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

+ LPA 97/2017

COMPETITION COMMISSION OF INDIA & ANR Appellants

Through: Mr. Balaji Subramanian, Ms. Ishani
Banerjee, Advocates with Mr. Jaideep Singh,
Dy. Director (CCI).

versus

FORECH INDIA LIMITED

..... Respondent

Through: Mr. Krishnan Venugopal, Sr. Advocate
with Mr. Rahul Goel, Ms. Anu Monga and
Mr. Ankush Walia, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **22.01.2020**

LPA 97/2017, C.M. No. 4841/2017 (stay), C.M. No. 4840/2017 (by the appellant for condonation of delay of 67 days in filing the accompanying appeal)

1. The appellant/CCI is aggrieved by an order dated 29.9.2016, passed by the learned Single Judge on an application moved by it (C.M. No. 32052/2015), praying *inter alia* for modification of the order dated 02.12.2015. Vide order dated 29.9.2016, the learned Single Judge had partly allowed the application moved by the appellant/CCI by modifying the order dated 02.12.2015. Not satisfied by the said order, the present appeal was filed by the appellant on 11.1.2017. Accompanying the said appeal is an application for seeking condonation of delay of 67 days in filing the appeal.
2. Since the appellant/CCI was aggrieved by the order dated 29.9.2016,

it was required to file an intra-court appeal within 30 days, which if reckoned from 29.9.2016, would have expired on 28.10.2016. However, the appeal has been filed with a delay of 67 days. When the application for condonation of delay was initially filed, on perusing the sketchy and ambiguous averments made therein, particularly, paras 3 and 4 thereof, it was deemed appropriate to grant liberty to the appellant/CCI to file a better affidavit in support of the pleas taken in the application. For purposes of ready reference, we may reproduce herein below, the averments made in paras 3 and 4 of the condonation of delay application:-

“3. That after seeking comments from the Legal Division of the appellant as well as the office of the DG, the same was put before the Director (Law) on 15.11.2016 for discussion and the file is again resubmitted for approval on 21.11.2016. The Director (Law) in turn forwarded the same to Adviser (Law) for approval on 21.11.2016. Adviser Law put up the same before the Member (Legal) who approved the same for placing it before the Commission for approval.

4. That the proposal for filing LPA was placed before the Commission on 13.12.2016 and the Commission approved the filing of LPA on 13.12.2016.”

2. As is apparent on going through the averments made above, no explanation was offered by the appellant/CCI for the delay between 29.9.2016, the date of passing of the order, to 15.11.2016, the date when the matter was put up before the Director (Law), within the Department, for a discussion. By then, 30 days provided for preferring an appeal were long over, having expired on 28.10.2016 whereas, the appellant/CCI seems to have been warming up to taking a call as to whether an appeal ought to be filed or not, even till as late as 15.11.2016. The position remained the same

till 13.12.2016, when the proposal for filing an appeal was still being mulled over and a decision was finally taken by the Commission.

3. In the additional affidavit filed by the appellant/CCI, yet again, there is no explanation worth the name for explaining the steps taken for the period between 29.9.2016 to 15.11.2016, except for a reference to the date on which a certified copy of the impugned judgment was applied for (30.9.2016), the date on which the certified copy was ready in the Registry (06.10.2016) and the date on which the certified copy was finally collected (17.10.2016). It is not as if the appellant/CCI could not file an appeal without obtaining a certified copy of the impugned order. All that was required was an application for exemption from filing a certified copy of the impugned order to be filed alongwith the appeal, a procedure that is adopted as a matter of routine by Advocates so that the certified copy can be filed later, as and when made available by the Registry.

4. In fact, on a perusal of the aforesaid dates, it transpires that the certified copy kept lying in the Registry for almost two weeks, till the same was collected on behalf of the appellant/CCI, but the gap of 28 days between 17.10.2016, the date of collecting the certified copy of the impugned order and 15.11.2016, remains unexplained. Further, in para 3 of the application, a specific averment has been made that the Director (Law) had forwarded the file to the Adviser (Law) for approval on 22.11.2016. However, the appellant seems to have improved upon its case by stating in the additional affidavit filed later, that the matter was discussed by the Judicial Member, Director (Law) and Adviser (Law) on 21.11.2016 and thereafter, the same was placed before the Commission for its approval. Even after the matter was placed before the Commission by the concerned officers on 21.11.2016,

it took 22 days for it to give its approval for filing the appeal knowing very well that it was a time bound matter.

5. Mr. Venugopal, learned Sr. Advocate appearing for the respondent submits that in view of the fact that the Commission meets on a daily basis to discharge its administrative functions, the appellant/CCI cannot wish away 22 days (period between 22.11.2016 to 13.12.2016), by making a bald statement in the additional affidavit that the Commission had approved filing of the appeal only on 13.12.2016.

6. We may note that even thereafter, it has taken the appellant/CCI one and a half month to file the appeal that came to be finally filed on 11.1.2017. The explanation offered for the delay from 13.12.2016 to 11.1.2017 also shows the lackadaisical and casual approach adopted by the appellant/CCI in processing the case knowing very well that the period of limitation had long since expired on 28.10.2016.

