
(2015) 04 DEL CK 0239

In the Delhi High Court

Case No : I.A. 11739/2012 in OMP 573 of 2012

Nordic Intertrade

APPELLANT

Vs

Steel Authority of India Ltd.

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11, 18(1), 2(1)(h), 31, 31(5)
Limitation Act, 1963 — Section 29, 5

Citation : (2015) 04 DEL CK 0239

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Darpan Wadhwa, Sumeet Lall and Shwetabh Sinha, for the Appellant; Arvind Nigam, and Ashish Kumar, Advocates for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.

I.A. 11739/2012 in OMP 573/2012

1. By this order I shall decide IA 11739/2012 filed in OMP 573/2012, by which the petitioner seeks condonation of 21 days" delay in filing the petition under Section 34 of the Arbitration and Conciliation Act ("Act" in short) challenging the Award dated January 23, 2012.

2. It is the case of the petitioner in the application that the impugned arbitral award dated January 23, 2012 was received by erstwhile Advocates of the petitioner from Indian Council of Arbitration ("ICA" in short) on February 07, 2012. The petitioner company is based in Norway. Its Indian agent M/s. Sawhney Steel was looking after the arbitration proceedings. The lawyers for the petitioner who are based in Mumbai had sent the award to M/s. Sawhney Steel in Delhi. M/s. Sawhney Steel forwarded the same to the petitioner in Norway. It was the stand of the petitioner that it took some time for the lawyers in Mumbai to send it to M/s. Sawhney Steel in Delhi and for M/s. Sawhney Steel to send the same

to its principal, i.e., the petitioner at Norway.

3. On receipt of the award in Norway, the petitioner examined it and took advice from its lawyers on further course of action, which consumed substantial time. Pursuant thereto all the documents were entrusted to the present Advocate of the petitioner who after going through the documents and the impugned award has prepared and filed the petition. The petitioner has also averred that from the date of receipt of the award i.e. February 07, 2012, the present petition ought to have been filed within 3 months i.e. May 07, 2012, but was filed on May 28, 2012. According to the petitioner, the delay of 21 days had occurred for the reasons stated above inasmuch as it took some time to receive proper legal advice on the issues which involve complex questions of law as well as important principles of shipping and maritime law and there is a sufficient cause for condoning the delay which was unintentional and bona-fide.

4. The respondent in its reply to this application would state that the application does not have any specific details or reasons and the petitioner had presumed that seeking condonation of delay is a matter of right. The respondent would submit that the petitioner needs to satisfy this Court that delay of each and every day was justified and for sufficient reasons. The respondent disputed about the existence of sufficient and cogent reasons seeking condonation of delay.

5. In the rejoinder the petitioner has reiterated its stand as taken in the application seeking condonation of delay.

6. Subsequently on May 10, 2013, the petitioner had filed an additional affidavit. In this affidavit, the stand of the petitioner additionally is that the impugned arbitral award dated January 23, 2012 was received by the petitioner from ICA in Norway only on March 28, 2012 under the cover of ICA's letter dated February 01, 2012. The petitioner has also stated that it has premised its application seeking Condonation of delay by calculating the limitation from the date when the erstwhile Advocates of the petitioner had received the arbitral award i.e. on February 07, 2012 instead by the petitioner itself.

7. The petitioner filed a further additional affidavit on October 09, 2014, wherein the petitioner in para No. 2 again concedes that it had inadvertently stated in the additional affidavit filed on May 10, 2013 that the petitioner had received the impugned arbitral award dated January 23, 2012 from ICA on March 20, 2012 (not March 28, 2012). According to the petitioner, the mistake had occurred as the petitioner did not realise that the stamp of acknowledgment for receiving the impugned arbitral award on the letter dated February 01, 2012 of the ICA actually was an acknowledgment given by the erstwhile Advocates for the petitioner. It was also averred that the said confusion arose due to the fact that the said letter was marked to the petitioner at its Norway address. The last affidavit also states the impugned arbitral award sent by ICA through registered post was received by the petitioner in Norway in the last week of February, 2012. The petitioner concedes that it does not have the receipt of receiving the

