(Common Orders)

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

Date of Decision: *19.09.2016*

\+ LPA 21/2016

M/S KANDLA PORT TRUST ..... Appellant

versus

M/S PEC LTD ..... Respondent

\+ LPA 22/2016

M/S KANDLA PORT TRUST ..... Appellant

versus

M/S STC LTD ..... Respondent

Counsel for the appellant: Mr.Tushar Mehta, ASG with Mr.Sumit Goel and Ms.Nandita Bajpai, Advs.

Counsel for the respondent: Mr.Jayant Bhushan, Sr.Adv. with Ms.Rajdipa Behura, Ms.Garima Singh Yadav, Advocates

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

MS. G. ROHINI, CHIEF JUSTICE (ORAL)

CM No.1124/2016 in LPA No.21/2016
CM No.1127/2016 in LPA No.22/2016

1. These two applications are filed under Section 5 of the Limitation Act, 1963 with a prayer to condone the delay of 365 and 367 days respectively in filing LPA Nos. 21/2016 and 22/2016.

2. We have heard the learned counsel for both the parties and perused the material available on record.

3. The main appeals were preferred against the common order passed by the learned Single Judge dated 28.10.2014 dismissing W.P.(C) Nos. 7887/2011 and 7898/2011 with costs of Rs.50,000/- for each petition. The said writ petitions were filed by the Appellant herein, which is an authority constituted under the Major Port Trust Act, 1963 against two Central Public Sector Enterprises with a prayer to declare the Permanent Machinery of Arbitration (PMA) established vide Office Memorandum dated 22.01.2004 of the Department of Public Enterprises, Government of India as null and void and further to set aside the awards passed by the sole arbitrator as well as the appellate authority allowing remission to the tune of 80% of the principal demurrage charges to the Respondents. Having taken note of the fact that the writ petitioner/appellant herein had never raised any objection as to the jurisdiction of PMA either before the arbitrator or before the appellate authority and that the Committee on Dispute (CoD) was constituted pursuant to the directions of the Supreme Court in ***Oil & Natural Gas Commission & Anr. vs. Collector of Central Excise***, **1995 Supp. (4) SCC 541** and more particularly that the writ petitioner had voluntarily entered into arbitration agreement for resolution of its disputes with the respondents, the learned Single Judge held that all the grounds of challenge in the writ petitions are devoid of merit and accordingly dismissed the writ petitions with costs observing:

> "39. It was strongly urged by the learned counsel for KPT that the arbitration agreement for reference of disputes to the PMA was without KPT's consent and KPT was coerced into

giving its consent; As pointed out earlier this contention was not supported by any pleadings and, obviously, was evolved subsequently, as a matter of convenience. Even the written submissions filed by the learned counsel for KPT did not mention that KPT was coerced in any manner.

40. In addition, considerable time was spent by the learned counsel for KPT to urge that the matter not be heard by this Court and be referred to a larger Bench. As discussed above, these contentions were also bereft of any basis. It appears that the only reason why such contentions were pressed at length was to somehow avoid the conclusion of the present matter.

41. Lastly, it cannot be ignored that the disputes involved are amongst a statutory body controlled by the government of India and Government Corporations. The Supreme Court in several decisions including the ***ONGC Cases*** had expressed that such disputes should be resolved without litigation. The orders passed in ***ONGC Cases*** were recalled in ***Electronics Corporation of India*** *(supra)*, not because the intention of avoiding litigation through CoD was not laudatory but because the mechanism of CoD had not worked effectively. Viewed in this perspective, KPT's stand to avoid the PMA by contending that it was without its consent or that it was coerced clearly indicates KPT's propensity for litigating unfairly, which must be discouraged.

42. In the given circumstances, the present petitions and all pending applications are dismissed with costs, which are quantified at Rs.50,000/- for each petition."

