



**IN THE SUPREME COURT OF INDIA
EXTRA-ORDINARY APPELLATE JURISDICTION**

SPECIAL LEAVE PETITION (CIVIL) NO. 4008 OF 2023

TRICOLOR HOTELS LIMITED

PETITIONER

VERSUS

DINESH JAIN & ORS.

RESPONDENTS

ORDER

ATUL S. CHANDURKAR, J.

1. The order refusing to condone the delay in filing proceedings under Section 15(2) of the Arbitration and Conciliation Act, 1996 has led the petitioner to file the present proceedings.

2. Shorn of unnecessary details, the petitioner and the respondents entered into two share purchase agreements dated 04.11.2006. As per those agreements, the respondent Nos.1 to 7 sold their shareholding in the petitioner Company in favour of respondent Nos.8 to 14. In

the said agreements an arbitration clause was inserted. On disputes arising between the parties, the petitioner on 27.05.2009 issued a notice and invoked the arbitration clause. The petitioner nominated its arbitrator and called upon the respondents to name their nominee. Since there was no response to the aforesaid notice, the petitioner filed proceedings under Section 11 of the Arbitration and Conciliation Act, 1996 (for short 'the Act of 1996'). In those proceedings, with the consent of parties, a sole arbitrator came to be appointed on 12.05.2010. During the course of the arbitration proceedings, the sole arbitrator on 27.07.2015 recused himself and indicated his inability to continue as the sole arbitrator. This fact was communicated to the parties through an email dated 27.07.2015 addressed to their counsel. The petitioner on 01.08.2018 filed a petition under Section 15(2) of the Act of 1996 seeking substitution of the sole arbitrator. Thereafter, on 22.09.2018 the petitioner filed an application seeking condonation of delay, if any, in filing the said proceedings. The respondents opposed the aforesaid proceedings by

filing their reply. Ultimately on 09.11.2022 the learned Judge of the Delhi High Court was pleased to reject the application for condonation of delay on the ground that the petitioner had failed to show any sufficient cause. It was observed that condoning the delay would defeat the purpose of expeditious resolution of disputes by way of arbitration. Being aggrieved, the petitioner has challenged the said order.

3. Mr. Ritin Rai, learned Senior Advocate for the petitioner in support of the petition at the outset submitted that there was no delay whatsoever in filing the petition under Section 15(2) of the Act of 1996. The petitioner got knowledge of the email sent by the sole arbitrator dated 27.07.2015 only in the second week of August, 2015. In accordance with Article 137 of the Limitation Act, 1963 (for short 'the Act of 1963'), the period of limitation prescribed was three years from the date the right to apply accrued. Since the right to apply accrued to the petitioner when it got notice of the email sent by the sole arbitrator in the second week of August, 2015, the petition filed under Section 15(2)

of the Act of 1996 on 01.08.2018 was prior to expiry of the period of three years. The said petition therefore ought to have been entertained on merits.

In the alternate, it was submitted that on recusal of the sole arbitrator, the substitute arbitrator in terms of Section 15(2) of the Act of 1996 was required to be appointed in accordance with the rules that were applicable to the appointment of the arbitrator, who was being replaced. In the present case, under the arbitration agreement, a period of thirty days was available to the parties in terms of Section 11(5) of the Act of 1996 to agree upon the name of the sole arbitrator. During this period of thirty days no petition could be filed in Court for the appointment of an arbitrator. Hence the period of limitation under Section 15 of the Act of 1996 would commence to run only after expiry of the period of thirty days from 27.07.2015 which was the date of the recusal of the sole arbitrator. If this period of thirty days was excluded, it was clear that the petition preferred by the petitioner on 01.08.2018 was within limitation. The learned Senior Advocate for the petitioner in this regard placed

reliance on the decisions in ***National Highways Authority of India & Anr. vs. Bumihiway DDB Ltd. (JV) & Ors.***¹ and ***Huawei Technologies Company Limited vs. Sterlite Technologies Limited***,². It was further submitted that assuming that there was any delay in filing the petition under Section 15(2) of the Act of 1996, the same was only of a period of five days. The reason that the petitioner's counsel did not notice the email dated 27.07.2015 till the second week of August, 2015 was sufficient to condone the delay in filing the petition under Section 15(2) of the Act of 1996. The learned Judge erred in holding that there was no sufficient cause made out by the petitioner for condoning the delay. Considering the fact that the petitioner was diligently pursuing the proceedings, the delay ought to have been condoned so as to enable the parties to have their disputes resolved through arbitration. Reference in this regard was made to the decision of this Court in ***Government of Maharashtra (Water Resources***

¹ (2006) 10 SCC 763

² (2016) 1 SCC 721

Department) represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited³. It was thus prayed that the impugned order be set aside and the delay if any in filing the petition under Section 15(2) of the Act of 1996 be condoned.

