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

Judgment delivered on 10.03.2015

+ **FAO(OS) 109/2015**

**ORIENTAL INSURANCE CO LTD** ..... Appellant

versus

**OCEANIC SOLVENT INDUSTRIES LTD** ..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Vishnu Mehra

For the Respondent : Mr V.K. Sharma for caveator.  
Mr Dhanesh Relan with Mr Arush Bhandari for DDA

**CORAM:**

**HON'BLE MR. JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

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**BADAR DURREZ AHMED, J (ORAL)**

**Cav. No. 237/2015**

Since the learned counsel for the caveator is present, the caveat stands discharged.

**FAO(OS) No. 109/2015 & CM App. Nos.4284/2015 & 4285/2015**

1. This appeal is directed against the order dated 28<sup>th</sup> January,

2015, passed in OMP No. 681/2009 and IA Nos. 14944/2009, 14945/2009 and 20889/2014. Essentially, IA No. 14945/2009, which was an application seeking condonation of 45 days delay in re-filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act').

2. The learned Single Judge noted the fact that, while it was within the powers of the Court to condone the delay in re-filing, based on the decision of this Court in **DDA v. Durga Construction Co.: (2014) 1 RAJ 490 (DEL)**, it was also incumbent on the applicant to show sufficient cause, which prevented the applicants from re-filing the petition in time. The learned Single Judge was right in observing that in **Durga Construction Co. (supra)**, a Division Bench of this Court held that while the Court had jurisdiction to condone the delay in re-filing, the approach should not be such, that it becomes too liberal and that the conduct of the applicant would have to be tested on the anvil of whether the applicant acted with due diligence and dispatch or not. The applicant is required to show that the delay was on account of unavoidable circumstances beyond his control and could not have been avoided despite all efforts by him.

3. Noting these principles, the learned Single Judge has examined the application submitted by the appellant for condonation of delay in re-filing. He has noted that the application does not even specify the reason except for stating that the delay occurred due to some unavoidable circumstances.

4. In fact, we have also examined the stay application and we find that the only paragraphs, which purport to be the reason, are as under:-

“2. That delay has occurred due to some unavoidable circumstances which is deeply regretted.

3. That delay in re-filing of OMP petitioner was occurred in the aforesaid unavoidable circumstances. It is in the interest of justice that delay of 38 days in filing the OMP be condoned. The petitioner will suffer irreparable loss, if the delay in re-filing the OMP is not condoned.

4. The delay is not intentional and deliberate.”

5. We are in complete agreement with the observation of the learned Single Judge that no reason whatsoever had been ascribed for the delay in re-filing the petition.

6. In these circumstances, no interference is called for in the impugned order.

7. The appeal and the applications are accordingly dismissed.

8. There shall be no orders as to costs.

**BADAR DURREZ AHMED, J**

**SANJEEV SACHDEVA, J**

**MARCH 10, 2015**

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