impugned arbitral award in its possession as in Norway the practice is to sign the register in the post office for the receipt of the registered letter. The petitioner has also stated that it does not have the envelope in which the impugned award was received as old envelopes are not retained for long. It may be noted that these were the primary reasons for the petitioner to plead ignorance on the exact date of receipt of the arbitral award in the last week of February, 2012. The petitioner had also written to the ICA requesting it to provide the receipts confirming the date when the award was sent by post to the petitioner in Norway and the date when the award was received by the petitioner in Norway. According to the petitioner, the ICA vide its letter dated September 25, 2014 confirmed that the said award was sent to the petitioner in Norway and to the petitioner's erstwhile Advocates in Mumbai through registered A.D post on February 01, 2012 and which was actually dispatched on February 02, 2012. According to the petitioner, even the attempts made by its Advocates for confirmation of the date when the award was received by the petitioner in Norway has proved futile as the post office does not have any information available with respect to the article dispatched on February 02, 2012. The petitioner's case is that if it had received the award on the first day of the last week of February, 2012, i.e., February 22, 2012 then the delay in filing the petition would merely be of six days and if assuming the petitioner had received the award on the last day of last week of February, 2012 then the petition is filed within 3 months i.e. within limitation. It is its case in the affidavit that the limitation for challenging the impugned arbitral award ought to be calculated from the date when the petitioner received the copy of award from ICA and not from February 07, 2012 when the erstwhile Advocates for the petitioner received the award.

8. Mr. Darpan Wadhwa, learned counsel for the petitioner has taken me through the application and different affidavits filed by the petitioner to urge that there was an inadvertent mistake on the part of the petitioner not to mention in the application itself the receipt of the arbitral award by its client in Norway. He also concedes that the premise on which the application was filed that the arbitral award was received by the erstwhile Advocates of the petitioner in Mumbai and sent to the petitioner's agent in Delhi who had sent the award to the petitioner in Norway is vague and without material dates. He also states that the stand of the petitioner in the additional affidavit filed on May 10, 2013 that the petitioner had received the impugned arbitral award dated January 23, 2012 on March 28, 2012 was also an inadvertent mistake. According to him, it is not the case of the respondent that the delay in filing the petition was beyond 3 months and thirty days. In other words, according to him the delay, if any, being beyond 3 months but within additional 30 days as required under Section 34(3) of the Act, the reasons specified in the application i.e. that after the receipt of the award the petitioner took legal advice, and it was advised to challenge the impugned arbitral award and thereafter the lawyers going through the record of the case and preparing the petition which resulted in loss of time is a sufficient cause for

this Court to condone the delay. He would also state that in terms of the settled position of law the limitation would start from the date when the party has received a signed copy of the arbitral award from the Arbitrator/Arbitral Tribunal, which according to him would be the last week of February, 2012. He states, even then the delay would be 6 days, from the 1st day of the last week of February 2012. Alternatively he would plead, even assuming the limitation start running from the date when the erstwhile Advocates of the petitioner had received the impugned arbitral award then also the delay would be of 21 days. It is his submission that the word "sufficient cause" should be given liberal interpretation to ensure that substantial justice is done, otherwise the petitioner would be denied of a remedy against the impugned arbitral award. He would state that the petitioner has a prima facie case in the main petition and would rely upon the following judgments in support of his contentions:-

(a) State of Himachal Pradesh and Another Vs. Himachal Techno Engineers and Another, (2011) 1 CTC 739 : (2010) 8 JT 443 : (2010) 7 SCALE 516 : (2010) 12 SCC 210 : (2010) 8 SCR 1025 : (2010) AIRSCW 5950 : (2010) AIRSCW 5088 : (2010) 5 Supreme 681

(b) State of Goa Vs. Western Builders, AIR 2006 SC 2525 : (2006) 3 ARBLR 1 : (2006) 6 JT 125 : (2006) 6 SCALE 574 : (2006) 6 SCC 239 : (2006) 3 SCR 288 Supp : (2006) AIRSCW 3436 : (2006) 5 Supreme 274

(c) Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, AIR 2005 SC 1832 : (2005) 1 ARBLR 409 : (2005) 4 CompLJ 16 : (2005) 3 JT 426 : (2005) 4 SCC 239 : (2005) 3 SCR 983 : (2005) 1 UJ 547 : (2005) AIRSCW 1635 : (2005) 2 Supreme 622