4. Per contra Mr. Vikas Dhawan, learned Senior Advocate for the respondents opposed the appeal. It was submitted that the High Court was justified in refusing to condone the delay after being satisfied that there was absence of sufficient cause in filing the petition under Section 15(2) of the Act of 1996. The petition filed under Section 15(2) of the Act of 1996 was barred by limitation as the sole arbitrator had recused himself on 27.07.2015. This fact was intimated to the counsel for both the parties by sending an email to them. There was no question of the period of limitation commencing from the date of knowledge of such communication since the right to apply accrued immediately on 27.07.2015. The ground furnished by the petitioner for seeking condonation of delay was rightly

³ 2021 INSC 194

found to not constitute 'sufficient cause' for condoning the delay. It was submitted that since the sole arbitrator was appointed by the Court in exercise of power under Section 11(6) of the Act of 1996, the only manner in which the substitute arbitrator could be appointed was by the Court in exercise of jurisdiction under Section 15(2) of the Act of 1996. The initial period of thirty days as sought to be claimed by the petitioner would not be available in view of the fact that the sole arbitrator had been appointed by the Court under Section 11(6) of the Act of 1996. It was therefore not permissible for the petitioner to again invoke the arbitration clause and claim the period of thirty days for nominating its arbitrator. In this regard reliance was placed on the judgment of the Bombay High Court in **SAP India Private Limited vs. Cox & Kings Limited**⁴. It was urged that the ratio of the decision in **Bumihiway (supra)** was not applicable to the facts of the case. It was also urged that though the petitioner filed the petition under Section 15(2) of the Act of 1996 on 01.08.2018, it was not accompanied

⁴ 2019:BHC-0S:9221

by any application for condonation of delay. Such application was subsequently filed only on 22.09.2018. As a result, the period of delay ought to be reckoned till that date. In absence of any sufficient cause whatsoever there was no reason for exercising discretion in favour of the petitioner. Reliance was placed on the decisions in ***Basawaraj & Anr. vs. Special Land Acquisition Officer***⁵, ***Borse Brothers Engineers and Contractors Private Limited (supra), Bharat Sanchar Nigam Limited & Anr. vs. Nortel Networks India Private Limited***⁶, and ***HPCL Bio-Fuels Ltd. vs. Shahaji Bhanudas Bhad***⁷. Considering the fact that the share purchase agreements had been entered into on 04.11.2006 and the sole arbitrator who had been appointed on 12.05.2010 had recused himself on 27.07.2015, it was clear that even from said date, a period of about ten years had elapsed. The petitioner was not diligent in pursuing the arbitration proceedings which was clear from its conduct. The discretion was rightly not

⁵ (2013) 14 SCC 81

⁶ 2021 INSC 175

⁷ 2024 INSC 851

exercised in its favour by the High Court. In view of the law laid down by this Court in ***Pritam Singh vs. State***⁸, the petitioner was not entitled to any discretionary relief in that regard. It was thus submitted that since the High Court had considered the entire matter in the proper perspective, no interference with the impugned order was called for. The Special Leave Petition therefore was liable to be dismissed.

5. We have heard the learned counsel for the parties at length and we have also perused the documentary material on record. The High Court while refusing to condone the delay in filing the petition under Section 15(2) of the Act of 1996 has noted that after the sole arbitrator on 27.07.2015 recused himself and communicated this fact to the parties through his email, the right to apply for appointing a substitute arbitrator accrued. The issuance of the email by the sole arbitrator and its receipt by the parties is not disputed. In the application for condonation of delay filed by the petitioner it has been stated in clear terms that though the sole arbitrator had communicated the order dated

⁸ (1950) SCC 189

27.07.2015 through email, the petitioner's counsel could access the email account only in the second week of August, 2015 due to some technical issues. At the same time, the petitioner's counsel informed the petitioner accordingly. After considering the grounds raised in the application for condonation of delay, the High Court found that no sufficient cause for the delay as occasioned had been furnished by the petitioner. An attempt to get over the aspect of delay was sought to be made by raising a plea of technical glitch of the email account of the petitioner's lawyer. It found the explanation furnished to be ambiguous and hence was persuaded not to condone the delay. It further observed that though the delay caused was of five days, considering the fact that the dispute was sought to be resolved through arbitration which proceedings had been long drawn, it was not inclined to exercise discretion and condone the delay.

6. We find from the impugned order that the High Court has considered the entire matter and was thereafter satisfied that the petitioner had failed to make out any

sufficient cause for condoning the delay in filing the petition under Section 15(2) of the Act of 1996. The view as taken cannot be said to be perverse or resulting in manifest injustice for this Court to intervene in exercise of jurisdiction under Article 136 of the Constitution of India. No special circumstances are shown to exist nor do the proceedings raise any issue of sufficient gravity for this Court to undertake a review of the decision appealed against.

7. We therefore do not find any reason to entertain the Special Leave Petition. It is accordingly dismissed.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI,
SEPTEMBER 19, 2025.