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

+ **O.M.P. (COMM) 338/2018**

NEESA AGRITECH & FOODS LIMITED & ORS..... Petitioners

Through **Mr. Vishal, Mr. Ajit Kumar, Ms.
Nutan Kumar, Mr. Ashwani Kumar
and Mr. Rahul Kumar, Advs.**

versus

S.E.INVESTMENT

..... Respondent

Through **Mr. P. Nagesh and Mr. Nishant
Tyagi, Advs.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% 16.08.2018

I.A.No.10463/2018 in O.M.P. (COMM) 338/2018

1. This is an application filed on behalf of the petitioners.
2. According to the petitioners, the period of delay involved is 110 days.
3. As per the Registry, the period of delay is 853 days.
4. On the last date of hearing, I had recorded averments and the crucial dates which were necessary for deciding the application. For the sake of convenience, relevant part of the order dated 7.8.2018 is extracted hereafter:

“.... 2. A perusal of the record maintained by the Registry shows that according to the Registry, there is a delay of 853 days,

3. In the captioned application it has been averred that there, is a delay of 556 days.

4. The crucial dates, in this behalf, to which a reference has been

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made by the petitioner, are as follows.

4.1 The award dated 4.12.2015 was, evidently, received by the petitioner on 4.12.2015 (it appears the date is wrongly typed in paragraph 1 as 14.12.2016).

4.2 A petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short 'the Act') was filed in the District Court at Ahmedabad on 14.3.2016.

4.3 Furthermore, the said petition was returned by the concerned court on account of lack of jurisdiction vide order dated 25.9.2017.

4.4 It is further averred that the petitioner had applied for issuance of a certified copy on 17.11.2017, which, was made ready on 19.12.2017.

4.5 According to the petitioner, the instant petition under Section 34 of the Act was filed on 14.2.2018. The Registry's record, however, that the petition was filed on 4.7.2018.

5. Counsel for the petitioner seeks condonation of delay between the period commencing from the date when the award was received and the date when the petition was returned by the District Court, at Ahmedabad i.e. 25.9.2017.

6. To be noted, there is no explanation in the application for delay after the certified copy of the judgment was received, which was, on 19.12.2017.

7. The Registry will submit a report with regard to the correct facts, that is, as to whether the accompanying petition filed under Section 34 of the Act with this Court was filed on 14.2.2018 as averred in the application or on 4.7.2018.

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8. Renotify the matter on 16.8.2018.”

5. The Registry has submitted a report dated 14.8.2018 in terms of the directions issued by this Court on 7.8.2018.

6. According to the Registry, the petition was lodged for the first time on 4.7.2018.

7. In these circumstances, even if the period of delay between 14.3.2016,

when the petitioners had filed a petition under Section 34 of the Arbitration and Conciliation Act, 1996, in the District Court at Ahmedabad and the date when it was returned by the said Court on account of lack of jurisdiction on 25.9.2017, is excluded, as also, the period between the date when the petitioners applied for a certified copy (i.e. on 17.11.2017) and the date when it was made ready, (i.e. on 19.12.2017) is redacted, it would not help the cause of the petitioner. The petition will still be beyond limitation as prescribed under Section 34(3) of the Act.

8. Furthermore, as noted above, there is no explanation for the period of delay after 19.12.2017.

9. Accordingly, the captioned application is dismissed.

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10. In view of the order passed in I.A. No.10463/2018, the said petition and the application will also stand dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

AUGUST 16, 2018
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