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

Date of Decision: 3rd May, 2018

+ **FAO(OS) (COMM) 50/2018**

M/S LIFELONG MEDIATECH PVT LTD Appellant

Through: Mr. Sameer Nandwani, Advocate.

versus

M/S UNITED INDIA INSURANCE CO LTD Respondent

Through: Mr. A. K. De, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM No.10452/2018 (Delay)

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 against the order dated 22.11.2017 passed by the learned Single Judge of this Court, by which the objections to the award have been dismissed. The appellant seeks condonation of 65 days delay in filing the present appeal.
2. Learned counsel appearing for the applicant submits that the delay has been caused on account of bona-fide reasons and not on account of inaction or carelessness. Learned counsel for the applicant submits that the appellant is a corporate body with a legal department and any decision to file the appeal has to go through the legal department as well as by the higher management. The appellant had preferred to take an opinion from "some counsels" and also gave some self-analysis of the case. Thereafter, the facts were placed before the higher

management of the company and thus, this process took some time and resulted in delay, which is contended to be unintentional.

3. Learned counsel for the applicant has relied upon a decision rendered in the case of '*Ummer vs Pottengal Subida & Ors.*' reported in **2018 Vol. 3 JT 154**, more particularly, paragraph 18 which reads as under:

“18. One cannot now dispute the legal proposition that the earlier view of this Court that the appellant was required to explain the delay of each day till the date of filing the appeal has since been diluted by the later decisions of this Court and is, therefore, held as no longer good law”.

4. This application is opposed by the learned counsel for the respondent, who submits that no reasonable grounds have been raised by the appellant seeking condonation of delay in filing the present appeal.
5. We have heard the learned counsel for the parties. Before the rival submissions of the parties can be considered, we deem it appropriate to highlight the main objective of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is to provide speedy disposal of commercial disputes, to create a positive image and to improve the international image of the Indian Justice Delivery System.
6. Learned counsel for the appellant has relied upon the judgment rendered in the case of *Ummer Vs Pottengal Subida & Ors. (Supra)* in support of his submission that each days delay is not required to be explained. It has also been submitted before us that the appellant has a strong case on merits and this Court must take a lenient view in the matter to avoid any injustice to the appellant.

7. No doubt, The Supreme Court of India has taken a consistent view that while deciding an application under Section 5 of the Limitation Act, the Courts must take a liberal view so as to advance substantial justice. However, the Supreme Court has also observed that a liberal approach must be taken, provided there is no gross negligence, deliberate inaction or lack of bonafides imputable to the parties seeking condonation of delay.
8. We have carefully examined the application filed by the appellant seeking condonation of delay. A careful reading of the application would show that the application is highly casual in nature, it lacks material particulars and does not disclose sufficient cause for condoning the delay.
9. Since, the application is very short, we deem it appropriate to reproduce the same:
 - “1. That the above said appeal has been filed today which is most likely to succeed as many questions of fact and law are involved. The grounds of objections may please be read as part of this application as the same are not being repeated for sake of brevity.
 2. That the appellant is a body corporate and has got its own legal department, any decision to file appeal has to go through the legal department as well as higher management.
 3. That the objections were decided against the appellant, the appellant preferred to take opinion from some counsels and also did self-analysis of the case and thereafter placed the facts before the higher management of the company.
 4. That after the higher management gave consent to file the appeal the present appeal is

being preferred on various grounds as advised to the appellant.

5. That all this process took some time and a delay of 65 days has occurred in the process, which is purely unintentional.

6. That it is settled law that in case a party has got a good case, technicalities should not stand in the way of justice.

7. That the appellant/applicant has got a good case on merits and is most likely to succeed.

8. That for the mercy shown to the Appellant, the Appellant shall ever pray to this Hon'ble Court with folded hands.

PRAYER

It is, therefore, respectfully prayed that this Hon'ble Court may please be kind enough to condone delay of 65 days in filing the accompanying appeal keeping in view the aforesaid facts and circumstances as also in the interest of justice.

Any other relief which this Hon'ble Court may deem fit and proper may also pass in favour of the appellants and against the respondent.”

10. In the case of ***Office of the Chief Postmaster General & Ors. Vs. Living Media India Limited and Anr.***, reported at ***AIR 2012 SC 1506***, the Supreme Court of India has analysed the entire law on the subject. It would be relevant to reproduce paras 11 to 13, which is reproduced below:

“11) We have already extracted the reasons as mentioned in the "better affidavit" sworn by Mr. Aparajeet Pattanayak, SSRM, Air Mail Sorting Division, New Delhi. It is relevant to note that in

the said affidavit, the Department has itself mentioned and is aware of the date of the judgment of the Division Bench of the High Court in LPA Nos. 418 and 1006 of 2007 as 11.09.2009. Even according to the deponent, their counsel had applied for the certified copy of the said judgment only on 08.01.2010 and the same was received by the Department on the very same day. There is no explanation for not applying for certified copy of the impugned judgment on 11.09.2009 or at least within a reasonable time. The fact remains that the certified copy was applied only on 08.01.2010, i.e. after a period of nearly four months. In spite of affording another opportunity to file better affidavit by placing adequate material, neither the Department nor the person in-charge has filed any explanation for not applying the certified copy within the prescribed period. The other dates mentioned in the affidavit which we have already extracted, clearly show that there was delay at every stage and except mentioning the dates of receipt of the file and the decision taken, there is no explanation as to why such delay had occasioned. Though it was stated by the Department that the delay was due to unavoidable circumstances and genuine difficulties, the fact remains that from day one the Department or the person/persons concerned have not evinced diligence in

prosecuting the matter to this Court by taking appropriate steps.

12) 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. 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 bonafide, 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.

13) 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 bonafide 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 government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. 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.”

11. In the case of *Office of the Chief Postmaster General & Ors. (Supra)*, the Supreme Court was considering an application seeking condonation of delay filed by a Government Department. The present case pertains to a Private Limited Company which admittedly has a legal department. The first question which arises for our consideration is whether the application discloses sufficient grounds for condonation of delay.
12. While considering the application seeking condonation of delay, the period of delay is not the criteria. A short delay may not be condoned in the absence of an acceptable explanation while a large delay may be condoned if the explanation is satisfactory. Courts cannot lose track of

the fact that normally after the expiry of the period, the right to sue extinguishes and the other side acquires a right which should not be usually disturbed as it would cause injustice to the opposite party.

13. We find that in this case, the application seeking condonation of delay is completely silent as to when the certified copy of the impugned judgment was received and the causes for the delay in filing the present appeal. Reading of the application would show that delay was caused on account of times spent in seeking opinion from some counsel. This in our view cannot be treated as sufficient grounds as no details have been provided and only a bald statement has been made. In the absence of any satisfactory explanation, it cannot be said that the delay was caused due to bonafide reasons and not on account of negligence or inaction. The Court cannot lose track of the fact that the appellant is not an illiterate litigant but a company which admittedly has its own legal department which is evident from reading para 2 of the application.
14. Accordingly, we find no merit in the application. The same, is therefore, dismissed.

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15. In view of the order passed in the application, the present appeal is dismissed being barred by limitation.

G. S. SISTANI, J

SANGITA DHINGRA SEHGAL, J

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