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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. 616/2014**

Date of Decision: 28.10.2014

UNION OF INDIA

..... Petitioner

Through: Mr.Anuj Aggarwal, Mr.Gaurav
Khanna and Ms.Niti Jain, Advocates

versus

M/S COMPUTER SCIENCES CORPORATION (INDIA) (P) LTD

..... Respondent

Through: Mr.Meet Malhotra, Senior Advocate
with Mr.Ravi S. Singh and Ms.Pallak
Singh, Advocates

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT (ORAL)

I.A.No. 10581/2014 (application under Section 5 of the Limitation Act 1963 read with Section 151 of the CPC for condonation of delay in filing the application under Section 34 of the Arbitration & Conciliation Act, 1996 against the award dated 17.12.2012 and IA No. 10582/2014 (application for condonation of delay in re-filing under Section 151 CPC).

1. The undisputed fact of the case is that an award had been passed on 17.12.2012. The petition was filed on 8th April, 2013 with a delay of 23 days in filing the petition.

2. Thereafter, certain objections were raised by the Registry and the

objections could be removed by the petitioner only after a considerable delay and therefore there is a total delay of 385 days in refilling.

3. IA No. 10581/2014 has been filed by the petitioner for condonation of delay of 23 days in filing the said petition. It is submitted that the copy of the award dated 17th December, 2013 was handed over to the petitioner/department, by the counsel only on 11th January, 2013. Thereafter, the department contacted the said counsel on 06th February, 2013 for his legal opinion on the point as to whether the same is liable to be challenged or not for obtaining the further opinion of Ministry of Law & Justice.

The said counsel handed over the legal opinion only on 22nd February, 2013 only after several reminders.

4. The petitioner/department thereafter immediately sought the opinion of the Additional Secretary & In-charge Central Agency Section on 4th March, 2013. The opinion was received from office of the Solicitor General of India on 11.03.2013 wherein it was apprised to the petitioner that the file has not been sent to the Ministry of Law and Justice for the opinion.

5. On 18th March, 2013, the petitioner/department approached the Ministry of Law & Justice for appointment of a fresh Government counsel

and on 19th March, 2013, the present Government counsel was appointed and thereafter the present petition was filed. It is submitted that a delay of 23 days had occurred even after due diligence exercised by the petitioner and it is prayed that the same be condoned.

6. It is submitted that the petition was filed on 8th April, 2013 vide diary no. 54502 of 2013 and the Registry had raised certain objections. On 11th April, 2013, the petitioner's counsel contacted the Registry of this Hon'ble court seeking clarification of the objections as raised by the Registry as the same were incomprehensible.

7. The Registry pointed out that an application for condonation of delay was to be filed along with the petition as there was a delay of 23 days in filing of the said petition and the Registry also raised an objection of payment of court fee at the rate of 1% on the awarded amount.

8. The counsel thereafter contacted the authorised representative of the petitioner-department for preparation of the application for condonation of delay. It is contended that the department took some time to get the budget approved for payment of the court fee from the competent authority. It is further submitted that the case file containing other relevant documents pertaining to the matter went untraceable on account of the counsel Sh. Anuj

Aggarwal shifting his office from 14, School Lane, Bengali Market, New Delhi to B-244 (LGF), Greater Kailash Part-I, New Delhi and therefore the counsel could not contact the concerned official of the petitioner-department. It is submitted that due to this reason, the delay of 385 days in re-filing has occurred. It is prayed that the delay in re-filing be also condoned.

9. Both the applications have been contested by the respondent. It is submitted that despite the fact that the petition under Section 34 of the Arbitration and Conciliation Act, 1996 had been filed by the petitioner beyond 90 days, the period of limitation prescribed under Section 34 (3) of the Act, no application for condonation of delay was filed by the petitioner initially along with the petition. It is further contended that despite the objections dated 9th April, 2013 of Registry to remove the said objections within one week, the compliance was not done. The petitioner remained sleepy over the objections and re-filed the said petition only on 22nd May, 2014. It is further submitted that no cogent, plausible and acceptable explanation was set out in the present application for condonation of delay in filing the present petition and the facts shown in the applications are vague, bogus and unacceptable. It is further contended that no affidavit of

the counsel to substantiate the shifting of the office from 14, School Lane, Bengali Market, New Delhi to B-244 (LGF), Greater Kailash, Part-I, New Delhi has been filed. Reliance has also been placed on the findings in the case of Division Bench of this court titled as Delhi Transco Ltd & Anr. Vs. Hythro Engineers Pvt. Ltd & Anr.(2012) (3) Arb. L.R. 349 (Delhi).

