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With this thought, we hereby present to you

LEX BONA FIDE: LAW JOURNAL

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CASE COMMENT ON CHINTELS INDIA LIMITED V BHAYANA BUILDERS PRIVATE LIMITED

By **Karan Shah and Milind Parikh**

INTRODUCTION

The judgement in the case of *Chintels India Limited v Bhayana Builders Private Limited* [1]. The judgement is the judgment of the 3 judge bench of the Supreme Court of India headed by Rohinton Nariman J. and comprising of Navin Sinha J. and Kurian Joseph. The judgment was delivered on 11th February 2021 by the Supreme Court. The judgement has put the hardly contested issue to rest and laid the good law to form the part of the precedent. This judgement has held that an appeal as per Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 is maintainable against an order refusing to condone the delay in filing a setting aside application under Section 34 of the Arbitration and Conciliation Act, 1996.

FACTS

A petition was filed by the present appellants in the Delhi High Court to set aside the award of arbitration tribunal under section 34 of the Arbitration and Conciliation Act, 1996. The appellants then applied for the condonation of the delay in filing the petition under section 34 of the Arbitration and Conciliation Act, 1996. This application for condonation of delay sought to condone the delay of 28 days in filing the petition after the expiry of the 90 days of challenge to the Award of the Arbitral Tribunal. The applicants have sought the following condonation of delay on the ground of the change of the counsel in the arbitration proceedings and the Court proceedings.

The said application for the condonation of delay was rejected by the Learned Single Judge of the Delhi High Court and it led to the consequential rejection of the petition for the setting aside of the Arbitral Award under section 34 of the Arbitration and Conciliation Act, 1996. An appeal was therefore filed on the impugned order of the Learned Single Judge dated 4/6/2020 which did not condone the delay in the petition.

The Division Bench of the Delhi High Court disallowed the appeal and held that the petitioner and appellants in the present case were not entitled to the remedy under the Arbitration and

Conciliation Act, 1996. The Division Bench of the High Court had held that the appeals in arbitration matters are maintainable only under Section 37 and not under Order 43 Rule 1 or Section 10 of the Delhi High Court Act and further holds that a refusal to set aside an arbitral award under Section 34, to be appealable under Section 37, must be after the grounds set out in Section 34 have been applied to the arbitral award in question and after the court has turned down such grounds as per the case of BGS SGS Soma JV. v. NHPC Limited [2]. The Court however had granted the appellants the certificate to appeal against the judgment of the Division Bench of the High Court as per the Article 133 and 134A of the Constitution which states the High Court certifies the case involves the substantial question of law of general public importance or the matter involves the question of law ought to be decided by the Supreme Court. The appellants here had filed the appeal before the Supreme Court.

ISSUE

The issue before the Supreme Court in this appeal was whether an appeal under section 37(1)(c) of the Arbitration Act, 1996 would be maintainable against an order refusing to condone the delay in applying section 34 of the Arbitration Act, 1996 to set aside an award.

CONTENTIONS OF THE APPELLANT

The Appellants in this case being the original petitioners had based the argument on the three legs to put their case before the Supreme Court.

1. **Sec. 39 of the Arbitration Act, 1940 and Sec. 37 of the Arbitration and Conciliation Act, 1996 *pari materia*:** The appellants had argued that the provisions in the 1940 Act and the 1996 Act were *pari materia* and the interpretation of the older Act being applicable on the 1996 Act under Sec. 37. The Supreme Court in the case of Essar Construction [3] had ruled that the appeal lies in the case the single judge refuses to set aside the award of the arbitration tribunal under sec. 34 an application under the Sec. 37 can be filed by the aggrieved party.
2. **Condonation of Delay and refusal to condone the delay leads to different situations:** The appellants also argued that the refusal of the Court to condone the delay of the applicant will be leading to a refusal to set aside an award, and this would give the finality to the award and the case of the condoning the delay will be the case of the challenge to the award of the arbitral tribunal.

