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

% *Decided on : 29.08.2022*

+ **FAO (COMM) 104/2022, CM APPL. 31422/2022 & CM APPL. 31423/2022**

**UNION OF INDIA THROUGH PRINCIPAL CHIEF
MATERIALS MANAGER** Appellant

Through: **Mr. Vikram Jetly, CGSC with
Ms. Shreya Jetly, Advocate.**

versus

**M/S INCOM CABLES (PVT) LTD. THROUGH ITS
DIRECTOR/MANAGING DIRECTOR** Respondent

Through:

**CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE VIKAS MAHAJAN**

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 31424/2022 (For condonation of delay)

1. This application seeks condonation of a delay of 34 days in the filing of the accompanying appeal under section 37 of the Arbitration and Conciliation Act, 1996, against the order of the District Judge dismissing its petition under section 34 of the Act. The appeal has also been filed under section 13 (1A) of the Commercial Courts Act, 2015. The latter provision reads



inter alia as under:

“ Section 13. Appeals from decrees of Commercial Courts and Commercial Divisions.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).J”

2. An order of a Commercial Court at the level of District Judge can be impugned before the Commercial Division of this court only within a period of 60 days. Admittedly, the present appeal was filed on 01.07.2022 i.e. after 122 days of the impugned order dated 28.02.2022. In the circumstances, condonation of delay should have been sought for 62 days and not mere 34 days. The period of 60 days, from the date of the impugned order, expired on 29.04.2022. This court closed for the Summer Vacations on 03.06.2022. Effectively before the vacations, the appellant had at least 35 days to file the section 37 appeal, along with an application for condonation of such delay as may have been occasioned due to “sufficient cause”. The appellant did not do so. Instead it filed the appeal on 01.07.2022.



3. In *State of Maharashtra (Water Resources Department) vs. Borse Brothers Engineers and Contractors Pvt. Ltd.* (2021) 6 SCC 460 it was held that preferring a petition under section 34 of the Arbitration and Conciliation Act, 1996, the period of 120 days on the outer side is fixed and not extendable, especially because of the proviso to section 34(3) of the Act which reads as under:

“Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

(emphasis supplied)

4. In other words, the statute has put a cap of 3 months plus 30 days. The said judgment further held:

“ 43. The next important argument that needs to be addressed is as to whether the hard-and-fast rule applied by this Court in N.V. International [N.V. International v. State of Assam, (2020) 2 SCC 109 : (2020) 1 SCC (Civ) 275] is correct in law. Firstly, as has correctly been argued by Shri Shroti, N.V. International [N.V. International v. State of Assam, (2020) 2 SCC 109 : (2020) 1 SCC (Civ) 275] does not notice the provisions of the Commercial Courts Act at all and can be said to be per incuriam on this count. Secondly, it is also correct to note that the period of 90 days plus 30 days and not thereafter mentioned in Section 34(3) of the Arbitration Act cannot now apply, the limitation period for filing of appeals under the Commercial Courts Act being 60 days and not 90 days. Thirdly, the argument that absent a provision curtailing the condonation of



delay beyond the period provided in Section 13 of the Commercial Courts Act would also make it clear that any such bodily lifting of the last part of Section 34(3) into Section 37 of the Arbitration Act would also be unwarranted. We cannot accept Shri Navare's argument that this is a mere casus omissus which can be filled in by the Court.

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53. However, the matter does not end here. The question still arises as to the application of Section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in N.V. International [N.V. International v. State of Assam, (2020) 2 SCC 109 : (2020) 1 SCC (Civ) 275] which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.

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55. Reading the Arbitration Act and the Commercial Courts Act as a whole, it is clear that when Section 37 of the Arbitration Act is read with either Article 116 or 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, the object and context provided by the aforesaid statutes, read as a whole, is the speedy disposal of appeals filed under Section 37 of the Arbitration Act. To read Section 5 of the Limitation Act consistently with the aforesaid object, it is necessary to discover as to what the expression "sufficient cause" means in the context of condoning delay in filing appeals under Section 37 of the Arbitration Act."



5. Resultantly, the appellant will have to show “sufficient cause” under section 5 of the Limitation Act, 1963. The said judgment also quoted *Basawaraj vs. LAO* (2013) 14 SCC 81, and held that:

“ 11. The expression “sufficient cause” should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible (Vide Madanlal v. Shyamlal [Madanlal v. Shyamlal, (2002) 1 SCC 535] and Ram Nath Sao v. Gobardhan Sao [Ram Nath Sao v. Gobardhan Sao (2002) 3 SCC 195]).”

