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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 17/2018 & C.M.Nos.1116-18/2018

UNION OF INDIA Appellant

Through: Mr. N. Prashant Kumar Nair,
Advocate.

Versus

MANOJ CABLES Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **12.01.2018**

C.M.No.1118/2018 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed off.

C.M.No. 1117/2018 (for delay) & FAO 17/2018 & C.M.No.1116/2018

1. There is admittedly a delay of 166 days in filing of the appeal. C. M. No. 1117/2018 seeks condonation of the same on the ground that the case pertained to the execution of a work contract by the respondent in 2005; a dispute arose between the parties and the matter was referred to Arbitration; the arbitration Award was passed on 28.07.2011, which was challenged under section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act'); the challenge was dismissed in terms of the impugned order dated 23.03.2017. This appeal seeks the setting aside of the said order. A stage for consideration of the challenge to the impugned order would arise only after the appellant is able to show that the said inordinate delay of 166 days

was occasioned by a justifiable cause. The reasons for the delay are that the relevant records were not available; there was intra-department confusion in communication and that the officers instructing the counsel did not have complete information of the facts of the case.

2. The aforesaid reasons are *ex facie* untenable because the appellant/Union of India is better placed than any other party. It has an established infrastructure with qualified personnel to take care of its legal affairs along with assistance from its panel of lawyers. Therefore, the plea that the records were not available or that the officers did not have sufficient knowledge is without basis. Furthermore, it is not the appellant's case that records were either lost or misplaced.

3. The learned counsel for the appellant contends that since the appeal is filed by the Union of India, a lenient view be taken. In support of his contentions, he relies upon the dictum of the Supreme Court in ***State of Haryana vs. Chander Mani & Ors.***, AIR 1996 SC 1623, which held:-

“11.....It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay-intentional or otherwise-is a routine. Considerable delay of procedural red tape in the process of their making decision is a common feature. Therefore, certain amount of latitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest.....”

4. The learned counsel also relies upon the other judgments in the same vein i.e.

(i) ***Poonam & Ors. vs. Harish Kumar & Anr.***, (2012) 12 SCC 527;

- (ii) ***S. Ganeshraju & Anr. vs. Narasamma & Ors., (2013) 11 SCC 341;***
- (iii) ***Improvement Trust Ludhiana vs. Ujagar Singh & Ors., IV (2010) SLT 797'***; and
- (iv) ***Bhagmal & Ors. vs. Kunwar Lal & Ors.', AIR 2010 SCC 2991.***

5. The distilled opinion that emanates from the said decisions is that ordinarily the courts would be a little more considerate apropos applications seeking condonation of delay by the State, as otherwise, ultimately, public interest would suffer. However, the judicial dictum is only apropos the judicial approach to the pleas for condonation of delay. The decisions do not negate the requirement of sufficient cause as stipulated in section 5 of the Limitation Act. Hence, according to the cited judgments, a more considerate view of a plea for the condonation of delay by the State would be extended to instances of procedural delays incidental to the decision making process and not routine delays, so as to grant such general latitude to applications by the Government, that it would defeat the very purpose of the Limitation Act or to make its strict stipulations otiose.

6. In the present case, evidently the files/records were available, so were the qualified personnel to deal with the case; the arbitration Award was passed in the year 2011; a challenge against it was mounted in the Objection Petition bearing Arb. No. 57717/2016 and actively pursued till its dismissal by the impugned order on 23.03.2017. Therefore, it cannot be said that the case was old. In the circumstances, the appellant's contentions are untenable and the Court does not find any grounds to condone the unwarranted delay of 166 days. There is no scope for rewarding indolence in law.

7. However, the learned counsel for the appellant submits that he has a good case on merits, therefore, the case be heard and be decided on merits.