10. I have heard the arguments. Perused the records.

11. There is no dispute to the fact that there is a delay of 23 days of filing of the petition. The award was passed on 17th December, 2012 and the petition under Section 34 of the Act was for the first time filed on 8th April, 2011. The period of limitation as prescribed under Section 34(3) of the Act for filing the petition is 90 days which is extendable to 30 days.

12. The language of Section 34(3) of the Act shows that the application if filed beyond 90 days but filed within a further period of 30 days, such a delay can be condoned if the applicant satisfy the court that he was prevented by sufficient cause from making the application within the said period of three months. Such an application may be entertained within a further period of thirty days, but not thereafter.

13. The language used in the said provision clearly stipulates that the condonation of delay in filing the application beyond the period of 90 days

but within a further period of 30 days, is not automatic and the court are to assess whether the sufficient cause from filing which prevented the petitioner.

14. In the present case there is no dispute to the fact that at the time when the petition was filed, it was not accompanied by any application for condonation of delay and also the court fee was deficient. The petitioner was given time to make good of the court fee within one week. The petitioner took 385 days to remove these as well as other objections.

15. The law regarding condonation of delay in re-filing is well settled. Even for condonation of delay in re-filing, the petitioner is required to show the sufficient cause which prevented him from re-filing it within the time given by the Registry.

16. This court in the case titled as **Brij Mohan vs. Sunita**, 166 (2010) DLT 537 while dealing with contention of delay in refiling and discussing the expression “sufficient cause” has clearly held that the court cannot mechanically condone the delay in refiling the appeal if no reasonable ground is shown at all. In the case 162 (2009) DLT 542 (DB) titled as **Asha Sharma & Ors. vs. Sanimiya Vanijiya P.Ltd. & Ors.**, the division bench of this court has discussed the situation where the appeal was refiled after

expiry of 30 days and has observed as under:-

“9. It is quite clear from a bare perusal of the above Rule that the Deputy Registrar cannot grant time of more than 30 days in aggregate for re-filing of a Memorandum of Appeal, for the reasons specified in Order 41 Rule 3 of the Code of Civil Procedure. If the Memorandum of Appeal, after removing the defects notified by the registry, is filed after more than 30 days, it shall be considered as a fresh appeal, filed on the date on which it is presented after removal of the defects.”

17. In **Asha Sharma’s** case (supra), this court has further observed as under:

“23. It is trite law that Rules of Procedure being hand-mades of justice, a party should not be refused relief merely because of some mistakes, negligence or inadvertence. Rules of Procedure are designed to facilitate justice and further its ends.

But, even if we take a rather liberal approach in this matter, we are unable to find any good ground for condonation of delay in filing this appeal. None of the reasons given in the application is convincing or logical. The impression we gather is that the appellants deliberately delayed filing of the appeal so as to prolong the litigation. It cannot be said that even if the appellants were totally negligent and careless and have not come forward with any worthwhile explanation for the delay, the court ought to condone the delay in re-filing. The Rules framed by the High Court cannot be allowed to be taken so casually and there will be no sanctity behind the rules if every delay in re-filing, is to be condoned irrespective of howsoever unreasonably long and unexplained it be, and howsoever mandatory be the nature of the documents, non-filing of which renders the Appeal defective.

We cannot condone the delay merely because an application for condonation of delay has been filed. No court would not like to reject an appeal as time-barred unless there are strong reasons, which compel the court to take such a view. Some indulgence and a liberal view in such matters is well-accepted but to say that the court has no option in the matter and must accept the Memorandum of Appeal irrespective of the nature of the objections and delay in re-filing, even where there is no reasonable explanation to justify the delay, would only be travesty of justice and will be as good as removing the relevant Rule in High Court Rules and Orders, from the Statute Book.