6. Thus, “sufficient cause” means adequate and enough reason which prevented a person from approaching a court within limitation. The party seeking condonation of delay should not be found to be negligent or for want of bonafides nor should it have been not diligent nor inactive in pursuing its case. The Supreme Court also held that the test for condonation of delay cannot be different for the Government. All parties are treated to be equal before the law.
7. In *State of Maharashtra* (supra), 75 days delay beyond the 60 days provided in the Commercial Courts Act, 2015 was not condoned by the High Court under section 37. The SLP against the order of the High Court was dismissed.



8. In the present case the delay is of 62 days and is sought to be explained as under:-

“ 2. That after the judgement dated 28.02.2022, the Department sent the case file on 07.03.2022 to the Railway Advocate for his opinion.

3. That again the said matter was sent for opinion of the Dy. GM/Law on 06.04.2022.

4. That the department obtained the approval of PCMM on 18.04.2022 or filing the said Appeal.

5. That thereafter the department approached the litigation department of UOI Delhi High Court. Thereafter the counsel for the appellant received the instructions for filing of the present appeal from the litigation in charge of Union of India Delhi High Court by informing that the said matter has been marked to the present Counsel in Delhi High Court on 05.05.2022. Thereafter the comments/documents were sent to the Counsel on 10.05.2022 by the department.

6. That the Government counsel had accordingly drafted the said appeal and requested the department that for the purpose of filing the appeal more documents are required. The department after collecting the relevant documents/information from various internal departments/earlier counsel who was handling the matter in the court below provided the same to the govt. counsel on 26.05.2022. Thereafter the final Appeal was sent to the concerned department for vetting and approval on 29.05.2022 and the same was after getting approved and notarized was handed over to the Counsel for filing the same on 30.06.2022 and the same was e-filed on 01.07.2022.

7. That the delay occurred in gathering the requisite documents/information etc. for filing of



the aforesaid appeal was also on account of administrative reasons as well as on account of Covid-19 Pandemic. The Hon'ble Delhi High Court was closed for summer vacation from 04.06.2022 to 01.07.2022, the limitation would not run for this vacation period.

8. That the non-filing of the present appeal within statutory time period is neither intentional nor deliberate but due to the administrative reasons as well as due to Covid-19 Pandemic on account of restricted functioning of Appellant's office. It is submitted that the delay in filing of the present appeal may kindly be condoned."

9. What is seen from the above is that the departmental approval and opinion to file an appeal took over 6 weeks. The case was assigned to an advocate for drafting of an appeal only after the expiry of 60 days, the reason for this delay is not explained and by the time the appeal was drafted and relevant documents were collected, almost 90 days had gone-by. Thereafter, the Department took another about 32 days to approve the draft and append its signatures thereto, for filing the appeal. Surely, the aforementioned grounds are not "sufficient cause" for condonation of the 62 days' delay. Matters involving arbitration proceedings pursued for remedy under the Commercial Courts Act, are expected to be pursued with the promptitude envisaged in the statute. After all, condonation of delay is by way of an exception and not as a matter of rule¹.

¹ State of Maharashtra (Water Resources Department) vs. Borse Brothers Engineers and Contractors Pvt. Ltd. (2021) 6 SCC 460 (Para 63)



10. For the aforesaid reasons, the application is dismissed.

FAO (COMM) 104/2022, CM APPL. 31422/2022 & CM APPL. 31423/2022

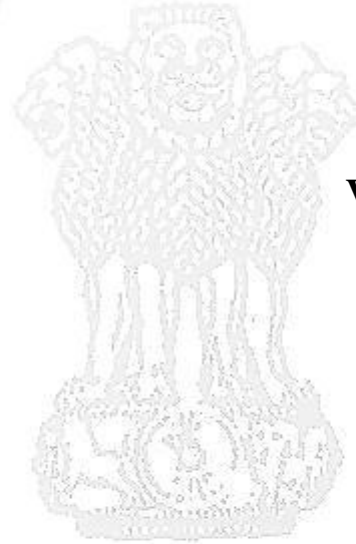
11. Consequently, the appeal, along with pending applications, too is dismissed as time-barred.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

AUGUST 29, 2022

SS/RW



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