- 3. Statutory Right to Appeal:** The appellants had argued that the statutory right to appeal can be exercised even when the dismissal of the appeal on the preliminary grounds will mean the exercise of the right to appeal. The sec. 37(1)(c) of the Arbitration and Conciliation Act, 1996 gives the interpretation that the refusal to set aside an arbitral award “under Section 34”, includes Section 34(3), whereby a court may refuse to condone the delay in filing a setting aside application. They also tried to distinguish the case of BGS SGS Soma JV. v. NHPC Limited^[4], arguing that it laid the different question as to apply to set aside an award under section 34 should be returned to the proper court dependent upon where the seat of arbitration was located.

CONTENTIONS OF THE RESPONDENTS

The respondents as well had based their arguments on the three legs as follows:

- 1. Denial of *pari materia* provision:** The respondents had denied the existence of the *pari materia* provisions. They had claimed that the Sec. 39 of the 1940 Arbitration Act and Sec. 37 of the Arbitration and Conciliation Act, 1996. The argument was furthered that Sec. 39 deals with the grounds set out in Sec. 30 of the 1940 Act and the grounds were different from the grounds in Sec. 34 of the present 1996 Act.
- 2. Objects and Scope of the Act:** The respondents also based the 2nd leg of the arguments on the interpretation into the scope and objectives of the 1996 Act. It was argued that the Act was made as per the party autonomy to allow the process of the arbitration to have the minimal intervention of the courts. This was also the intent of the legislature in Sec. 5 of the Act which deals with the overriding effect of the proceedings on the other alternative remedies. It was also contended that the appeal in the present matter may not lie as the appeal is the creation of the statute and the same is limited in the scope.

No distinct situations: The respondents had said the situations in the case of the acceptance or the rejection of the application of the condonation of delay will have the same implications. They relied on the case of Union of India v. Simplex Infrastructures Ltd^[5].

JUDGEMENT

The judgement of the Court was delivered by Rohinton Nariman J. on behalf of the Bench in the unanimous decision the Court held that:

1. The term 'setting aside or refusing to set aside an arbitral award' in Section 37(1)(c) is to be read with 'under Section 34'. State of Himachal Pradesh v. Himachal Techno Engineers and Anr.[6] The court held the Sec. 34 is to be construed in the finality and not just be interpreted in regards to Sec. 34(2). The refusal to condone the delay will fall under the scope of Sec.37 of the Act.
2. Section 39(1)(vi) of the 1940 Act is in *pari materia* to Section 37(1)(c) of the 1996 Act, relying upon the judgement in the case of *Chief Engineer*[7] and *Essar Constructions*[8] as the legislative intent and the scheme of both the provisions is similar.
3. The principle of minimal intervention by the Courts as intended in Section 5 of the 1996 Act cannot be interpreted to limit the statutory provisions and the right to appeal as per the statute has to be provided and this is essential and the legislature is to be believed to have thought correctly while granting the statutory right to appeal.
4. An appeal under Section 37(1)(c) of the 1996 Act would be maintainable against an order refusing to condone the delay. This meant that in the statutory appeal as well the delay can also be condoned and the matter be decided on merits without the preliminary refusal of the matter.

ORDER

The matter was remanded back to the Division Bench of the High Court to decide the appeal in the regard to the disallowing of the application for the condonation of delay. The order of the Division Bench of the High Court was set aside regarding the interpretation of Sec. 37 of the Act.

CONCLUSION

The Supreme Court in the case of deciding the appeals and the application post the award in the arbitration proceeding has laid that the party autonomy and the judicial non-interventionism is also present but the statutory right to appeal thereby cannot be refused. It has also held that refusal to condone the delay in filing a setting aside application is appealable.

REFERENCES:

- [1] LL 2021 SC 77
- [2] (2020) 4 SCC 234
- [3] (2000) 6 SCC 94
- [4] *Supra* note 2
- [5] (2017) 14 SCC 225
- [6] (2010) 12 SCC 210
- [7] (2006)13 SCC 622
- [8] *Supra* note 3

