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

% *Date of Judgement: 18th February, 2019*

+ RFA(OS) 15/2019
SJVN LTD

..... Appellant

Through Mr. Uttam Datt & Mr. Vinayak Nair,
Advocates.

versus

JAIPRAKASH HYUNDAI CONSORTIUM Respondent
Through *Nemo.*

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL 7438/2019 (Exemption)

1. Exemption is allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL 7437/2019 (delay in filing)

3. By the present application, the applicant/appellant seeks condonation of 94 days delay in filing the present appeal. The cause for the delay has been set out in paras 2 and 3 of the application, which is reproduced below :

“2. That the Appellant analysed the impugned said judgment and sought legal opinion on the legality of the judgment and the ground on which it could be challenged. There are three suits in which identical judgments has been passed by the learned single Judge dismissing all the three suits between the same

parties on the same day. The facts in the three suits are different however all three suits have been dismissed on the identical grounds. The analyses of the judgments and differentiation in the three suits took time.

3. The legal opinion and decision to file appeal and approvals for the same took time due to multiple approvals and the filing of the appeal got delayed. The preparation and drafting of the appeal also took time which delayed the filing of the appeal.”

4. Learned counsel for the appellant submits that a consistent view has been taken while considering the application, a liberal approach must be followed by this Court which shows that a meritorious matter is not left to be decided purely for technical reason.
5. We have heard learned counsel for the appellant and have examined the application. Taking into consideration the relevant paras which we have reproduced above, we are of the view that the applicant has failed to make out a case to show that there were sufficient reasons for the delay. The application is vague, lacking of material particulars and dates.
6. 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, more particularly paras 11 to 13 which, read as under :

“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.”

7. For the reasons stated above, we find no ground to condone the delay.

Accordingly, the application is dismissed.

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8. We have examined the impugned judgment on merits as well. The appellant had filed a suit seeking following prayers :

“(i) Pass a decree of declaration against the Defendant and in favour of the Plaintiff that the decision of Disputes Review Board, dated 24.10.2006, 30.04.2007 and 06.08.2009 as factually and legally correct.

(ii) Pass a decree of sum of Rs.3,20,58,418/- in favour of the Plaintiff and against the Defendant.

(iii) Pass a decree of pendentelite and future interest on the decretal amount at the rate of 18% per annum.”

9. The subject matter of the disputes between the parties is a contract dated 24.06.1993. As per the terms of the contract, the disputes between the parties were referred to the Dispute Review Board (in short ‘DRB’), which is an inhouse mechanism at the pre-litigation stage. The procedure, which was to be followed, finds mentioned in clause 67 of the contract, which we reproduce below :

“SETTLEMENT OF DISPUTES

Modified Clause 67 : Arbitration : of the General Conditions of Contract :

- i. If the Contractor considers any work demanded of him to be outside the requirements of the Contract or considers any decision of the Engineer-in-Charge on any matter in connection with or arising out of the Contract or carrying out of work to be unacceptable, he shall promptly ask the Engineer-in-Charge in writing for written instruction or decision.

Thereupon, the Engineer-in-Charge shall give his written instructions or decision within a period of thirty days of such request.

Upon receipt of the written instructions or decision, the Contractor shall promptly proceed without delay to comply with such instructions or decision. If the Engineer-in-Charge fails to give his instructions or decision in writing within a period of thirty days after being requested for or if the Contractor is dissatisfied with the instructions or decision of the Engineer-in-Charge, the Contractor may within thirty days after receiving the instructions or decision, file a written appeal with the CMD, JPC stating clearly, and in detail, of the relevant Contract provisions, together with the facts and circumstances involved in the dispute. The decision will be furnished in writing to the Contractor within thirty days after the receipt of Contractor's written appeal.

If the Contractor is dis-satisfied with this decision, the Contractor, within a period of fifteen days from the receipt of the decision, shall indicate to CMD, NJPC his intention to refer the matter to the disputes Review Board (DRB) and within a period of another fifteen days shall formally appeal to the Disputes Review Board. The constitution of the Dispute Review Board and the procedure to be adopted by it for resolving the disputes is elaborated in the Annexure-A, provided, however, all such disputes which may arise prior to the constitution of the Board, shall be taken up for

consideration at its first meeting convened not later than 30 days upon its constitution. As specified under Para 1 of Annexure-A, the dispute involving the individual claims upto Rs.50.00 (fifty) million shall be binding on the NJPC and the Contractor. In the case of the dispute involving individual claim beyond 50.00 (fifty) million, if inspite of recommendations/decision of the Dispute Review Board, the Dispute remains unresolved, either party, within 15 days of the receipt of the aforesaid recommendations/decision of the Board, may appeal back to the Board for review. However, if even after this review of its recommendations/decision by the Dispute Review Board, the two parties still fails to resolve the dispute; either party may resort to arbitrator. In that case, within a period of 30 days of the receipt of the Dispute Review Board's final recommendations/decision, the party desiring to resort to arbitration shall indicate its intention to refer the dispute to arbitration, failing which, the said final recommendations/decision of the Dispute Review Board shall be conclusive and binding.”

10. The DRB gave its decision on 24.10.2006, clarifications on 03.04.20047 & 06.08.2009 and recommendations of the DRB as stated in para 7 of the plaint were accepted by both the parties. Learned counsel for the appellant has urged before us that although, the decision has been accepted by both the parties, however, there is an additional outstanding claim in the sum of Rs.3,20,58,418/-. Despite

several correspondences exchanged between the parties, this amount has not been cleared and the present suit has been instituted for this claim as well. We find that there is no reference with regard to this claim of Rs.3,20,58,418/- in the impugned judgment, although, the learned counsel for the appellant submits that the same was raised but not considered. However, there is no whisper of this claim in the impugned judgment and only prayer (i) was urged, which is disputed by learned counsel for the appellant on the ground of limitation and merits.

11. We find no ground to interfere in the appeal, the same is accordingly dismissed.
12. Calling of the record has been exempted as learned counsel for the appellant submits that all the relevant records have been placed before this Court.

G.S.SISTANI, J.

JYOTI SINGH, J.

FEBRUARY 18, 2019

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