24. These days we find a growing tendency to file an incomplete Memorandum of Appeal and then take unreasonably long time to remove the defects, even where such defects can be cured within a very short time. Such a practice cannot be said to be conducive to be fair and reasonable and therefore needs to be curbed. An unduly liberal and benevolent approach will only give encouragement to such unfair practices and therefore is not called for. When an Appeal comes up for hearing long after expiry of the prescribed period of limitation, it springs surprise on opposite party, which assumes finality in his favour on account of non-filing of Appeal within a reasonable period.”

18. In the present case, first there was a delay of 23 days in filing petition. The petition was filed without any application of condonation of delay and with deficient court fee. Then, it took the petitioner 385 days to remove objections. The petition was considered being filed only when all the objections were removed. Registry gave 7 days time to petitioner to remove objections but it took more than a year.

19. The Supreme Court in the case (2001) 8 SCC 470 titled as ***Union of India vs. Popular Construction Co.*** has clearly held as under :

12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.

20. It is also a settled law that what is not permitted to be done directly cannot be permitted to be done indirectly. Also, the court has to take stringent views while dealing with condonation of delay in re-filing.

21. It is incumbent on the petitioner to explain the reasons for delay in filing and re-filing. The courts are required to take a strict view in such matters and a casual approach is deprecated. The petitioner is required to categorically explain the delay of each day in re-filing.

22. In the present case, there is delay of 23 days in filing the petition and when the petition was filed, it was filed with deficient court fee and with no application for condonation of delay. Then, there was delay of 385 days in removing various objections. The given reasons for delay are that the file got lost on account of Mr. Anuj Aggarwal, learned counsel for the petitioner,

shifting his office and that the considerable time was lost in getting the budget sanctioned from department for payment of the deficient court fee.

23. It is also clear from the contentions that no date of shifting of the office had been given. No date has been given of loss and recovery of file. The overall grounds for condonation of delay of 385 days for refiling the petition are very vague. When the file was returned on 9th April, 2013, it was refilled only on 22nd May, 2014 and the notings of Registry shows that it was still having several defects which the petitioner was asked to remove within a week.

24. During the course of arguments, learned counsel for the respondent has also submitted that the petitioner had in other matter filed IA Nos. 7795/2013 and 7796/2013 in OMP No. 477/2013 claimed for condonation of delay of 14 days in filing and 390 days in refiling on the same grounds, that the file was lost in the office of the counsel and that ad valorem court fee could not be paid due to the time consumed in obtaining necessary sanctions of budget and also permissions from the competent authority and both the IA were dismissed by the Id. Single Judge of this Hon'ble court vide order dated 23rd September, 2013. That order was challenged in FAO(OS) No. 478/2013 and the same was also dismissed on 06.11.2013 by the Hon'ble

Division Bench of this court. It is submitted that the present petition has sought condonation of delay on those two grounds alone and these grounds had already been rejected “ as sufficient ground for condonation of delay” and thus the present applications are also liable to be dismissed.

25. Thus, this court had already held in the said OMP, confirmed by Division Bench of that courts that these are not sufficient grounds for condonation of delay.

26. Also, in the case 2012 (3) ARBLR349 (Delhi) titled as ***Delhi Transco Ltd. & Anr. Vs. Hythro Engineers Pvt.Ltd***, it has been clearly held by this court that if the petition is filed beyond the time given by Deputy Registrar/Assistant Registrar Incharge for removal of objections, this in view of Rule 5(3) of Chapter I Part A of Vol 5 of High Court Rules and order, should be considered as fresh filing.

27. The court has observed as under:-

11. Moreover, there is no answer with the appellant to the reliance placed by the learned Single Judge on Rule 5, Chapter “I”, Part A of Vol.5 of High Court Rules and Orders, according to which, the objections should have been re-filed within a time not exceeding 7 days at a time, and 30 days in aggregate to be fixed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter. Rule 5 (3) read with the note also makes it abundantly clear that in case the petition is filed beyond the time allowed by the Deputy Registrar/Assistant Registrar, Incharge of Filing Counter

under Sub-Rule 1, it shall be considered as a fresh institution.

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28. The award in this case dated 17.12.12 and the petition could remove the objections only after 389 days. The reasons shown for delay are certainly not sufficient to condone the delay.

29. Both the applications are hereby dismissed.

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In view of the fact that the petition is barred by limitation, the petition and the pending applications are hereby dismissed.

DEEPA SHARMA, J

OCTOBER 28, 2014

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