petition of the applicant/petitioner under Section 34 of the Act is deemed to have been filed within the period of limitation.

12. The application under Section 5 of the Limitation Act stands disposed of.

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