(d) Benarsi Krishna Committee and Others Vs. Karmyogi Shelters Pvt. Ltd., (2012) 4 ARBLR 81 : (2012) 111 CLA 65 : (2013) 115 CLT 468 : (2012) 5 CTC 519 : (2012) 9 JT 111 : (2012) 4 RCR(Civil) 584 : (2012) 9 SCALE 251 : (2012) 9 SCC 496

(e) Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others, (2002) 2 JT 349 : (2002) 2 SCALE 334 : (2002) 3 SCC 195 : (2002) 2 SCR 77 : (2002) AIRSCW 978 : (2002) 2 Supreme 143

(f) N. Balakrishnan Vs. M. Krishnamurthy, (1998) 6 AD 465 : AIR 1998 SC 3222 : (1998) 2 CTC 533 : (2008) 228 ELT 162 : (1998) 6 JT 242 : (1999) 121 PLR 462 : (1998) 5 SCALE 105 : (1998) 7 SCC 123 : (1998) 1 SCR 403 Supp : (1998) AIRSCW 3139 : (1998) 7 Supreme 209

(g) Delhi Development Authority vs. M/s. Amita Nand Agarwal (OMP No. 115/2007) decided on 25.02.2008

(h) Mrs. Gurdeep Kaur Vs. Mrs. C.K. Bedi and Another, (2008) 2 ARBLR 537 : (2008) 104 DRJ 213

(i) MCD vs. G.D Builders 119 (2005) DLT 658

9. On the other hand, Mr. Arvind Nigam, learned Senior Counsel for the respondent has taken me through the application, rejoinder and the additional affidavits filed by the petitioner in support of its prayer seeking condonation of delay. According to him, the application itself is premised on a false ground that the arbitral award was received by the erstwhile Advocates of the petitioner. In other words, it was his case that nowhere in the application did the petitioner mentioned that petitioner had also received a copy of the impugned arbitral award. That apart he would state that even the date of sending the arbitral award to the petitioner's agent in Delhi has not been given nor the application refers to the date on which the petitioner's agent in Delhi had sent the copy to the petitioner in Norway. He would also state that a new fact has been averred by the petitioner in the first additional affidavit filed on May 10, 2013 that the impugned arbitral award was received by the petitioner on March 28, 2013. According to him, this is factually incorrect inasmuch as the document evidencing the receipt of the arbitral award was in fact is the receipt of the impugned arbitral award by the Advocates of the petitioner in Mumbai. He has compared for the benefit of this Court the stamps which are identical. He would also state that the petitioner has admitted the false statement made by it in the affidavit dated May 10, 2013. According to him, even in the second additional affidavit filed on October 09, 2014 the petitioner had stated that the arbitral award was received in the last week of February, 2012. He would state, no date has been given which would be material to consider the prayer for Condonation of delay in filing the petition under Section 34 of the Act. He would sum up by stating that a party which has not approached the Court with clean hands is not entitled to any relief. He would rely upon the following two judgments in support of his case:

(a) Municipal Corporation of Delhi vs. Madhu Kishan Gupta and Anr., OMP No. 576/2006, decided by this Court on December 12, 2007

(b) Basawaraj and Others Vs. The Spl. Land Acquisition Officer, AIR 2014 SC 746 : (2013) 13 JT 469 : (2014) 1 RCR(Civil) 603 : (2013) 10 SCALE 391 : (2013) 14 SCC 81

10. Having considered the submissions made by learned counsel for the parties, it is the case of the petitioner that the petition has been filed beyond the period of three months but within additional thirty days and sufficient cause having been shown, this Court need to condone the delay. It is to be considered whether sufficient cause has been shown for the Court to condone the delay or as contended by the learned Senior Counsel for the respondent that the petitioner having taken a false stand which reflects that the petitioner had not approached this Court with clean hands, the prayer for condonation of delay need to be rejected.

11. Before I deal with the merits of the contentions advanced before me, I consider the judgments referred to by the learned counsel for the parties.

