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

+ **FAO(OS) 368/2015**

ASHOK ENGINEERING CORPORATION

..... Appellant

Through: Mr Chinmoy Pradip, Mr Atul Kumar and Mr
Rajiv K. Raj

versus

BHARAT HEAVY ELECTRICAL LTD

..... Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

% **14.07.2015**

CM No. 12141/2015

The exemption is allowed subject to all just exceptions.

FAO(OS) 368/2015 and CM No. 12140/2015

This is an appeal filed against the order dated 06.05.2015 passed by a learned Single Judge of this court in OMP No. 275/2015, which was a petition under Section 34 of the Arbitration and Conciliation Act, 1996 in respect of an Award dated 31.05.2014. The arbitrator had dismissed the claim of the appellant herein on the ground of limitation. The Section 34 petition filed by the appellant herein before the learned Single Judge was within time, however, there was delay in re-filing of 124 days. The appellant moved an application being I.A. No. 8569/2015 seeking condonation of the delay in re-filing. The relevant contents of the said application have been set out in the impugned order and we are not repeating the same in this order. The learned Single Judge has examined the said application and has come to the conclusion that the same is vague and devoid of relevant facts. It is also held by the learned Single Judge that the application does not indicate

sufficient cause to condone the delay in re-filing the petition. The learned Single Judge, in our view, has correctly relied upon the Division Bench decision of this court in the case of *Delhi Development Authority v. Durga Construction Company*; 2013 (139) DRJ 133. In that decision this court held that while it has the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in Section 34(3) of the Arbitration and Conciliation Act, 1996, the said jurisdiction is not to be exercised liberally and the delay in re-filing cannot be permitted to frustrate the salutary objects of the said Act. The applicant must satisfy the court that it had pursued the matter diligently and that the delay was beyond the control of the applicant and was unavoidable. The learned Single Judge held that the case of the appellant does not fit into that category of cases where the applicant had pursued the matter diligently and the delay was beyond the control of the appellant or was unavoidable for some reason or the other. We see no reason to interfere with this finding of the learned Single Judge and, consequently, dismiss the present appeal. We may also observe that the present appeal has also been filed after a delay of about 12 days. Even if we were to condone the delay in filing the appeal, the result would still be the same inasmuch as we agree with the decision of the learned Single Judge in not condoning the delay in re-filing the petition under Section 34 of the said Act.

The appeal and the application are dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JULY 14, 2015 / SU