

HIGH COURT REFUSES TO INTERMEDDLE WITH EX-PARTE AWARD

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“Vigilantibus non dormientibus jura subveniunt”

The laws aid the vigilant and not those who slumber. Very often in contractual disputes, parties have disputes regarding payments due from one party against the services provided by the other party. The recent judgment of the Delhi High Court (“**High Court**”) in M/s Amardeep Prakshan v. M/s Siddharth Tradex (P) Ltd. & Anr.², is an example, where the Sole Arbitrator passed an ex-parte award after giving many opportunities to the party to contest their case. The aggrieved party challenged the said award and moved an application u/s 34 of the Arbitration and Conciliation Act, 1996 (**Act**) to set aside the award along with an application u/s 5 of the Limitation Act, 1963.

The Additional District Judge dismissed the said application on 13.07.2016, against which the Appeal u/s 37 of the Act was instituted by the aggrieved before Hon’ble High Court of Delhi.

FACTS

M/s Siddharth Tradex (P) Ltd (**Respondent**) and M/s Amardeep Prakshan (**Appellant**) entered into commercial transactions. Subsequently, a certain dispute arose between the parties, on which Respondent sent a legal notice to Appellant invoking Arbitration proceedings. The Arbitration proceedings were conducted and the award was passed ex-parte. The said award consists of the arbitrations proceedings which were conducted on each day of the hearing. It was mentioned that on many hearings, the arbitration proceedings were adjourned on account of the absence of the defendant

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(Appellant herein). It was also mentioned in the award that on 26.06.2013, both the parties appeared and the Defendant was asked to file his Written Reply to the Claim on his request. The further averments talks about the non-appearance of the Defendant thereon and the matter was proceeded ex-parte and the award was passed on 25.08.2014 in favour of the Respondent.

The law u/s 34 (3) provides that the period of limitation for moving an application or setting aside an arbitration award is three (3) months from the date of receipt of arbitration award or if a request is made u/s 33 from the date on which the request has been disposed by the arbitral tribunal, which can be extended by court by another 30 days. Appellant contended that he was never served with the notice of the arbitration proceedings and came to know about the existence of the award only when he received the notice of Execution Petition.

CONCLUSION

The High Court observed the averments made in the award and came to the finding that the Appellant was duly served the notice and was also present on 26.06.2013 on which date, he was asked to file his reply to the claim. Even after the award was passed the appellant approached the court after the statutory limitation period. Thereby, the High Court refused to interfere with the order passed by the Ld. ADJ saying that the ADJ rightly dismissed the application u/s 5 of the Limitation Act.