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

% Date of decision: 29th August, 2018

+ **FAO(OS) (COMM) 172/2017**

M/S TANARIA INFRASTRUCTURE PVT LTD..... Appellant
Through Mr. S. Sharma, Advocate

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA
..... Respondent
Through Mr. V. K. Garg, Sr. Advocate
with Mr. Sumit Gupta, Mr.
Noopur Dubey and Mr.
Aneesha Sadhwani, Advocates

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

1. This intra court appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('A&C Act' for short) read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 impugns order dated 30.05.2017 whereby application filed by the appellant for condonation of delay of 240 days in refilling of the objections under Section 34 of the A&C Act has been rejected.

2. The impugned order records that as per Section 34(3) objections are to be filed within three months and court has discretion to condone delay for a further period of upto one month and not beyond.

3. Objections challenging the impugned award dated 16.05.2016 were filed on 16.08.2016.

4. The Registry on examination of the objections and on the first occasion itself had raised objections including the objections regarding incomplete documents, failure to stamp the application, annexures and power of attorney.

5. Thereafter, the appellant had re-filed the objection on a number of occasions, but the defects were not rectified and the objections were returned by the Registry. On some occasions there was substantial delay in refiling beyond period of seven days as stipulated in the High Court Rules. The objection as originally filed consisted of 24 pages and subsequently amendment and changes were made and documents were added and number of pages to the objection petition increased to 504 pages.

6. One of the plea and ground taken in the application seeking condonation of delay for re-filing the objection was that the applicant had procured and was furnished documents under the Right to Information Act, 2005 which the Arbitrator had not taken on record. The petitioner had also filed written arguments

which the Arbitrator had not taken on record. The counsel for the appellant had to compare and examine the order sheets and arrange the documents as filed before the Arbitrator. Some documents were not available with the petitioner and were missing and this took time as document had to be retrieved.

7. It is also stated in the application for condonation of delay that some of the pages of the objection petition had been changed and signed again. Further, the objection petition as filed had to be amended.

8. Law mandates and requires that objections under Section 34 of the A&C Act should be filed within three months. Courts have the power to condone the delay for a further period of upto one month on the applicant showing sufficient cause. There is no power to condone the delay beyond one month.

9. In the present case, we have examined the reasons given by the appellant in the application seeking condonation of delay in refilling of 240 days. Reasons and excuses given for delay spanning over eight months are insufficient and scanty to explain the long delay. In fact an attempt was made to redraft and amend the objections. Arbitration proceedings had continued for four years from 2012 to 2016. Contention of lack of time and that papers and documents had to be collected was a pretence and a lame excuse to cover up lethargy and negligence. Negligence and casualness, if not reckless, as in the present

case, should not be overlooked and condoned in commercial and arbitration matters. Keeping in view the legislative mandate, discretion to condone prolonged delay should not be liberally exercised on mere asking, without good and sufficient cause and justification being shown. Latitude and indulgence cannot be shown and granted, when the delay is prolonged and the party has been careless and heedless in failing to act inspite of repeated opportunities.

10. In view of the aforesaid factual position, not being satisfied with the explanation given by the appellant for condonation of delay of 240 days in refilling of the objections, we hold that the impugned order requires no interference. The appeal is dismissed. No costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

AUGUST 29, 2018

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