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

+ **FAO(OS) 632/2015**

M/S HI TEK ENGINEERS & ORS Appellant
Represented by: **Mr.Vikas Tomar, Adv.**

versus

**TECHNOLOGY INFORMATION FORECASTING
AND ASSESSMENT COUNSEL (TIFAC)** Respondent
Represented by: **None**

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
18.04.2016

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CM 13388/2016

Exemption allowed subject to just exceptions.

CM 13387/2016 (restoration)

1. The appeal was filed belatedly. The delay is of 125 days. On November 17, 2015 notice was issued returnable for February 16, 2016. Process fee was not filed and therefore notice could not be issued. None appeared for the appellant on February 16, 2016, therefore the appeal was dismissed for non-prosecution.
2. Seeking restoration, it is pleaded that Shri Shashank Shekhar Parihar, the counsel engaged by the appellant was admitted in Moolchand Hospital on February 03, 2016 and unfortunately expired on same day.

FAO(OS) 632/2015

page 1 of 3

3. The appeal has been filed by two advocates namely Akshat Goel and Shashank Shekhar Parihar.
4. There is no explanation as to why Shri Akshat Goel could not prosecute the appeal. That apart, we find that the appellants have admitted the claim of the respondent and have raised issues to simply delay the proceedings.
5. Application under Order VII Rule 11 of the Code of Civil Procedure filed by the appellants was dismissed on August 13, 2013, noting that the plea of this Court having no territorial jurisdiction raised by the appellant was a ruse inasmuch as in the plaint it was pleaded that the money was disbursed to the appellant No.1, by way of loan, at Delhi and was to be repaid at Delhi. Further, the agreement between the parties has a clause that Courts at Delhi shall have exclusive jurisdiction.
6. Overlooking the exclusive jurisdiction clause, since the loan was disbursed at Delhi and was repayable at Delhi, this Court would have jurisdiction as rightly held by the learned Single Judge.
7. The second contention concerning there being an arbitration clause in the agreement has been dealt with in the impugned order dated April 21, 2015 which shows that IA No.15086/2014 filed by the appellants invoking Section 8 of the Arbitration and Conciliation Act, 1996 has been deferred for consideration.
8. It is clearly an attempt to delay the proceedings.
9. Not satisfied with a sufficient cause to recall the order dated February 16, 2016, we dismiss CM 13387/2016.

10. No cost.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

APRIL 18, 2016
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