

## Govt. of NCT of Delhi Vs Y.D. Builders and Hotels Pvt. Ltd

**Court:** DELHI HIGH COURT

**Date of Decision:** Oct. 19, 2016

**Acts Referred:** Arbitration and Conciliation Act, 1996 - Section 34(3)

**Citation:** (2016) 234 DLT 577

**Hon'ble Judges:** Mr. Vibhu Bakhru, J.

**Bench:** Single Bench

**Advocate:** Ms. Jyoti Singh, Senior Advocate with Mr. Saurabh Chadda and Mr. Ishan Kashyap, Advocates, for the Petitioner; Mr. M.K. Ghosh, Ms. Tina Garg and Mr. Rohit Dutta, Advocates, for the Respondent

**Final Decision:** Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Vibhu Bakhru, J. - IA No.8720/2016

The present application has been filed by the petitioner, inter alia, seeking condonation of delay of 110 days in re-filing of the above captioned

petition.

2. The petitioner has filed the above petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter "the Act") impugning an

arbitral award dated 22.10.2015. The present petition was filed on 23.01.2016 which is apparently beyond the period of three months from the

date of passing of the award. However, the petitioner asserts that the concerned department had received the copy of award only on 27.10.2015,

therefore, the petition was filed within the time as prescribed under Section 34(3) of the Act i.e. within the period of three months from the receipt

of the copy of the arbitral award.

3. The said petition was returned under objection by the Registry of this Court with various objections on the same date i.e. 23.01.2016.

Apparently, the petition was not signed as required and was also not supported by a statement of truth. The petition was thereafter re-filed on

03.02.2016 but all objections were not removed. The petition was thereafter re-filed on 08.02.2016 and again on 19.02.2016 but was returned

under objections on both occasions. The petition was thereafter re-filed on 26.05.2016 - after a period of more than three months - but all

objections had still not been removed. The petition was re-filed successively on various dates but was returned under objection on each occasion

and finally the petition was refiled on 19.07.2016.

4. In the present case, the petitioner has sought to explain the delay in refiling in the following manner: The petitioner states that although the petition

was filed in January, 2016, the Department had asked the learned counsel for the petitioner to engage a senior advocate and after consultations,

the name of a senior advocate was sent to the Government of NCT of Delhi and the Office of the Chief Minister. It is stated that the Competent

Authority took ""considerable time due to administrative reasons"" and communicated its approval only by end of March 2016. Subsequently, it

transpired that certain documents were not available and copies thereof were obtained from the arbitrator on 26.04.2016. The petitioner thereafter

took steps for having the documents typed and the typed documents were received by 20.05.2016.

5. The petition was re-filed on 19.7.2016 and there is no explanation as to why it took further two months for re-filing the petition after curing the

defects.

6. Ms. Jyoti Singh, learned senior counsel appearing on behalf of the petitioner submitted that since the petitioner is the Government of NCT of

Delhi, its processes take considerable time.

7. At this stage, it is necessary to refer to Section 34(3) of the Act, which reads as under:

Section 34(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.

8. The provisions of Section 34(3) Act are unambiguous, the court may entertain a petition for setting aside the award even after three months

provided the petitioner was prevented by sufficient cause from filing the petition within a period of three months. However the court cannot

entertain a petition after 30 days of the expiry of the initial period of three months.

9. In Delhi Development Authority v. M/s Durga Construction Co: 2013 (139) DRJ 133 a division bench of this Court had considered the

question as to whether the Court can condone the delay in re-filing beyond 120 days. Although, the Court held that this Court would have the

jurisdiction to condone the delay in re-filing, however it also cautioned that this power cannot be exercised liberally in view of the provisions of the

Act and the legislative intent to ensure that all the proceedings are concluded expeditiously. The relevant extract of the above decision is set out as

under:-

25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in

section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to

ensure that arbitration proceedings are concluded expeditiously. The delay in re-filing cannot be permitted to frustrate this object of the Act. The

applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In

the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory

explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called

for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34

of the Act must be preferred.

10. Petitions under the section 34 of the Act have to be filed within the period of three months of receipt of the arbitral award and the Court has no

jurisdiction to condone the delay in re-filing of the petition beyond 30 days. Thus, the legislative object of the Section 34(3) of the Act is to ensure

that the petitions for setting aside the award are taken up expeditiously. This object cannot be allowed to be frustrated by condoning inordinate

delays in re-filing as in the present case. As noted above, the delay in re-filing itself exceeds three months, which is the initial period granted for

filing of the petition. Although the Court has the jurisdiction to condone delay in re-filing the petition, the same cannot be exercised oblivious of the

discipline of Section 34(3) of the Act.

11. In Delhi Transco Ltd. & Anr. v. Hythro Engineers Pvt. Ltd.: 2012 (6) R.A.J. 299 (Del), a Division Bench of this Court had held as

under:-

However, what is to be borne in mind by the Court is that the limitation period is limited by the Act to three months, which is extendable, at the

most, by another thirty days, subject to sufficient cause being disclosed by the petitioner to explain the delay beyond the period of three months.

Therefore, it cannot be that a petitioner by causing delay in re-filing of the objection petition, delays the re-filing to an extent which goes well

beyond even the period of three months & thirty days from the date when the limitation for filing the objections begins to run. If the delay in re-filing

is such as to go well and substantially beyond the period of three months and thirty days, the matter would require a closer scrutiny and adoption of

more stringent norms while considering the application for condonation of delay in refiling, and the Court would conduct a deeper scrutiny in the

matter. The leniency shown and the liberal approach adopted, otherwise, by the Courts in matter of condonation of delay in other cases would, in

such cases, not be adopted, as the adoption of such an approach by the Court would defeat the statutory scheme contained in the Act which

prescribes an outer limit of time within which the objections could be preferred. It cannot be that what a petitioner is not entitled to do in the first

instance, i.e. to file objection to an award beyond the period of three months & thirty days under any circumstance, he can be permitted to do

merely because he may have filed the objections initially within the period of three months, or within a period of three months plus thirty days, and

where the refiling takes place much after the expiry of the period of three months & thirty days and, that too, without any real justifiable cause or

reason.

12. Further the explanation provided by the petitioner can most charitably be described as inconsiderable. The Supreme Court in the case of

Office of The Chief Post Master General and Ors v. Living Media India Ltd. and Anr.: (2012) 3 SCC 563 held as under:-

In our view, it is the right time to inform all the Government bodies, their agencies and instrumentalities that unless they have reasonable and

acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending

for several months/years due to considerable degree of procedural red-tape in the process. The Government departments are under a special

obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as

an anticipated benefit for Government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a

few.

13. In view of above, there is no ground to condone the inordinate delay in re-filing the petition.

14. The application is thus dismissed.

O.M.P. (COMM) 338/2016 & IA Nos.8718-19/2016

15. In view of order passed in IA No.8720/2016, the petition as well as pending applications are dismissed.