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IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO(OS) 37/2016

UNION OF INDIA & ORS

..... Appellants

Through

Mr Arun Bhardwaj, CGSC with Mr Ashish Pandey, Advocates.

versus

BOWAS INDUPLAN CHEMIE, GES M B H & ORS

..... Respondents

Through

Mr Sachin Chopra with Mr Anuj Tyagi and Mr Shubhnit Hans, Advocates.

Mr Karan Khanna with Ms Asmita Kumar, Advocates for Dena Bank.

Ms Tarunika Sharma, Advocate for SBI.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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10.05.2016

CM No.4566/2016 (exemption)

CM No.4567/2016 (exemption)

Exemptions are allowed subject to all just exceptions.

CM No.4569/2016 (for condonation of delay in re-filing the appeal)

After hearing counsel for the parties, the delay in re-filing is condoned.

The application stands disposed of.

**FAO(OS) 37/2016 & CM No.4568/2016 (for condonation of delay),
CM No.4565/2016 (stay)**

CM 4568/2016 is an application seeking condonation of delay of 217 days in filing the appeal. The impugned order was passed on 24.03.2015 and the appeal has been filed on 26.11.2015. The period of limitation for filing an appeal is 30 days. In the condonation of delay application, the first date on which some action is reportedly taken by the appellant is 25.05.2015 when it is said that the Department approached the Ministry of Defence by a letter dated 25.05.2015 for seeking legal advice of the Legal Advisor (Defence) to file an appeal against the order. This date itself was beyond the period of 30 days. Thereafter, the next date mentioned is a file noting of the legal office of the Legal Advisor, Ministry of Defence on 11.09.2015, which indicates that in the opinion of the Department

there was a merit in the contention sought to be raised by the Department and that the Department may challenge the impugned order by way of an appeal. The Joint Secretary and Legal Advisor, Ministry of Defence by virtue of a file noting dated 30.09.2015 allegedly approved the opinion of the Legal Officer. Thereafter, on 01.10.2015, the matter was assigned to the counsel for filing an appeal, which was, ultimately, filed on 26.11.2015. There is no explanation as to why the first letter was written on 25.05.2015, much beyond the period of limitation of 30 days. Furthermore, there is no explanation as to why the examination by the Legal Advisor, Ministry of Defence took such an inordinate time from 25.05.2015 to 11.09.2015 and why it took another 19 days for the Joint Secretary and Legal Advisor (DEF), Ministry of Defence to approve the opinion of the Legal Officer.

The explanation sought to be offered for the delay in filing the appeal does not amount to sufficient cause for the delay. Consequently, the delay cannot be condoned.

In any event, we also note that the interest of the appellant has been secured by the Court by directing that the entire amount of the three bank guarantees are to be placed in fixed deposits in the very same banks and to be kept unencashed and renewed during the pendency of the arbitral proceedings. The position today is that the entire amounts of the bank guarantees have been placed in fixed deposits and are subject to the final orders that may be passed by the Arbitral Tribunal. By way of further safeguard, the learned Single Judge has also permitted the parties to approach the Arbitral Tribunal for any other interim relief in accordance with law. Therefore, even on merits, no interference is called for.

The appeal is, accordingly, dismissed both on the ground of delay and on merits.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

MAY 10, 2016/st