12. In State of Himachal Pradesh and Anr. Vs. Himachal Techno Engineers, a

dispute arose between the parties with regard to the construction of a water purification plant. A question was raised with regard to date of commencement of limitation under Section 34 of the Arbitration and Conciliation Act, 1996, whether the period of three months can be counted as 90 days. The court held that:

Sub-section (3) uses the words "three months" while prescribing the period of limitation and the proviso uses the words "thirty days" while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is to describe the periods as "three months" and "one month" respectively or by describing the periods as "ninety days" and "thirty days" respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in Sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

13. Further, with regard to the issue of when the period of limitation is to commence, the court followed the ratio as laid down in the Tecco Trichy Case (infra) holding that the period only commences once a copy of the arbitral award has been received by a party to the arbitration agreement.

14. In *State of Goa v Western Builders* (supra), the Supreme Court discussed the issue of the applicability of the Limitation Act to a Section 34 petition in a matter where a dispute between the parties was originally decided against the State of Goa. The State delayed filing its Section 34 petition challenging the award. On the applicability of the Limitation Act, the Court held:

"general proposition is by virtue of Section 43 of the Act of 1996 The Limitation Act 1963 applies to the Act of 1996 but by virtue of Sub-section (2) of Section 29 of the Limitation Act, if any other period has been prescribed under the special enactment for moving the application or otherwise then that period of limitation will govern the proceedings under that Act, and not the provisions of the Limitation Act. In the present case under the Act of 1996 for setting aside the award on any of the grounds mentioned in Sub-section (2) of Section 34 the period of limitation has been prescribed and that will govern. Likewise, the period of condonation of delay i.e. 30 days in the proviso to Section 34(2) will govern.

15. In *Union of India v Tecco Trichy Engineers and Contractors* (supra), a dispute arose in a contract with regard to gauge conversion of railway tracks from Madras Beach to Trichchirappalli-Villupuram Section. The question of condonation of delay in filing Section 34(3) proceedings arose before the Supreme Court; specifically the question of the date wherefrom the limitation under Section 34(3) would be counted" Looking into the issue, the Supreme Court held that:

"The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by

the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings".

16. In *Benarsi Krishna Committee and Ors. (supra)*, the Supreme Court was dealing with a matter relating to the conversion of a cinema compound into a commercial complex. Dispute arose in the matter, which was referred to arbitration. A question was raised before the Supreme Court with regard to Section 34(3) and what constituted valid service under the section. It was held that service had to be validly made on a "party" and the Court *inter alia* held, the expression "party" as defined in Section 2(1)(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. The said definition is not qualified in any way so as to include the agent of the party to such agreement. In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the arbitral award on the party himself and not on his advocate, which gives the party concerned right to proceed under Section 34(3) of the aforesaid Act".

17. In *Ram Nath Sao (supra)*, it was a case of partition suit involving approximately 116 acres of land, in which an issue arose, whether substitution of legal heirs of deceased defendants had been done within the limitation period. In this case, it has been held by the Supreme Court that "sufficient cause" is to be liberally construed. On the issue of limitation, it held that the condonation of delay is a matter of discretion of the court. For the delay, it also held that the rule in court should be acceptance of the explanation furnished by a party for delay and not the other way around.

18. In *N. Balakrishnan (supra)*, the Supreme Court while dealing with Section 5 of the Limitation Act, in addition to condonation of delay being at the discretion of the court, held that the Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly.

19. In *Delhi Development Authority v M/s. Amita Nand Aggarwal (supra)*, the petition under Section 34 was filed 20 days after the permissible period of 3 months had passed. However, certain objections were raised by the Registry, which were finally cleared only after the additional 30 days period had passed. Delay was condoned under Section 34(3) by this Court. In this case, it was seen that the government agency involved, DDA, had a long internal procedure before the matter was filed. A 20 days delay beyond the initial 3 months was permitted.

The time taken to clear objections before the Registry was not counted for the purposes of limitation.