8. Assuming for a moment that the delay is condoned and the appeal is considered for decision on merits, the Court would note that the appeal impugns the order dated 23.03.2017 passed by the learned Additional District Judge-02 (North-West), Rohini Courts, Delhi, in Arb. No. 57717/2016, whereby the appellant's challenge to the Arbitration Award under section 34 of the Act was dismissed, for the following reasons:-

“6. Before proceeding further, I refer to provisions of Section 34 of the AC Act. It provides, inter-alia, that an arbitral award may be set aside by the court only if the party making application furnishes proof that a party was under some incapacity, or the arbitration agreement was not valid under the law, or the party making application was not given proper notice of appointment of arbitrator or of the arbitral proceedings, or the composition of arbitral tribunal was not in accordance with agreement of the parties, or the subject matter of dispute was not capable of settlement by arbitration, or the arbitral award was in conflict with public policy of India, etc.

7. Now coming to the fact of the present case, coupled with detailed arbitration proceedings, conducted by Ld. Arbitrator in this matter, further coupled with the entire impugned award on record, this court is of the considered opinion that the Ld. Arbitrator had given fair & reasonable opportunity of hearing to both sides (involved in this matter) before passing the impugned award.

8. As revealed from the Impugned award, in the considered opinion of this court, the Ld. Arbitrator had fairly considered statement of claim of the respondent and reply thereto before passing such award. Vide this impugned award, the respondent was rightly found entitled to payment of

Rs.52,20,877/- (Fifty Two Lacs Twenty Thousand Eight Hundred and Seventy Seven Only), alongwith interest & costs, as mentioned in the impugned award.

9. On the basis of above mentioned discussion, coupled with the entire facts and circumstances of this case, this court is of the considered opinion that there is no ground for setting aside the impugned award, claimed in the petition under discussion. Hence, the petition under discussion is hereby dismissed as devoid of any merits and stands decided in view of above judgment. In the given facts & circumstances of this case, contesting parties herein are left to bear their own costs, qua this matter.”

9. It is the contention of the appellant that the Award is not a reasoned order since the respondent had not completed the contract in terms of its stipulations, therefore, the appellant is entitled to the amount withheld by it; and being a non-speaking order, the Award needs to be set aside. The Court would note that the Award was passed by the Sole Arbitrator, who was appointed by the appellant and was working with the appellant as Chief Workshop Manager, Signal Workshop, Ghaziabad, Northern Railway. A perusal of the Award shows that it dealt with the eight issues raised in the arbitration proceedings; after each issue was considered by the learned Arbitrator, the conclusions were arrived at with reasons; though the reasoning may not have been as elaborate as the appellant may have wanted it to be. But then, legal reasoning has to satisfy objective standards. Decisions do not have to be tailored to meet personal standards of rationale that may be held by the litigating parties. It is evident that the arguments of the parties have been well considered by the learned Arbitrator before arriving at the conclusions. The Award otherwise appears to be based on the

records. Furthermore, the reasoning for issue Nos. 1, 4, 6 and 7 are elaborate and the conclusion thereon is rational. Its reasoning apropos issues No.5 and 7 are:

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SN	Description of claims	Statement of Claimant	Statement of Respondent
XX	XXX	XXX	XXX
5	Issue of Finalization of risk purchase tender without issue of counter offer.	Purchase was done on much higher price without issuing counter offer to the National Cable.	No clause in the IRS conditions stipulates to issue a counter offer to the L-2 in Risk purchase
XX	XXX	XXX	XXX
7	Whether the final purchase of the material was made in the stipulated time as enumerated in IRS 0702, after the invitation of risk purchase and its effects.	Risk purchase was made beyond the stipulated period.	Condition no.35 is applicable in this case and risk purchase period has to be nine months.

10. In view of the above, the Court is of the considered opinion that the contentions apropos the Award being unreasonable and non-speaking are untenable. The Court finds no reason to interfere with the impugned order in view of the limited grounds of challenge under section 34 of the Act. In the circumstances, the appeal fails on merits as well. It, alongwith pending applications, is dismissed.

NAJMI WAZIRI, J.

JANUARY 12, 2018

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