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

+ **FAO 136/2020, CM APPL. 13743/2020 (stay) & CM APPL. 13744/2020 (exemption)**

PCDA (R&D)

..... Appellant

Through: Mr. D.S. Mehandru, Advocate.

versus

SIRIUS GLOBAL LTD

..... Respondent

Through: Mr. H. Banerjee, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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17.08.2020

The hearing was conducted through video conferencing.

CM APPL. 13745/2020 (Exemption from Court Fees)

1. Exemption allowed, subject to the condition that the appellant will file the duly sworn/attested affidavit and the requisite Court fee within 72 hours from the date of resumption of the regular functioning of this Court.
2. The application stands disposed-off.

CM APPL. 13742/2020 (delay of 60 days in filing appeal)

3. This application seeks condonation of delay of 60 days in filing the appeal under section 37 of the Arbitration and Conciliation Act, 1996, against the order dated 14.10.2019, passed by the learned Addl. District Judge-04, Patiala House Courts, in a section 34 objection petition (Arbtn. no. 2414 of 2018). The said impugned order had

dismissed the appellant's application on grounds of maintainability.

4. The statutory period for filing the appeal under section 37 of the Arbitration and Conciliation Act, 1996, is 90 days. The impugned order was passed on 14.10.2019 and the FAO was filed on 22.06.2020. The interim period is sought to be explained as under:

“....

3. That the appellant had engaged a Govt. Counsel to conduct the Objection Petition u/s 34 of the Act before the concerned court. The Order was passed by the Hon'ble Court on 14.10.2019 and the certified copy of the same was applied by the Govt. Counsel only on 5.12.2019. The certified copy of the order was received by the Govt. Counsel only on 19.12.2019 and the same was received in the office of the appellant along with his legal opinion during the first week of January, 2020. A copy of the proof of receipt of certified copy is annexed as Annexure-I.

.....”

5. The Supreme Court in *M/s N.V. International vs The State of Assam & Ors*, (2020) 2 SCC 109, has held *inter alia*, that any delay beyond 120 days (i.e. statutory period of 90 days and 30 days grace period under section 5 of limitation act) in filing of an appeal under section 37 of the Act, arising out of application under section 34 of the Act, being either dismissed or allowed ought not to be condoned, as the very object of speedy resolution of disputes referred to arbitration would be subverted. It held:

“...3. Having heard the learned counsel for both sides, we may observe that the matter is no longer res integra. In Union of India v. Varindera Constructions Ltd. [Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111], this Court, by its judgment and order dated 17-9-

2018 [Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111] held thus: (SCC p. 112, paras 1-5)

“1. Heard the learned counsel appearing for the parties.

2. By a judgment dated 19-4-2018 in Union of India v. Varindera Constructions Ltd. [Union of India v. Varindera Constructions Ltd., (2018) 7 SCC 794], this Court has in near identical facts and circumstances allowed the appeal of the Union of India in a proceeding arising from an arbitral award.

3. Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10-4-2013 [Union of India v. Varindera Constructions Ltd., 2013 SCC OnLine Del 6511] has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the selfsame proceeding under Section 37 should be covered by the same drill.

4. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri [Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.

5. In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these special leave petitions on the facts of this particular case. The special leave petitions stand disposed of accordingly.

Pending applications, if any, also stand disposed of.”

4. We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following Lachmeshwar Prasad Shukul [Lachmeshwar Prasad Shukul v. Keshwar Lal Chaudhuri, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned.

.....”

6. The application for a certified copy of the dismissal of the objection petition of 14.10.19, was made only on 05.12.2019. The certified copy was received on 19.12.2019. The 120 days for impugning the said order under section 37 of the Act was set to expire on 11.2.2020. The appellant took its time to apply for the certified copy, it lost 51 days in the process. Only the fourteen days taken in procuring the certified copy would be excluded. Alternatively, the limitation for filing the appeal would be extended by fourteen days to 25.2.2020.
7. The learned counsel for the appellant seeks to rely upon the suspension of time limits for filing appeals, etc., in terms of the order of the Supreme Court passed on 15.03.2020. However, when the extended time limit had already expired on 25.2.2020, then an order passed subsequently, could not possibly come to the appellant's aid.
8. The appeal was filed on 22.6.2020, about four months after the expiry of the limitation period. Accordingly, the application is dismissed.

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(exemption)

9. Consequently, the appeal too is rejected and dismissed.
10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through e-mail.

AUGUST 17, 2020
AB

NAJMI WAZIRI, J