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

% Judgment delivered on: 12.04.2023

\+ CM(M) 483/2023 & CM APPL. 14495/2023 (for additional documents) & CM APPL. 14497/2023 (for stay)

UNIC HEALTHCARE & ORS ..... Petitioners

versus

PNEUMO CARE HEALTH PVT. LTD. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Sudhir Kumar Sharma, Advocate with Mr. Pranjal, Advocate.

For the Respondent : Mr. Arpit Bhargava, Ms. Hina Bhargava and Mr. Pankaj, Advocates.

CORAM:
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Petitioner challenges the order dated 08.02.2023 in CS (COMM) No. 465/22 titled as "Pneumo Care Health Pvt. Ltd. vs. Unic Healthcare", whereby the learned Trial Court has foreclosed the right of the petitioners/ defendants to file their written statements on the ground that the same was filed beyond 120 days, as stipulated under Order VIII Rule 1 of the CPC, 1908 as amended by Commercial Courts Act, 2015.

2. As per the submissions of Mr. Sudhir Kumar Sharma, learned counsel appearing for the petitioner, the written statement was filed through an email addressed to the concerned court on 24.12.2022 at

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08:00 pm in the evening. On that basis, Mr. Sharma, learned counsel submits that the written statements were filed within 120 day period, as stipulated by the Code.

3. Learned counsel submits that even otherwise, the time would have expired only on 02.01.2023 and, if reckoned from 24.12.2022 at 08:00 pm, such filing ought to have been considered as if filed on 02.01.2023. Reckoned in such manner, even otherwise the filing of the written statement would have been within the stipulated period and, therefore, the impugned order has to be set aside.

4. Mr. Arpit Bhargava, learned counsel appearing for the respondent opposes the said submission on the ground that as on 24.12.2022, the filing was either by hard copies physically or at best could have been done via the official e-filing portal of the District Courts and not otherwise.

5. Learned counsel submits that the facility of e-filing directly to the concerned court was provided only during the COVID period, keeping in view the accentuating circumstances that had occurred on account of COVID-19 pandemic and not otherwise.

6. Learned counsel submits that the e-filing done directly to the concerned court cannot be considered as proper and valid filing.

7. Mr. Sharma, learned counsel appearing for the petitioner draws attention of this Court to page 68 of the present petition which is the email received by the petitioner from the Court Officer of the learned Trial Court where the written statement along with the application seeking condonation of delay was filed through the official email of the Court, rather than through the official email website of the learned Trial

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Court.

8. According to Mr. Sharma, the Court Officer, via the return email, directed that the hard copy of the written statement and the other pleadings and documents be filed in Court on or before the next date of hearing. Learned counsel submits that the next date of hearing was 16.01.2023 before which date, the hard copies were indeed filed.

9. Mr. Sharma on the basis of factual narration submits that the written statement having been originally filed by sending the same through email on 24.12.2022, coupled with the return email dated 02.01.2023, of the court officer of the learned Trial Court, may be considered as the written statement being filed within the stipulated extended period of time but within the 120 days period as stipulated under the Commercial Courts Act, 2015.

10. *Per contra*, Mr. Bhargava, learned counsel appearing for the respondent also hands over the bench the notification dated 28.02.2023 issued by this Court whereby an elaborate mechanism for the purpose of e-filing of the suit and applications related to the commercial disputes under the Commercial Courts Act, 2015 were notified and sent to all the District Courts at Delhi for implementation.

11. Learned counsel, in particular, draws attention of this Court to the meaning ascribed electronic filing (e-filing) at clause 2.7 of such notification which reads as under:-

> ***"Electronic Filing (e-filing):*** *means e-filing as prescribed through the Internet (at the web portal of the Court) and through the internet/intranet at Designated Counters, unless the context requires otherwise."*

12. He also relies on clause 2.18 which is the meaning ascribed to

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"***statement of defence***: *means and includes written statements, replies, counter affidavits and additional or supplementary affidavits."*

13. Learned counsel fairly submits that it could be so that during the pandemic, direct filing may have been permitted by the District Courts for the purposes of ensuring that the litigants and advocates do not suffer any hardship, but once the situation under the Covid-19 had normalized, the petitioner had no choice other than to either file hard copies or through the web portal.

14. Learned counsel submits that having not followed either of the prescribed procedure, the filing of the written statement directly on the website of the concerned court by email of the Court would not tantamount to proper filing of the written statement as such cannot be taken on record.

15. Learned counsel submits that the petitioner has not filed any notification or direction issued by the District Court at Saket permitting any such filing as has been done, particularly contrary to the notification dated 28.02.2022, issued by this Court.

16. Learned counsel also draws attention of this Court to clause 14 of the said notification issued by this Court which prescribed as to the manner in which the limitation is to be computed so far as the e-filing through the e-portal is concerned. On that basis, learned counsel submits that the written statement ought to have been filed as per clause 14, which has not been done and as such, even otherwise, filing directly through the email of the concerned Court, falls foul of clause 14 of the notification.

17. This Court has considered the rival submissions of the parties.

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18. It is not disputed that the extended time upto 120 days would have expired on 02.01.2023 in the present case.

19. It is also undisputed that the copies of the written statement on behalf of the petitioner as well the application for condonation of delay were in fact, filed through the email of the concerned Court on 24.12.2022, however, beyond the office hours at 08:00 pm.

20. It is also undisputed that on 02.01.2023, during the court hours, the petitioner received the return email from the court officer of the concerned court requesting that the hard copies of the said documents be filed in the court on or before the next date of hearing.

21. It is also undisputed that the next date of hearing before the learned Trial Court was fixed on 16.01.2023.

22. There is no doubt that the petitioner has not been able to produce any documents or a direction or a circular issued by the learned District Court concerned, as to whether during the period, when the written statement was filed directly through the email address of the concerned Court, such practise was in prevalence or not. The e filing of the said written statement could be considered as a proper filing only for the reason that there was a return email by the court officer directing the petitioner to file their written statement in hard copies on or before the next date of hearing.

23. That so far as the submission of learned counsel appearing for the respondent based on the notification dated 28.02.2023 is concerned, there cannot be quarrel to the fact that there were certain procedures prescribed by this Court to ensure that e-filing too could be utilized in the matter of filing documents and pleadings before the learned District

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Court, apart from the usual method of hard copies being filed.

24. However, neither of the parties has been able to show that there was any bar at that point of time from the parties filing documents and pleadings directly before the concerned court through the email address of such court.

25. In any case in the present petition the written statement was filed much prior in time to the expiry of 120 days which got over only on 02.01.2023.

26. In that view of the matter, this Court is of the considered opinion that the learned Trial Court did not consider the said filing in the manner as observed hereinabove and as such the same is set aside.

27. Learned Trial Court shall take the written statement filed by the petitioner on record and proceed in accordance with law.

28. With the aforesaid, the petition is allowed with a cost of Rs.50,000/- to be paid by the petitioner to the respondent as compensatory cost for the delay in filing the written statement within one week from today against the valid receipt which would be filed before the learned Trial Court under the proper index.

29. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J .

APRIL 12, 2023/ms

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