7. At this stage, learned counsel for the appellant/CCI submits that the present appeal raises an issue of great importance and it shall have serious consequences on the other pending matters, having regard to the nature of the order passed by the learned Single Judge.

8. We may note that in the impugned order dated 29.9.2016, a previous order passed by the learned Single Judge on 02.12.2015 has been reproduced, which the appellant/CCI had sought modification of. The submission made by learned counsel for the appellant/CCI was duly recorded in para 2 of the order dated 02.12.2015. For purposes of ready reference, the order dated 02.12.2015, is extracted herein below:-

“1. This order is in continuation of the previous orders dated 30th November, 2015 and 1st December, 2015.

2. The counsel for the respondents states that without prejudice to the rights and contentions of the respondents and without constituting a precedent, the respondents are ready to furnish all the documents of investigation available with the respondents, save those with respect to which any party has claimed confidentiality, to the petitioner on the date when the statement of the official of the petitioner who has been summoned to appear is recorded and after confronting the said official with some of the documents with which it is deemed expedient to confront him.

3. It is further stated that the respondents will similarly give an opportunity to the petitioner to cross examine any witness whose oral statement pertaining to the petitioner has been recorded. It is yet further stated that the petitioner shall be given an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents.

4. The senior counsel for the petitioner has expressed apprehension that the respondents, in the guise of confidentiality, may deny all documents to the petitioner.

5. The counsel for the respondents states that the orders passed on the application of any other person claiming confidentiality with respect to any document / material shall also be supplied to the petitioner.

6. In this view of the matter, the petition is disposed of keeping all contentions of both the parties open and giving liberty to the parties to apply if any difficulty arise.”

9. As is apparent from a perusal of the aforesaid order, the statement of the learned counsel for the appellant/CCI was recorded to the effect that it was ready to furnish all the documents of the investigation available with it to the respondent herein, except for those with respect to which a party had claimed confidentiality, without it being treated as a precedent. The very

same fact had weighed with the learned Single Judge at the time of passing the impugned order on 29.9.2016.

10. In view of the said statement made on behalf of the appellant/CCI, duly recorded by the learned Single Judge in the order dated 02.12.2015, we do not find any merit in the submission made before us now that the order dated 02.12.2015 or for that matter, the impugned order dated 29.9.2016, shall have wide ramifications or shall be treated as a precedent in the future.

11. It is also relevant to extract below the observations made by the learned Single Judge in paras 13 to 18 of the order dated 29.9.2016:-

“13. The respondents indeed, in the garb of modification, are seeking to wriggle out of the consent given by them i) to furnish to the petitioner all the documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality; ii) to give an opportunity to the petitioner to cross-examine any witness whose oral statement pertaining to the petitioner has been recorded; iii) to give to the petitioner an opportunity to make a further statement after copies of the documents have been given to the petitioner and after the official of the petitioner has been confronted with some of the documents; iv) to give to the petitioner the orders passed on the application of any other person claiming confidentiality with respect to any document / material.

14. The respondents, through while seeking modification of their statement to give to the petitioner orders on the application of any other person claiming confidentiality with respect to any document / material have given reasons therefor, for seeking modification of their statement to furnish to the petitioner all documents of investigation with the respondents save those with respect to which any party has claimed confidentiality, have not given any reasons whatsoever save for

expressing “difficulties” therein and which reasons were shown to the undersigned subsequently in confidence.

15. I am not satisfied with the reasons shown to me in confidence for withdrawing the consent given on 2nd December, 2015 to furnish to the petitioner all documents of investigation available with the respondents save those with respect to which any party has claimed confidentiality.

*16. Since the order disposing of the petition was not adjudicatory order and was without prejudice to the rights and contentions of the respondents and without constituting a precedent for the respondents, I do not deem it appropriate to in this application for modification of the said order enter into an adjudicatory exercise as the counsels have argued. The same would clearly be beyond the scope of modification and even beyond the scope of review. Reference in this regard can be made to the order dated 16th September, 2016 of the Division Bench of this Court in Review Petition No.542/2014 in W.P.(C) No.3821/2014 titled **Rosa Power Supply Co. Ltd. Vs. Union of India**. I therefore decline to adjudicate, whether the respondents under the law are required to at the stage of investigation before the DG of CCI supply all material to the person being investigated against or not.*

17. Though the respondents on 1st April, 2016 and as recorded in the order of that date reproduced above further agreed to grant full opportunity to the petitioner including of adducing evidence and cross-examining witnesses before the CCI also and it appeared that the same offered a viable solution but the same was not acceptable to the senior counsel for the petitioner. In the light of consent earlier given by the respondents in this regard and to withdraw which no satisfactory reason is given, the same cannot be permitted to be withdrawn

without consent of the petitioner.

18. The modification of that part of the order sought is thus declined. ”

12. We are in complete agreement with the observations made by the learned Single Judge as reproduced hereinabove. There is no justification to modify the impugned order in the light of the statement made by learned counsel for the appellant/CCI on 2.12.2015, as noted in the order dated 2.12.2015. Thus, even on merits, no case for interference is made out by the appellant/CCI.

13. Accordingly, the application for seeking condonation of delay is dismissed as meritless and as a sequel thereto, the appeal and the pending application are also dismissed.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 22, 2020
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