

Chief Justice's Court

Case :- APPEAL UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT 1996 DEFECTIVE No. - 216 of 2024

Appellant :- State of UP Through Mahanideshak Chikitsalaya Medical Services

Respondent :- M/S Supreme Electrical and Mechanical Works

Counsel for Appellant :- Siddharth Singh, SC

Hon'ble Arun Bhansali,Chief Justice

Hon'ble Vikas Budhwar,J.

1. This appeal is directed against order dated 10.02.2021 passed by the Commercial Court, Kanpur Nagar whereby the application filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996') has been rejected on account of non compliance of provisions of Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'the MSME Act').

2. Application under Section 34 of the Act of 1996 was filed against award dated 15.02.2017, whereby award of Rs.34,21,423/- as principal and Rs.1,67,16,033/- as interest up to 11.11.2016, was passed in favour of the respondent.

3. The office has reported the present appeal as barred by 1191 days. An application under Section 5 of the Limitation Act has been filed seeking condonation of delay in filing the appeal. It is *inter alia* indicated in the affidavit in support of the application under Section 5 of the Limitation Act that order was passed by the Commercial Court dismissing the application under Section 34 of the Act of 1996 on 10.02.2021; after obtaining copy of the order dated 10.02.2021, letters were sent to the Law Department seeking permission to challenge the order passed by the Commercial Court; after obtaining permission from the Government, papers were sent to Chief Standing Counsel at

High Court, Allahabad and after preparing the case, a petition under Article 227 of the Constitution of India was filed in May, 2023. The petition under Article 227 was taken up by the Court on 06.07.2023. After realizing that proper remedy was an appeal under Section 37 of the Act of 1996, the petition was withdrawn on 06.07.2023. Whereafter the Law Department granted permission to file the appeal on 01.05.2024, whereafter the appeal has been prepared and has been filed. It is claimed that the delay in filing the appeal was unintentional and beyond the control of the appellants and, therefore, the delay be condoned.

4. Learned counsel for the appellants made submissions that based on wrong advice, writ petition was filed and after realizing that the proper remedy was to file an appeal under Section 37 of the Act of 1996, the writ petition was withdrawn and appeal has been filed and, therefore, the delay in filing the appeal may be condoned. Submissions have been made that a huge amount of the department, which is a public money, is involved and, therefore, a lenient view may be taken and the delay in filing the appeal may be condoned.

5. When it was pointed out that the order passed by the Commercial Court dismissing the appeal for non compliance of provisions of Section 19 of the MSME Act is justified in view of the law laid down by Hon'ble Supreme Court, submissions were made that the appellants are now prepared to make compliance of the provisions of the MSME Act.

6. We have considered the submissions made by learned counsel for the appellants and have perused the materials available on record.

7. The facts are glaring, wherein the appellants, despite the law laid down by Hon'ble Supreme Court regarding compliance of provisions of Section 19 of the MSME Act, chose not to comply with the said provisions for over four years, which led to dismissal of the application under Section 34 of the Act of 1996 on 10.02.2021. Whereafter a writ petition under Article 227 of the Constitution of India was filed after a

passage of over two years and three months before this Court and when the same came up before the Court on 06.07.2023, the same was withdrawn for filing an appeal and thereafter the sanction to file the appeal was granted after one year on 01.05.2024 and the appeal has been presented before this Court on 12.07.2024.

8. The entire conduct of the appellants in dealing with the matter before the Commercial Court and after passing of the order by the Commercial Court on 10.02.2021 till filing of the present appeal is wholly negligent.

9. In fact, the delay of 1191 days in filing the appeal, cannot even be condoned as laid down by Hon'ble Supreme Court in **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited : (2021) 6 SCC 460.**

"63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

10. The very fact that the appellants chose not to comply with the provisions of Section 19 of the MSME Act for over four years when the matter remained pending before the Commercial Court and thereafter waiting for two years in filing the writ petition and another year after withdrawing the writ petition for the purpose of filing of appeal, does not make out a case for condonation of delay and consequently, the application seeking condonation of delay is **rejected**.

11. Though with the rejection of the delay condonation application, this Court would have closed the chapter, however, it is apparent that the proceedings have been conducted in a wholly reckless manner which is other than bona fide. The award passed was for a sum of about Rs.2 crores and thus, promptness and diligence was required not only at the stage of conducting the proceedings under Section 34 of the Act of 1996 but also after dismissal of the said proceedings, which is totally lacking.

12. Since the bona fides are lacking which needs to be checked at the level of officers and the functionaries of the State Government who are at the helm of affairs, accordingly, the Principal Secretary / Additional Chief Secretary, Medical and Health Services, U.P. is directed to conduct an inquiry with regard to the lapses committed by the erring officers/employees who are under responsibility to prosecute the proceedings and consequently to take action strictly in accordance with law.

13. Learned counsel for the appellants shall communicate the order passed today to the concerned for its compliance.

14. Since the application seeking condonation of delay has been rejected, consequently, the appeal stands **dismissed**.

Order Date :- 5.8.2024

RK

(Vikas Budhwar, J)

(Arun Bhansali, CJ)