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

+ O.M.P. (COMM) 101/2018 & IA Nos.2985/2017, 2987-88/2017

UNION OF INDIA

..... Petitioner

Through: Mr Ruchir Mishra and Mr Mukesh
Kr. Tiwari, Advocates.

versus

NETHERLANDS INDIA COMMUNICATIONS
ENTERPRISES LIMITED

..... Respondent

Through: Mr D. Moitra, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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01.03.2018

IA No.2986/2018

1. This is an application filed under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 2335 days in re-filing the present petition.
2. It is doubtful whether the present petition can be considered as re-filing of the petition, which was filed earlier on 15.09.2011. Admittedly, the said filing was defective and accordingly, the petition was returned on 16.09.2011. It appears that it was, thereafter, filed once again around 19.11.2012. However, the defects were not removed. It was again returned for rectification of the defects; nevertheless, the same were still not removed.
3. Although the grounds of challenge in the petition may be similar, it is

clearly not the same petition that was returned under objections.

4. Even if the petitioner's case is considered as on 19.11.2012, this Court is not persuaded to accept that sufficient grounds have been made out by the petitioner for condoning the delay of almost one year in re-filing the said petition in November, 2012. In absence of any credible explanation for an inordinate delay of more than one year, there is no reason to condone such delay.

5. Concededly, after the petition was returned for defects in November, 2012, the petitioner did not take any steps to re-file the same. The only explanation provided by the petitioner is that at the material time, the petitioner was required to pay the Court Fees, for which the counsel had written to the department but had received no response to the same; therefore, he had stopped acting in the matter. Reluctance to pay the applicable Court Fees can hardly be accepted as a ground for condonation of delay.

6. The amount of court fees payable was amended in 2012 by virtue of The Court Fees (Delhi Amendment) Act, 2012, which was declared unconstitutional by a Division Bench of this Court by a judgment dated 09.10.2013. However, the petitioner did not take any steps at that stage as well.

7. It is clear that the aforesaid explanation cannot be countenanced. If the petitioner had taken the decision not to re-file the petition on account of Court Fees, it can hardly be said that the petitioner ought to be permitted to re-file the same after the amendment to The Court Fees Act, 1870 was struck down.

8. There is little explanation for the delay that has occurred thereafter. The petitioner claims that since other matters were pending, the petitioner was under the impression that the present petition was also pending. There is no material on record, which could fuel such belief.

9. The petition preferred by the respondent was dismissed for non prosecution on 19.01.2017; this also did not prompt the petitioner to come forward at that stage. This petition has filed almost after a year, thereafter.

10. The Division Bench of this Court in the case of in **Delhi Development Authority vs. M/s Durga Construction Co: 2013 (139) DRJ 133** had accepted the contention that the provisions of Section 34(3) of the Arbitration and Conciliation Act, 1996 were not applicable as far as re-filing of the petition is concerned. Nonetheless, this Court had held that given the legislative intent, a liberal view in condoning delay in re-filing would not be warranted and it would not be apposite to condone an inordinate delay in re-filing. In this view, this Court finds the explanations provided by the learned counsel for the petitioner for an inordinate delay unworthy of consideration.

11. The application is, accordingly, dismissed. Consequently, the petition and all other applications are also dismissed.

VIBHU BAKHRU, J

MARCH 01, 2018
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