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

% *Date of Judgment: 28th September, 2018*

+ **FAO(OS) (COMM) 221/2018**

M/S CEMENT CORPORATION OF INDIA LTD Appellant

Through **Mr. Santosh Kumar Rout with Mr.
Pratap Chandra, Advocates.**

versus

M/S CURRENT ADVERTISING PVT LTD Respondent

Through **Mr. Kamal Gupta & Mr. Harsh
Kumar, Advocates.**

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

CM APPL 40128/2018 (exemption)

1. Exemption is allowed, subject to all just exception.
2. The application stands disposed of.

CM APPL 40126/2018 (delay in filing)

3. This application has been filed by the applicant/appellant seeking condonation of 94 days delay in filing the appeal. Since the application is short, we deem it appropriate to reproduce the same :

“1. That the accompanying appeal has been filed impugning the order dated 10.04.2018 passed by Hon’ble Single Judge that rejected the objection of the appellant to set aside the award dated 27.02.2009.

2. That the appellant is a Public Sector Unit. The counsel of the appellant conveyed the order of the Hon’ble Single Judge to the authority who is dealing the matter. The same was sent to the appropriate authority.

The authority discussed the facts in the board meeting and was decided to go on appeal. The decision was forwarded to concerned authority to contact with the panel advocates.

3. That Shri Santosh Kumar Rout was appointed as counsel in the present matter to prepare an appeal on behalf of the Corporation. The counsel of the Corporation collected necessary documents from the Corporation and applied for certified copy. Appeal was drafted and the same was sent for vetting and after getting approval the appeal is filed. The draft of the appeal was discussed in the meeting of the authorities and was returned to the counsel of the appellant company to make some changes. The authority also discussed with the counsel of the company and got approved the draft of the appeal.

4. That in between the all proceedings could not be processed properly in time and in between a delay of 113 days have occurred in filing the present appeal.

5. That the delay occurred in filing the present appeal is not intentional nor deliberate but due to the reasons stated herein above.

6. That the appellant seek indulgence of the Hon'ble Court to condone the delay of 94 days for interest of justice.

7. That the present application filed for the interest of justice and the inconvenience happened is regretted.

PRAYER

It is, therefore, most respectfully prayed that the Hon'ble Court may be pleased to :

- a) Allow the present application and condone the delay of 94 days for the reasons stated therein above,
- b) Pass such other further orders which this Hon'ble Court deems fit and proper in the facts and circumstances of the present case in favour of the appellant Corporation."

4. The reason stated in the application seeking condonation of delay is that after receipt of the order, the matter was discussed in the Board Meeting and it was decided to file an appeal. However, the application is silent as to when the Board Meeting was held and when it was decided to file the appeal. The other ground incorporated in the application is that the Corporation collected necessary documents and applied for certified copies and thereafter, appeal was drafted and sent for vetting. This para also does not convey any material particulars as when and which documents were collected, when were the certified copies applied and when were the same made available.
5. Counsel for the applicant/appellant submits that the delay was neither deliberate nor intentional and also the appellant is a Public Sector Undertaking and thus, the delay should be condoned.
6. We have examined the application and heard the learned counsel for the parties and has taken their rival submissions into consideration.
7. In the case of *Office of the Chief Postmaster General & Ors. Vs. Living Media India Limited and Anr.*, reported in *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.”

8. The Supreme Court in ***Maniben Devraj Shah vs. Municipal Corporation of Brihan Mumbai***, reported at (2012) 5 SCC 157, explained the detailed grounds for condoning the delay in paras 15-25, as reproduced below:-

“15.The expression 'sufficient cause' used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the Courts to apply the law in a meaningful manner which serve the ends of justice. No hard and fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years this Court has advocated that a liberal approach should be adopted in such matters so that substantive rights of the parties are not defeated merely because of delay.

16. In Ramlal v. Rewa Coalfields Ltd. AIR 1962 SC 361, this Court while interpreting Section 5 of the Limitation Act, laid down the following proposition: (AIR pp. 363-64, para 7)

“7.In construing Section 5 (of the Limitation Act), it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired, the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown, discretion is given to the court to condone delay and admit the appeal. This discretion has been deliberately conferred on the court in order that judicial power and discretion in that

behalf should be exercised to advance substantial justice.”

17. In Collector, Land Acquisition, Anantnag v. Mst. Katiji, this Court made a significant departure from the earlier judgments and observed: (SCC pp.108-09, para 3)

“3.The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. and such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in

injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

18. In *N. Balakrishnan v. M. Krishnamurthy*, (1998) 7 SCC 123, the Court went a step further and made the following observations: (SCC pp. 127-28, paras 9,11 & 13)

“9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

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11.Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined

in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

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13.It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.”

19. In P.K. Ramachandran v. State of Kerala (1997) 7 SCC 556, this Court while reversing the order passed by the High Court which had condoned 565 days delay in filing an appeal by the State against the decree of the Sub-Court in an arbitration application, observed that: (SCC p. 558, para 6)

“6.law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.”

20. In *Vedabai v. Shantaram Baburao Patil*, (2001) 9 SCC 106, the Court observed that a distinction must be made between a case where the delay is inordinate and a case where the delay is of few days and whereas in the former case the consideration of prejudice to the other side will be a relevant factor, in the latter case no such consideration arises.

21. In *State of Nagaland v. Lipok AO*, the Court referred to several precedents on the subject and observed that the proof of sufficient cause is a condition precedent for exercise of discretion vested in the Court: (SCC p. 757, para 8)

“8.... What counts is not the length of the delay but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.”

22. The Court also took cognizance of the usual bureaucratic delays which takes place in the functioning of the State and its agencies/instrumentalities and observed: (SCC p.759, para 13)

“13.Experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file- pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. The State which represents collective cause of the community, does not deserve a litigant-non-grata status. The courts, therefore, have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression of sufficient cause. Merit is preferred to scuttle a decision on merits in turning down the case on technicalities of delay in presenting the appeal.”

23. What needs to be emphasised is that even though a liberal and justice oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act

and other similar statutes, the Courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

24. What colour the expression 'sufficient cause' would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the Court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

25. In cases involving the State and its agencies/instrumentalities, the Court can take note of the fact that sufficient time is taken in the decision making process but no premium can be given for total lethargy or utter negligence on the part of the officers of the State and / or its agencies/instrumentalities and the applications filed by them for condonation of delay cannot be allowed as a matter of course by accepting the plea that dismissal of the matter on the ground of bar of limitation will cause injury to the public interest.”

9. It has repeatedly been held that delay can only be condoned if sufficient cause in condoning the delay is established based on genuine reasons as section 5 of the limitation is not a matter of right for the party who pleads the condonation, but it depends on the discretion of the court. The Court has further made it clear that where the cases involved any State entity, no preferential treatment should be given as it vitiate the basic doctrine of equality.
10. Furthermore, upon reading of the application, we find that the delay is neither on account of any bonafide reason nor any sufficient cause has

been shown.

11. Accordingly, the application is dismissed.

FAO(OS) (COMM) 221/2018

12. The appeal is dismissed in view of the order passed in the application seeking condonation of delay.

G.S.SISTANI, J.

SANGITA DHINGRA SEHGAL, J.

SEPTEMBER 28, 2018/ck