4. Against the said common order, the main appeals came to be preferred in December, 2015 with delay of one year. In the applications for condonation of delay, it is pleaded:

"4. It is submitted that copy of the judgment was received through Law Officer vide UO Note No. LW/HCD/2401/446 dated 15.11.2014 for examining the judgment from factual aspects and comments to decide the further course of action.

5. After receiving the order, an opinion was sought from the advocates as to whether an appeal should be filed against the impugned order dated 28.10.2014. The advocates had opined that the impugned order is unsustainable in law and hence an appeal could be filed against the order dated 28.10.2014.

6. Thereafter, the Applicant also forwarded a copy of circular dated 14.07.2014 issued by the Department of Public Enterprises revising the earlier PMA guidelines to their advocates and sought their further opinion on the matter in view of the circular dated 14.07.2014.

7. The advocates, in light of the office memorandum dated 14.07.2014, opined vide letter dated 5.12.2014 that though the applicant has merits to challenge the order dated 28.10.2014 but it may comply with the appellate awards dated 03.03.2011 & 04.03.2011 passed by the Appellate Authority under the PMA mechanism.

8. That after receiving the opinion dated 05.12.2014, the same was submitted for the orders of Traffic Manager of the Appellant on 08.12.2014 who directed to submit the present status to the Board for information and process for payments as per the awards.

9. That on 10.12.2014, the Draft Table Paper informing the Board was put up for approval of Traffic Manager. However, proposal to place the same item before the Board for approval of Chairman through Law Officer and Finance took some time and same could only be placed on 03.02.2015.

10. That the proposal was received back on 20.03.2015 along with remarks of Law Officer (dated 09.02.2015) for incorporating the reference of DPE's Guidelines on Settlement of Disputes in the proposed Board Note and also remarks of FA & CAO (7-3-2015) for furnishing the details of refunds proposed to be released to M/s STC & PEC and for placing the appellate awards dated 03.03.2011 and 04.03.2011, respectively and for incorporating the gist of the order in the draft Board Notice. That on 27.03.2015, Traffic Department of the Appellant complied with the remarks of Law Officer and FA & CAO.

11. That on 09.05.2015, the proposal was again received back from Secretary with remarks to incorporate the contents of Government Guidelines suitably in the Board Note. The proposal was rectified and remarks of the Secretary were complied with by 24.04.2015.

12. That on 08.05.2015, Law Officer again sent back the proposal for incorporating the latest Government guidelines issued by Department of Public Enterprises dated 14.07.2014 in the Board Note. On 13.05.2015, the proposal was sent back again after complying with the remarks; the proposal was re-submitted for approval of Chairman through Law Officer & FA & CAO. Thereafter on 26.05.2015, proposal (Board Note) was cleared by the Law Officer and Secretary.

13. The approved proposal was returned back by the Finance department of the Appellant on 07.07.2015 with remarks to keep the calculation sheet of claim amount and further to prepare and place the draft Board Resolution along with the Board Note. The remarks of the finance department were complied with by the Traffic Department of the Appellant by 24.07.2015.

14. After finalization of the proposal, the finance department of the Appellant again routed the proposal through Law Officer and Secretary on 27.07.2015 and the file was sent back to the finance department after clearing the proposal on 13.08.2015. However, due to some error in the calculation of the interest on the claim amount, the proposal was returned back by the finance department of the Appellant on 26.08.2015 to re-calculate and correct the interest and to correct the Board Resolution as well. On the same day, the Traffic Department offered the clarification and proposal was cleared by the finance department.

15. That on 27.08.2015, the board note was cleared by the Chairman and the Board note was over to the board section of the Appellant for placing the same before the Board in its meeting which was scheduled to be held on 28.08.2015.

16. That on 28.08.2015, the proposal was discussed by the Board of Trustees during its meeting and it was decided to take a legal opinion of the Government Law Officer to file an appeal against the impugned order. accordingly, the lawyers in Delhi were instructed to draft a case for opinion and to seek a legal advise from the Ld. ASG.

