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

+ **FAO(OS) (COMM) 12/2020**

NTPC LIMITED

..... Appellant

Through: Mr. Bharat Sangal, Sr. Advocate with
Mr. Ashim Vachher, Advocate.

versus

M/S WPIL LIMITED

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **17.01.2020**

FAO(OS) (COMM) 12/2020, C.M. No. 1563/2020 (Exemption), C.M. No. 1564/2020 (by the appellant for condonation of delay in filing the appeal) and C.M. No.1565/2020 (by the appellant for condonation of delay in re-filing the appeal)

1. The appellant/petitioner is aggrieved by an order dated 08.8.2019, passed by the learned Single Judge dismissing a petition filed by it under Section 34 of the Arbitration & Conciliation Act, 1996 (in short '**A&C Act**') challenging an Arbitral Award dated 27.5.2015, passed by the learned Arbitral Tribunal. Accompanying the appeal is an application filed by the appellant praying *inter alia* for condonation of delay of 75 days beyond a period of 30 days, in filing the accompanying appeal. Besides, the above application, the appellant/petitioner has also filed an application for seeking

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condonation of delay of 15 days in re-filing the appeal after curing the objections raised by the Registry. The only explanation offered for explaining the delay of 75 days in filing the Section 37 petition is stated in para 2 of the application, which reads as below:-

“2. It is submitted that the Appellant is Maharatna Government Organisation having various branches. It is submitted that before filing any Appeal/Petition various Approvals and permissions are required from different offices/heads of the Appellant. It is further submitted that obtaining necessary permissions and approvals took some considerable time in filing the accompanying Appeal after the impugned order came to the knowledge of the Appellant. It is submitted that the accompanying Appeal was filed on 22.11.2019.”

2. Simply because it took the appellant/petitioner 75 days beyond the prescribed period in law to file an appeal on account of obtaining necessary permissions and approvals within the hierarchy of the Department, can hardly be a ground to condone the delay. No other explanation has been offered in the application for seeking condonation of delay. To our mind, the explanation offered is neither just nor sufficient for condoning the delay.

3. Even on merits, having perused the impugned judgment wherein, the appellant/petitioner had raised a grievance about denial of the full claim lodged by it against the respondent which was to the tune of Rs.10.062 crores, we find that the learned Single Judge has duly noticed that the appellant/petitioner had failed to file any documents to establish that specified amounts had actually been paid by it to a subsequently appointed Contractor, after terminating the contract executed with the respondent on 10.1.2006. Except for placing on record, the terms and conditions of the

contract executed with M/s KBL Ltd. & India Institute of Science, Bangalore, the appellant/petitioner failed to demonstrate that the said Contractors had completed the work within the stipulated time and the entire amount under the respective contracts had actually been paid to them. Mr. Sangal, learned Sr. Advocate appearing for the appellant/petitioner states that the appellant had produced a witness, who had deposed about making a payment of Rs.64.00 crores (approx.) to M/s KBL Ltd. However, the said submission rightly did not find favour with the learned Single Judge, who observed that the amount paid by the appellant/petitioner to M/s KBL Ltd. was far below the amount that was payable to the respondent under the contract.

4. It has also been observed in the impugned Award that for claiming damages, a claimant must be able to demonstrate that it took all reasonable steps to mitigate its losses and in the instant case, though the respondent was in default of the contractual terms as set out in the Contract Agreement dated 30.9.2005, fact remains that it had approached the appellant/petitioner to complete the work by authorising M/s Mitsubishi as an associate in place of M/s Alstom Fluides on the same contractual price, but the appellant/petitioner had shot down the said offer. Had the appellant/petitioner given some consideration to the said option, it could have been a ground to mitigate its losses, but it elected to go the other way. As a result, the learned Single Judge held that in the absence of any proof of actual payment made by the appellant/petitioner to M/s KBL Ltd., the Arbitral Tribunal cannot be faulted in declining to grant any liquidated

damages to the appellant/petitioner. We are in complete agreement with the view expressed above. Even otherwise, the submissions made above are based on facts that cannot be a ground to assail the impugned judgment. If the scope of interference on the aspect of re-appreciation of the evidence is narrow under Section 34 of the A&C Act then, the said scope becomes narrower still in an appeal under Section 37 of the A&C Act.

5. No other question of law has been raised by the appellant/petitioner for this court to interfere in the impugned judgment, which is upheld. Consequently, the present appeal is dismissed in *limine* as meritless, not only on the ground of delay and laches but also on merits, along with the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 17, 2020

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