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

+ **CO.APP. 14/2018**

ABHISHEK MANUFACTURING CO. (INDIA) PRIVATE LIMITED

..... Appellant

Through Mr.Gaurav Varma with Mr.Aaryan
Sharma, Advs.

versus

EMAMI LIMITED

..... Respondent

Through None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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06.08.2018

C.M.No.31319/2018 (condonation of delay)

1. The present application has been filed by the applicant under Section 5 of the Limitation Act, 1963 for condonation of delay of 264 days in filing the accompanying appeal.
2. A perusal of the records, in particular the impugned order dated 11.10.2017, reveals that the appellant herein (respondent in the Company Petition) had approached the respondent herein (petitioner in the Company Petition) and placed a purchase order dated 07.11.2014, for supply of some goods.
3. The respondent accepted the said order placed by the appellant vide its email dated 14.11.2014 and agreed to supply the goods. On

19.12.2014, the appellant herein was called upon by the respondent to make payment for the said goods, which were ready for shipment. Though, the appellant did not respond, in the end of December 2014, it issued two cheques for a sum of Rs. 4.04 Lakhs and Rs.16.16 Lakhs respectively against the purchase invoice of the goods in question. While the cheque for Rs.4.04 Lakhs was encashed, the cheque for Rs.16.16 Lakhs, when presented, was dishonoured on the ground of '*insufficient funds*'.

4. After waiting for some time, the respondent sent a letter to the appellant for clearing the debt. On not receiving any payment, the respondent served a statutory notice dated 20.08.2015 on the appellant, to which too, neither did the appellant give a reply nor did it make any payment.

5. On 15.01.2016, the respondent filed a winding up petition against the appellant. Despite efforts made to serve them, the appellant remained unserved and was finally served through publication in the national newspapers on 03.02.2017, calling upon them to appear before the Company Court on 01.05.2017. Again, the appellant failed to appear before the learned Company Judge on the said date or even subsequently.

6. In view of the failure on the part of the appellant to appear before the Company Court, vide order dated 11.10.2017 the winding up petition filed by the respondent was admitted and an Official Liquidator attached to this Court was appointed as the 'Provisional Liquidator' who was

directed to take-over all the assets, books of accounts and records of the appellant forthwith.

7. Further, the Provisional Liquidator was directed to issue a publication in terms of the impugned order dated 11.10.2017, prior to the next date of hearing fixed in the matter, i.e., 19.03.2018. A copy of the order dated 19.03.2018 has not been placed on record. However, learned counsel for the appellant hands over a copy thereof, which reveals on perusal that Mr.Gaurav Varma, Advocate finally entered appearance on behalf of the respondent (appellant herein) on 19.03.2018 and made a request for an adjournment. The said request was acceded to and the matter was adjourned to 07.08.2018, i.e., tomorrow. Only thereafter, was the present appeal filed on 01.08.2018.

8. In the present application for seeking condonation of delay, the appellant has sought to explain that its Directors became aware of the impugned order dated 11.10.2017 only on 03.11.2017, when an officer from the office of the Provisional Liquidator came to seal the office premises. It has been averred in para 5 of the application that on becoming aware of the fact that it had been proceeded against *ex parte* and winding up proceedings have been initiated, the appellant took steps to engage an advocate and seek legal advice. The Directors of the appellant have also filed the statement of affairs of the company before the Provisional Liquidator, as directed by the Company Court.

9. In the present application, condonation of delay is sought, by claiming that the dispute between the parties related to the year 2015-16

and it took a lot of time to gather the relevant documents and assess the emails exchanged between the parties for filing the present appeal. It has been further stated that “the entire bulk of the emails were carefully read and scanned to see which emails pertained to the issues raised in the Company Petition” and the said process continued for several months, due to which a delay of 264 days took place in filing the accompanying Company Appeal.

10. To put it mildly, we are least impressed with the explanation furnished in the application for seeking condonation of delay. We may note that 15 odd documents have been filed by the appellant alongwith the present appeal and out of the said 15 documents, the emails exchanged between the parties are only 11 in number. This can hardly be termed as bulky correspondence exchanged between the parties to justify an inordinate delay of 264 days in filing the accompanying appeal.

11. We may note here that before passing the present order, we had requested learned counsel for the appellant to obtain instructions, if the appellant is still ready and willing to deposit in Court, the value of the cheque issued in favour of the respondent that had bounced and had led to the filing of the winding up Petition. Learned counsel for the appellant states that appellant is not in a financial position to deposit the said amount or even a lesser amount.

12. In view of the aforesaid facts and circumstances, we are not inclined to allow the present application, as no cause, much less just and

sufficient cause has been demonstrated by the appellant to justify filing such a belated appeal. As a result, the application for condonation of delay stands dismissed.

CO.APP. 14/2018 & C.M.Nos.31320/2018 (stay) & 31321/2018
(exemption)

In view of the order passed above, dismissing the application for condonation of delay, the appeal also stands dismissed alongwith the pending applications.

HIMA KOHLI, J

REKHA PALLI, J

AUGUST 06, 2018
sr/aa