

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Misc Arb. (Com) 112 of 2024
CNR No. WBSP18-000124-2024

Order No.10

Date: 12.02.2025

In the matter of:

An application under Section 34 of the Arbitration and Conciliation Act, 1996.

AND

In the matter of:

Subrata Mukherjee

Vs.

Protium Finance Limited.

Order

Today is fixed for hearing in reply of the application being I.A. no. 01 of 2024.

Both sides have filed their respective haziras.

Heard the respondent is full.

Now, the instant application is taken up for passing order.

I.A. No. 01 of 2024

1. This is an application filed by the petitioner under Section 34(3) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as Act) for condoning the delay of filing the *per se* application under Section 34 of the Act for setting aside an arbitral award dated 29th April, 2024 claimed to be an *ex parte* award.

2. It appears from the record that the impugned award dated 29th April, 2024 was passed *ex parte* against the petitioner herein and the petitioner was not received the impugned, however, he came to know about the award through its co-borrower who provided a copy of the arbitral award on 7th June, 2024 and the petitioner herein filed the instant application under Section 34 of the Act for setting aside the impugned award on 27th August, 2024. It is pertinent to mention here that the in the instant application it

appears that the impugned award was sent to the petitioner's house on 4th August, 2024 and the petitioner is counting the days from the said date i.e. on 4th August, 2024.

3. Section 34(3) of the Act provides as follows:

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.

4. From the above it is expounded that delay may be condoned after expiry of three months and within further period of thirty days, on being satisfied sufficient cause that needs to be shown by the petitioner.

5. In the case in hand, it appears that the initial three months period expired on 4th August, 2024 and the instant Section 34 application was filed on 23rd August, 2024 within the next 30 days' time period since the extended 30 days period would have been ended on 3rd September, 2024 (including holiday).

6. Therefore, it may safely state that the petitioner was not filed the application under Section 34 of the Act within three months from the date of receipt of the award and therefore, there is a delay, whereas, the application in context was filed within the extended period of 30 days. So, in view of the statutory directive aforesaid, now, this Court has to look after whether any sufficient cause has been pleaded by the petitioner in the instant application or not.

7. Petitioner herein stated that the delay for filing the application under Section 34 caused inasmuch as the petitioner was out of Kolkata for his business purposes and was only back in the city by 7th June, 2024. As regards, the petitioner has contended that the petitioner was unaware of impugned award till 7th June, 2024. After being intimated about the said impugned award dated 29th

April, 2024, held several meetings with the officials and/or representatives of the respondent company to amicably settle the disputes between the parties. But this mechanism failed by 31st July, 2024. The petitioner then sought legal advice and proceeded to take immediate action to challenge the impugned award on 1st August, 2024. The efforts were further delayed as the respondent company has not supplied the petitioner with the copy of the loan agreement. In spite of several requests, the respondent company did not provide the petitioner with the copy of the agreement and the petitioner, further, was made to wait to receive the agreement until 14th August, 2024. The legal representative of the petitioner company, having no other alternative initiated to prepare the documents required for the filing for Section 34 application under the Arbitration and Conciliation Act, 1996 only on 16th August, 2024, 15th August, 2024 being a national holiday. The deliberations between the legal representatives and the petitioners required a considerable period of time and, therefore, the application under Section 34 of the said 1996 Act was affirmed and filed only on 23rd August, 2024.

8. Ld. Counsel for the petitioner submits before this Court that the petitioner believes that there is a fair chance of succeeding in the matter. The petitioner states that the time period for preferring the application before this Court expired on 4th August, 2024 and while preferring the application under Section 34 of the Act, there has been a delay, but the same is within 30 days after expiry of three months, and as such it has become imperative that an application for condonation of delay be preferred and such delay be condoned as the sufficient cause has been shown.

9. In support of his contention, Ld. Counsel for the petitioner relies on the following cases Daskhin Haryana Bijli Vitran Nigam Ltd. vs. Navigant Technologies Pvt. Ltd., Bharat Rasayan Finance Limited vs. Rani Chand Sindhu and Anr., Usha Martin Limited vs. Eastern Gases Limited and Union of India vs. Ogilvy and Mather Ltd. and Anr.

10. The respondent has filed its objection to the instant application and therein has evasively denied all the averments as raised by the petitioner in the instant application.

11. Ld. Counsel appearing for the respondent has submitted that the reason delineated in the instant application so as to evade the delay of filing the Section 34 application is not at all sufficient. Therefore, the instant application should be rejected.

12. Heard the Ld. Counsels for both sides and also perused the materials on record.

13. A bare perusal of the proviso of Section 34(3) of the 1996 Act, it is crystal clear to take note that Section 34(3) of the 1996 Act provides a period of limitation to file an application for setting aside the arbitral award and the said limitation is three (03) months. More so, the proviso to the sub-section (3) of Section 34 of the 1996 Act places a limit on the period of condonable delay by using the words 'may entertain the application within a further period of thirty days, but not thereafter'. Therefore, if a petition and/or application is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned.

14. The aforesaid view has been tested in many times by the Hon'ble Apex Court as well as various Hon'ble High Courts of this country in diverse cases. As regards reliance is placed on the case of Mahindra and Mahindra Financial Services Limited v. Maheshbhai Tinabhai Rathod and Others¹ and the case of the P. Radha Bai v. P. Ashok Kumar².

15. The Hon'ble Apex Court in Mahindra and Mahindra Financial Services Limited's case (*supra*) further held that Section 5 of the Limitation Act is not applicable to condone the delay beyond the period prescribed under Section 34(3) of the 1996 Act.

¹Reported in (2022) 4 SCC 162.

²Reported in SCC pp. 457-58, para 33.

16. In the case of P.Radha Bai (*supra*) the Hon'ble Court held as “33.2. The proviso to Section 34(3) enables a court to extension as application to challenge an award after the three months' period is expired but only within an additional period of thirty days, “but not thereafter”. The use of the phrase “but not thereafter” shows that the 120 days' period is the outer boundary for challenging an award could go beyond 120 days. The phrase “but not thereafter” would be rendered redundant and otiose. This Court has consistently taken this view that the words “but not thereafter” in the proviso of Section 34(3) of the Arbitration and Conciliation Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt. [State of H.P. v. Himachal Techno Engineers³, Assam Urban Water Supply & Sewerage Board v. Subhas Porjects& Mktg. Ltd.⁴. and AnikumarJinabhai Patel v. PravinchandraJinabhai Patel⁵.].

17. In this case condonable period of three months has been elapsed on 04.08.2024 and the instant misc case has been filed on 27.08.2024. So, it is clear that the instant misc case is filed within the discretionary period of 30 days and not beyond that and the cause shown for delay in filing the application of Section 34 of the Act, is sufficient, hence, the same is condoned.

18. Hence, I.A. No. 01 of 2024 is allowed on contest without any order as to costs.

19. The instant application being no. I.A. No. 01 of 2024 is, thus, accordingly disposed of.

Fix the matter on **28th March, 2025 at 11:00 a.m.** for filing objection to the application being I.A. No. 02 of 2024 by the respondent.

Parties to act on the basis of downloaded copy of this Order from the Website/E-courts App.

Dictated and corrected by me

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram.

Sd/-
Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram.

³Reported in (2010) 12 SCC 210.

⁴Reported in (2012) 2 SCC 624.

⁵Reported in (2018) 15 SCC 178.