20. In *Gurdeep Kaur (supra)*, the dispute between the parties hinged on a plot of land measuring 1005 sq. yards in Greater Kailash, New Delhi, purchased by the respondent, a British citizen after obtaining permission from the Reserve Bank of India. While challenging the decision of the arbitral tribunal under Section 34, there was a delay in filing the petition before the Court. Delay was condoned by this Court as the party had received a copy of the award late as she was abroad. The counsel for the party had received the copy, but limitation for purposes of Section 34 was held to start from the date of receipt of the award by the party herself, and the fact that she was abroad and thus unable to receive the award was accepted by this Court.

21. In *Municipal Corporation of Delhi v GD Builders (supra)*, this Court has examined when a delay under Section 34 is to be condoned. While looking at the facts of the case, it was determined that filing was done within the 30 days period over and above the 3 months that have been prescribed in Section 34(3). The Court while examining judicial precedent for determining what constitutes "sufficient cause" held as under:

"In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, AIR 1969 SC 575 : (1969) 1 SCR 1006 , their Lordships held that unless an application was found to be bereft of bona fides or the delay was caused by inaction or negligence of the party, the prayer for condonation should not be declined. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, (1976) ACJ 128 : AIR 1976 SC 237 : (1977) 47 CompCas 453 : (1975) 2 SCC 840 : (1976) 2 SCR 266 , their Lordships held that the discretion vested in the court under Section 5 cannot be defined or crystallized so as to convert a discretionary power into a rigid rule of law and that the expression "sufficient cause" should receive a liberal construction. Reference may also be made to *State of Kerala v. E.K. Kuriyipe and Ors.* where the court held that the existence or otherwise of a sufficient cause to justify condensation of delay was a question of fact to be decided in the facts and circumstances of each case. This was followed by the decision of the Supreme Court in *O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others*, AIR 1984 SC 1744 : (1984) 2 SCALE 65 : (1984) 4 SCC 66 : (1984) 16 UJ 890 where the court held that of refusal to condone the delay would cause grave miscarriage of justice, the same should be condoned.

The Court condoned the delay occurred due to departmental/official process on account of functioning of local body.

22. Whereas in the case of *Madhu Kishan Gupta (supra)* this Court was considering an application filed seeking condonation of delay of 14 days in filing the petition under Section 34 of the Act by the Municipal Corporation of Delhi. The ground taken by the petitioner MCD for the delay was on account of "necessary procedural steps". This Court was of the view that no cogent reasons

or facts have been disclosed, on the basis of which it can be inferred that the delay is on account of sufficient reasons. The Court further held in the absence of facts highlighting alleged procedural steps, the condonation sought was not for bona fide and sufficient reasons/cause.

23. In *Basawaraj and Anr. (supra)*, the Supreme Court was considering a case, where the land of the appellants was acquired in pursuance of notification dated 23.4.1994. The award under Section 11 was made on 23.10.1997. The appellant preferred reference under Section 18(1) of the Act for enhancement of compensation and the reference Court vide award dated 28.2.2002 enhanced the compensation. Aggrieved, the appellant filed appeals under Section 54 of the Act before the High Court on 16.8.2007 with applications for condonation of delay. The same stood rejected by the High Court as it did not find sufficient cause to condone the delay. The Supreme Court held that the discretion to condone delay has to be exercised judiciously based on facts and circumstances of each case. Sufficient cause cannot be liberally interpreted if negligence in action or lack of bona fides is attributed to the party. Whether or not sufficient cause has been furnished can be decided on the facts of the case and no straight jacket formula is possible (Reference is made to *Madanlal Vs. Shyamlal*, (2001) 9 AD 524 : AIR 2002 SC 100 : (2001) 2 JT 389 Supp : (2001) 8 SCALE 172 : (2002) 1 SCC 535 : (2001) AIRSCW 4655 : (2001) 8 Supreme 200). The Court also held that the sufficient cause means that the party should not have acted in a negligent manner or there was want of bona fide on the part in view of the facts and circumstances of a case or it cannot be alleged that party has not acted diligently or remained inactive.

24. On a reading of the afore-said position of law, as relied upon by the parties, the following position emerges:-

(1) The delivery of an arbitral award is not a matter of mere formality. It is a matter of substance. The period of limitation under Section 34(3) commences once a copy of the arbitral award has been received by a party to the arbitration agreement and not by the Advocate.

(2) Where there is a challenge to the arbitral award, the period prescribed under the Act, which being a special enactment for moving the application or otherwise, then that period of limitation will govern the proceedings under the Act.

