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

+ **O.M.P. 152/2014**

M/S NATIONAL HIGHWAYS AUTHORITY OF
INDIA

..... Petitioner

Through: Mr. Rajiv Kapur with Mr. Anil
Kumar and Mr. Rahul Ranjan, Advocates.

versus

HINDUSTAN CONSTRUCTION CO LTD Respondent

Through: Mr. Dayan Krishnan, Senior
Advocate with Ms. Malaika Lal, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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14.05.2015

IA No. 2283/2014

1. This is an application seeking condonation of 37 days' delay in re-filing the petition.

2. The petition under Section 34 of the Arbitration and Conciliation Act 1996 ('Act'), challenging the Award dated 12th August, 2013, was first filed by the petitioner on 11th November, 2013. After defects were pointed out on 12th November 2013 by the Registry, the petition was

re-filed on 22nd November 2013. Thereafter the Registry had again pointed out that some of the defects were yet to be cured. The petition was re-filed for the third time on 17th December, 2013 but all the defects were not yet cured. One of the defects pointed out by the Registry on 18th December 2013 was that no application seeking condonation of delay in re-filing had been filed. Admittedly, the petition was thereafter re-filed for the fourth time only on 18th January, 2014.

3. Paras 2 and 3 of the application which purport to offer an application for the delay read as under:

“2. That the said petition was refilled on 17-12-2013, which was again put under objection on 18-12-2013. However, when the counsel went to collect the file under objection, it was found to be misplaced in the registrar somewhere.

3. That after though such by the staff therein, the said file was traced out by them and was returned to the counsel on 18-1-2014 and is being refilled within time now.”

4. In the reply filed to the application, it is pointed out by the Respondent that although the petitioner claims to have re-filed the petition on 25th January 2014, it was re-filed last only on 30th January, 2014, i.e. after delay of 50 days from 11th December 2013 when it was first returned with defects with the stipulation that it should be re-filed within 30 days. Reference is also made to Rule 5 of Chapter-1A (a) of Volume 5 of the Delhi High Court Rules, in terms of which the re-filing was to take place within 30 days. It is submitted that if a petition is filed beyond the prescribed period of 30 days, it should be considered as a fresh filing for the purposes of Section 34 (3) of the Act.

5. In view of the averments in the application, the Court on 16th May 2014 passed the following order:

“I.A. No. 2283/2014

The Registry is directed to send a report with regard to the filing and re-filing of the objection petition. It shall also indicate the specific objections raised on each of the occasion, and how they were dealt with by the petitioner.

The case of the petitioner is also that the petition was misplaced for about a month in the Registry and it was thereafter traced. The Registry shall send a specific report in this regard as well.

Adjourned to 13.08.2014.”

6. The Registry first submitted a tabulated chart setting out the dates of filing, return with defects, re-filing etc. The report dealt with the delays in re-filing, but was silent on the issue of the file being misplaced by the Registry between 18th December 2013 and 18th January 2014 as alleged by the Petitioner. Accordingly, by an order dated 6th February 2015, the Registrar (Original) was directed to submit a report on the above aspect within six weeks.

7. Pursuant to the above order, the Registrar (O) submitted a report, the relevant portion 3 of which reads as under:

“It has been informed that this petition was once again refilled on 17th December 2013 and on 18th December 2013 on checking certain objections were again raised and the same was sent to Return Counter on 19th December 2013. It remained at the

Return counter till 9th January 2014 on which date it was collected for removing objections and remained with the petitioner till 25th January 2014, when it was refilled. The relevant pages of the Register maintained at the Return counter evidencing pendency of the petition with objections from 19th December 2013 to 9th January 2014 and proof of it being returned to the Petitioner are annexed herewith as Annexure 'A' and respectively. The report submitted by the AOJ (Filing) in this respect is placed at Annexure 'C'. The proof of re-filing of the petition on 25th January 2014 is placed at Annexure 'D'.”

8. Photocopies of the relevant pages of the register have been enclosed with the report. In view of the above report of the Registrar (O), it appears that the file was sent to the Return Counter on 19th December 2013 itself and remained there till 9th January 2014, on which date it was collected for removal of objections. The report is categorical that the file remained with the counsel for the Petitioner till 25th January 2014, when it was re-filed.

9. Mr. Rajeev Kapur, learned counsel for the Petitioner, contests the above report and states that the Petitioner stands by its version that the file remained misplaced at the filing counter by the Registry and that it could be collected by the Petitioner only on 18th January 2014. Alternatively, he submits that the delay is not substantial and is liable to be condoned. Reliance is placed on the judgment in ***Delhi Development Authority v. Durga Construction Co. 2013 (139) DRJ 133 (DB)***. Mr. Kapur urges that the delay in re-filing should be condoned and the petition should be considered on merits.

10. The Court finds that the only explanation given in the application for condonation of delay is that the Registry misplaced the file between 18th December 2013 and 18th January, 2014. Since the entire blame for the delay was being laid on the Registry, the Court had required the Registrar (O) to submit a report. The report of the Registrar (O), supported by copies of the relevant pages of the concerned register, makes it clear that the file remained at the Return Counter between 19th December 2013 and 9th January 2014. It was collected on 9th January 2014 itself and remained with the counsel for

the Petitioner till 25th January, 2014. This falsifies the explanation offered by the Petitioner for the delay in re-filing the petition.

11. This Court is not persuaded to doubt the correctness of the report submitted by the Registrar (O) of this Court. It is supported by documents which form part of the record of the Registry. Since the explanation offered by the Petitioner for the delay is untrue, the question of the Court exercising discretion to condone the delay cannot arise.

12. The application is dismissed.

O.M.P. No. 152 of 2014

13. Consequently, the petition under Section 34 of the Act is dismissed.

S.MURALIDHAR, J

MAY 14, 2015/n