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

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Judgment delivered on: 10.12.2014

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O.M.P. 760/2012

CENTRAL WAREHOUSING CORPORATION **Petitioner**

versus

**M/S VARDHAMAN PRECISION PROFILES
AND TUBES PVT LTD** **Respondent**

Advocates who appeared in this case:

For the petitioner: Mr. Iftekhhar Ahmad, Advocate
For the respondent: Mr. M.P. Sharma and Ms. Reeta Chaudhary,
Advocates

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER,J

IA No.15084/2012 (for condonation of delay)

1. This is an application seeking condonation of delay of 29 days beyond the period of three months in filing the petition in this Court.
2. To be noted, the impugned award is dated 29.7.2009.
3. The petitioner had, in the first instance, approached the Bombay High Court by way of a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (in short the Act). As averred, the said petition was filed in Bombay High Court on 15.10.2009.
- 3.1 This aspect is not disputed by the counsel for the respondent.

4. It appears that on 6.7.2012, the petition, was dismissed as withdrawn on account of lack of territorial jurisdiction though, with liberty, I presume, impliedly, to approach the appropriate court.

4.1 While passing the said order, the Bombay High Court, indicated that the issue with regard to limitation and/or delay is kept open.

5. Counsel for the respondent opposes condonation of delay as, according to him, there is no explanation for delay between the period when, the petition was dismissed as withdrawn by Bombay High Court and the date on which, the accompanying petition was filed in this Court.

5.1 In other words, it is the say of Mr Sharma, learned counsel for the respondent, that there are no clear reasons articulated for delay qua the period spanning between 6.7.2012 and 4.8.2012.

6. Accordingly, the first issue, which arises, is as to whether the time spent in the Bombay High Court by the petitioner is to be condoned.

7. The record shows that, the petitioner filed its action in the Bombay High Court within the period of three months. That petition was dismissed as withdrawn, only on the ground of lack of territorial jurisdiction. In my view, having regard to the provisions of Section 14 of the Limitation Act, 1963 (in short the Limitation Act), the time spent by the petitioner in the Bombay High Court will have to be excluded in calculating limitation for the purposes of Section 34(3) of the Act. The reason for the same is that the petitioner acted with due diligence and was prosecuting the case in good faith till defect of jurisdiction was brought to its notice. As indicated above, the initial action was filed within three months of the award having been passed, which is demonstrative of both due diligence and good faith. That Section 14 of the Limitation Act can be taken recourse to while calculating

limitation under Section 34(3) of the Act is no longer *res integra*. [See ***State of Goa vs M/s Western Builders (2006) 6 SCC 239***]

7.1 Therefore, the next issue which is required to be considered is whether delay between 06.07.2012 and 04.08.2012 ought to be condoned. A perusal of the petition would show, it is averred that the delay occurred during this period on account of the fact that the records, which were handed over to the petitioner's advocate in Bombay, had to be secured. Having regard to the fact that the period involved is only 29 days, in my view, the reason given in the application, broadly, explains the delay.

8. Accordingly, I propose to condone the delay between 06.07.2012 and 04.08.2012. Consequently, the application is allowed.

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9. List in the category of finals.

10. The registry will requisition the arbitral record, if not already requisitioned.

RAJIV SHAKDHER, J

DECEMBER 10, 2014

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