17. That on 04.10.2015, a written opinion was given by the Ld ASG which was sent to the office of the applicant on 06.10.2015 wherein it was opined that the impugned order may be challenged by way of an appeal. That on 07.10.2015, Traffic Department of the Appellant moved the proposal for approval of Chairman for challenging the order dated 28.10.2014 by way of an appeal. The said proposal was approved on 20.10.2015 and on 26.10.2015, lawyers in Delhi were instructed to file an appeal in the captioned matter.

18. Thereafter it took some time for the lawyers to draft the appeal considering the voluminous record and the

> intervening Diwali vacations. finally the draft appeal was sent on 23.11.2015 and the said draft was approved by the Appellants on 03.12.2015. Thereafter, the same was filed and hence there is a delay of 365 days.
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> 19. That the Applicant submits that the delay in filing the Appeal is neither deliberate nor intentional and owing to the circumstances stated above. It is again stated that the Applicant has good case on merits and the delay in filing the accompanying appeal is bonafide. It is further submitted that if the delay is not condoned it will cause serious prejudice to the Appellant which otherwise has a good case on merits."

5. Referring to the reasons stated in the applications, it is submitted by Shri Tushar Mehta, the learned ASG appearing for the applicants/appellants that the delay is not intentional but only on account of the administrative procedures involved in filing the appeals. It is contended by the learned ASG that for taking an appropriate decision on behalf of the appellant, which is a statutory authority, the matter is required to be considered at various levels and therefore it cannot be placed on par with a private litigant for the purpose of deciding whether a sufficient cause is made out for condonation of delay under Section 5 of the Limitation Act, 1963. It is thus submitted by the learned ASG that a liberal approach may be adopted and the appeals may be decided on merits after condoning the delay. In support of his submissions, the leared ASG relied upon the decisions of the Supreme Court in ***Union of India v. Giani***, **(2011) 11 SCC 480** and ***S. Ganesharaju (Dead) through LRs vs. Narasamma (Dead) through LRs & Ors.***, **(2013) 11 SCC 341**.

6. However, the Respondent opposed the applications by filing a counter contending that the appellant has failed to provide justifiable explanation for

the inordinate delay in filing the appeals despite having received the copy of the judgment within three weeks from the date of the order under appeal. It is also contended that the applications are filed with the sole purpose of delaying the relief granted to the Respondent and the same being an abuse of process of law, the indulgence by this court is not warranted.

7. Shri Jayant Bhushan, the learned senior counsel appearing for the Respondent, while placing reliance upon the decisions of the Supreme Court in ***Office of The Chief Post Master General vs. Living Media India Ltd.***, **(2012) 3 SCC 563**, ***Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project***, **(2008) 17 SCC 448**, vehemently contended that the applications are liable to be dismissed.

8. The law is now well settled that condonation of delay cannot be a matter of course and though the State and its instrumentalities may be entitled to certain amount of latitude, the delay should not be condoned automatically. After reviewing the various decisions on this issue, the said principle has been reiterated by the Supreme Court in ***Office of The Chief Post Master General (supra)***, holding:

> "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

> 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.
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> 29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.
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> 30. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. Accordingly, the appeals are liable to be dismissed on the ground of delay."

9. In the case on hand, though it is sought to be claimed by the applicant/appellant that the delay in filing the appeals was only on account of

unavoidable administrative reasons and not deliberate, we are unable to accept the same in the light of the facts and circumstances of the present case. Having regard to the fact that the appellant/applicant is well aware of the prescribed period of limitation, if the appellant/applicant is genuinely interested in challenging the order under appeal, it should have been more diligent in pursuing the matter and ensuring that the appeal is presented within time. The inordinate delay of 365 and 367 days in presenting the appeals, in our considered opinion, cannot be condoned on the basis of the reasons stated in the applications.

10. Accordingly, both the applications are dismissed. Consequently, the appeals shall also stand dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 19, 2016
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