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

+ CM(M) 993/2022 & CM APPL.41353/2022

HARIOM GUPTA PROP. OF RADHA MADHAV
PACKAGING Petitioner

Through: Mr. Siddharth Yadav and
Mr. Akshay Pundir, Advs.

versus

MULTI SPECIALITY EXTRUSIONS P. LTD Respondent

Through: Mr. Deepak Vuttsya and Mr.
Akshay Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER (O R A L)

% **10.11.2022**

1. By the impugned order dated 18th August 2022 passed by the learned District Judge (Commercial Court) in CS (Comm.) 284/2020 (*Multi Speciality Extrusions Pvt. Ltd. v. Hariom Gupta*), the learned District Judge (Commercial Court) has allowed an application filed by the respondent, as the plaintiff in the suit, seeking closure of the right of the petitioner — defendant to file a written statement.

2. A reading of the impugned order reveals that the petitioner filed two written statements. The first was filed on 27th October 2021 and the second was filed on 11th March 2022.

3. Summons in the suit instituted by the respondent were served on the petitioner on 27th August 2021. The first written statement came to be filed by the petitioner on 27th October 2021. The written statement was not accompanied by any application seeking condonation of delay.

4. The learned Commercial Court has directed striking off, from the record, of the written statement filed by the petitioner on 27th October 2021 for two reasons. The first is that the written statement was not in accordance with the provisions of the Code of Civil Procedure, 1908 (CPC) as amended by the Commercial Courts Act, 2015. The second was that the written statement was filed beyond the normal period of 30 days unaccompanied by any application for condonation of delay.

5. Insofar as the second objection is concerned, the issue stands settled by the Order dated 10th January 2022 of Supreme Court in ***Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) 3/20205¹*** read with the decisions in ***Centaur Pharmaceuticals Pvt. Ltd. v. Stanford Laboratories Pvt. Ltd.²***, ***Babasaheb Raosaheb Kobarne v Pyrotek India Private Limited³*** and ***Prakash Corporates v. Dee Vee Projects Ltd.⁴***.

6. A conjoint reading of the aforesaid judgments indicates that, where the time for filing pleadings expired during the currency of the COVID-2019 pandemic, that time stands extended by the Supreme Court till 28th February 2022. The normal period for filing written statement, consequent to service of summons on the petitioner, expired on or around 27th September 2021, which was during the amnesty period as fixed by the Supreme Court. As such, the said normal period would stand extended till 28th February 2022. The

¹ 2022 3 SCC 117

² MANU/SCOR/03428/2022

³ MANU/SCOR/50600/2022

⁴ (2022) 5 SCC 112

written statement, if filed prior to 28th February 2022, had, therefore, necessarily to have been treated as having been filed within the normal period of limitation available for filing the written statement. It could not, therefore, be treated as belated and, to that extent, therefore, the finding of the learned Commercial Court cannot sustain.

7. The learned Commercial Court, has, however, also found the written statement filed by the petitioner on 27th October 2021, not to be in conformity with the provisions of the Commercial Courts Act. It is not necessary for me to enter into that dispute, in view of the submission of learned Counsel for the respondent, that the said written statement may be taken on record subject to the reservation of his rights to challenge the said written statement as having not been filed in accordance with the provisions of the Commercial Courts Act before the learned Commercial Court. This Court, therefore, does not express any opinion on whether the written statement filed on 27th October 2021, was or was not, in accordance with the terms of the Commercial Courts Act or whether the petitioner could be entitled, to place reliance thereon. Insofar as the said written statement dated 27th October 2021 is concerned, therefore, the impugned order dated 18th August 2022 is modified by consent only to the extent that the written statement is permitted to be placed on record. It would be open to the respondent to urge all contentions with respect to the written statement not being in conformity with the Commercial Courts Act before the learned Commercial Court and, equally, it would be open to the petitioner to rebut all such contentions. The learned Commercial Court would, thereafter, take a view on the said aspect after hearing both sides, uninfluenced by the impugned order dated 18th August

2022.

8. Insofar as the second written statement filed by the petitioner on 11th March 2022 is concerned, learned Counsel for the petitioner himself submits, on instructions, that the petitioner does not seek to rely on the said written statement and is not assailing the impugned order to the extent it strikes the said written statement off the record. As such, to the extent that the impugned order strikes the written statement filed by the petitioner on 11th March 2022 off the record, the impugned order is upheld.

9. Resultantly, the present petition is disposed of in the following terms:

(i) The finding of the learned Commercial Court, that the written statement dated 27th October 2021 was belated is quashed and set aside.

(ii) The impugned order, to the extent it strikes off from the record, the written statement dated 11th March 2022, is upheld.

(iii) The written statement dated 27th October 2021 is permitted to be filed and to be taken on record in the proceedings before the learned Commercial Court. However, this would be without prejudice and would be subject to all objections of the respondent to the effect that the written statement was not in conformity with the Commercial Courts Act and the right of the petitioner to advance submissions by way of response thereto. After hearing such objections, the learned Commercial Court would take a decision on whether

the written statement should be retained on the record or struck off. The said decision would be taken *de novo* uninfluenced by the observations and findings contained in the impugned order dated 18th August 2022.

10. This petition is accordingly disposed of in the aforesaid terms with no orders as to costs.

C.HARI SHANKAR, J

NOVEMBER 10, 2022
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