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

+ **CO.APP. 29/2015**

PANKAJ ALUMINIUM INDUSTRIES PVT. LTD Appellant

Represented by: **Mr.Kaustubh Shukla, Adv.**

versus

BHARAT ALUMINIUM COMPANY LTD Respondent

Represented by: **Mr.Rajiv Nayyar, Sr. Adv.**
instructed by **Mr.Prashanto**
Chandra Sen, Mr.Shivanshu
Singh, Mr.Udayan Verma and
Ms.Sanah Balta, Advs.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

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23.02.2017

CM Nos.18218 and 18220/2015

1. The appeal lays a challenge to an order dated March 23, 2011 dismissing CP No.131/2008 filed by the appellant. Against the said order a Petition seeking Special Leave to Appeal was directly filed before the Supreme Court which was withdrawn on November 4, 2011. The obvious reason being that an appeal was maintainable against the impugned order.

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2. Instant appeal was thereafter filed on November 17, 2011. There is a delay of 206 days in filing the appeal. The Registry listed objections. Seven days' time was given by the Registry to remove the objections. The appellant slept over the matter for 1342 days. The appeal was re-filed on August 21, 2015.

3. Vide CM No.18220/2015 it is prayed that delay in filing the appeal be condoned. Vide CM No.18218/2015 it is prayed that delay in re-filing the appeal be condoned. Reason given to condone the delay in re-filing the appeal is pendency of civil suit between the parties which appellant claims was dismissed on September 12, 2012. The suit was filed by the respondent against the appellant.

4. In our opinion pendency of the suit would have no concern with the steps to be taken by the appellant to pursue the appeal filed.

5. We do not find sufficient cause shown to condone the delay in re-filing the appeal. As regards the delay in filing the appeal, period of limitation is 30 days. Assuming that the appellant was ill advised to directly approach the Supreme Court against the impugned order, having withdrawn the SLP before the Supreme Court on November 4, 2011 and the appeal being filed on November 7, 2011, we would be inclined to overlook the period spent before the Supreme Court when the SLP was fled notwithstanding the law being very clear that before one approaches the Supreme Court appellate remedies have to be availed of.

6. The net result would be that delay in filing the appeal would be condoned but not the delay in re-filing the appeal.

7. The two above captioned applications are accordingly disposed of.

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Since the delay in re-filing the appeal has not been condoned the appeal is dismissed with no order as to costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

FEBRUARY 23, 2017
VLD