(3) The sufficient cause is to be liberally construed and condonation of delay is a matter of discretion of the Court and acceptance of explanation given should be the rule and refusal the exception.

(4) The rules of limitation are not meant to destroy the rights of the parties but to ensure that the parties do not resort to dilatory tactics but seek their remedy promptly.

(5) A delay of 20 days because of long internal procedure beyond 3 months was condoned.

(6) Delay was condoned on the ground that the petitioners had received a copy of the award after she had come from abroad.

(7) In an application seeking condonation of delay cogent reasons/facts need to be divulged to form a view of sufficient cause.

(8) The plea of condonation of delay has to be with regard to the facts of each case. Even though the Court has discretion, it has to be exercised judiciously. Sufficient cause cannot be liberally interpreted if negligence in action or lack of bona fides is attributed to the party.

25. The application of the petitioner was premised on a factual aspect, that the impugned arbitral award was received by the lawyers of the petitioner in Mumbai on February 07, 2012. The onward transmission of the arbitral award through the petitioner's agent in Delhi and then to Norway to the petitioner and further consideration of the arbitral award by the petitioner and its taking a legal advice of a new counsel and the preparation of the petition resulted in the delay. The relevant dates have not been given. In the first additional affidavit, the petitioner had referred to 28th March, 2012 as the date on which the arbitral award was received by the petitioner in Norway possibly to justify the petition was within limitation. In fact the petitioner had tried to justify the petition being within limitation by stating that the limitation must count from the date when the party has received the arbitral award and not the erstwhile Advocates. In the second additional affidavit, the petitioner concedes that it had inadvertently stated in the first additional affidavit that the petitioner had received the impugned arbitral award on March 28, 2012. The second additional affidavit reveals, some enquiries have been made after the mistake was detected possibly in view of the hearing before this Court on November 22, 2014 when learned counsel for the petitioner had sought time to file a better affidavit. The second additional affidavit also does not disclose the date on which the impugned arbitral award was received by the petitioner in Norway. The petitioner has not produced the receipt given by it to the postal authorities in Norway nor the envelope through which the arbitral award was received. The petitioner has left it to the Court to do the guess work. The receipt of the arbitral award can be in the second or third week of February, 2012 as well, but it cannot be before February 07, 2012 as that was the date of receipt of award by the erstwhile Advocates of the petitioner in Mumbai. The transmission to Norway would take more time. Mr. Wadhwas's submission, (even though, contrary to the position of law, that the limitation starts from the date of receipt of the Award by the party), as an alternative plea that even assuming the date of February 07, 2012 is taken as the date of receipt of the arbitral award, the delay is of 21 days beyond 3 months and sufficient cause having been shown, the delay need to be condoned is appealing. It is one thing to allege that the conduct of the petitioner in pleading its case seeking condonation of delay in the application, affidavits is improper/casual, but different to allege lack of bona-fide on the part of the petitioner to pursue its remedy challenging the arbitral award by filing a proper petition. The facts as

pleaded that the petitioner sought legal advice and engaged the present counsel, who after perusing the documents prepared the petition cannot be doubted. There is some explanation. It is not the case of the respondent that the counsel for the petitioner is same who pleaded the case before the Arbitrator. The manner in which the petitioner had pleaded its case by filing application and affidavits without verifying the material particulars may not show a deliberate act to hoodwink the Judicial Process, but reflects the casualness, disregard and indifferent attitude with which this application has been prosecuted. That cannot be a ground to deny the relief to the petitioner in the application whereby the petitioner has called upon this Court to allow it to cross the hurdle of limitation so that it can put forward its case on the merit of the challenge to the arbitral award, but surely considering the manner in which the condonation was sought, some conditions which act as a deterrent and the majesty of law is upheld need to be imposed.

26. Accordingly, I deem it fit to allow this application by condoning the delay of 21 days in filing the petition under Section 34 of the Act, subject to the petitioner paying a cost of Rs.1 lakh (Rupees One Lakh) to the respondent on or before the next date of hearing.

27. The application is accordingly disposed of.

28. List the OMP 573/2012 for directions on 27th July, 2015.