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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 18.12.2023***+ **CM(M) 841/2019 & CM APPL. 25482/2019****TDI INFRASTRUCTURE LTD**

..... Petitioner

Through: Ms.Kanika Agnihotri,
Mr.Shaurya Rohit, Advs.

versus

SUSHIL KUMAR GOYAL

..... Respondent

Through: Mr.Sachin Jain, Adv.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed challenging the order dated 14.03.2019 (hereinafter referred to as the 'Impugned Order') passed by the learned National Consumer Disputes Redressal Commission New Delhi (hereinafter referred to as the 'NCDRC') in First Appeal No. 1150/2016, titled as *TDI Infrastructure Ltd v. Sushil Kumar Goyal*.

2. By the Impugned Order, the learned NCDRC has been pleased to dismiss the appeal filed by the petitioner herein, on the ground of limitation.

3. The learned counsel for the petitioner submits that the learned NCDRC has failed to appreciate that the petitioner had shown a sufficient cause for the delay in filing the appeal. She submits that the learned NCDRC has, without granting an opportunity to the petitioner



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herein to make submission, also considered the merits of the appeal, and has held that no prejudice would be caused to the petitioner if the appeal is dismissed on the ground of the limitation.

4. She submits that in the present case, the allotment made in favour of the respondent had been cancelled due to a default on the part of the respondent in making timely payments. The petitioner, however, has been saddled with liability to refund the amount paid by the respondent to the petitioner alongwith interest, and an additional compensation of Rs.5 lakhs towards the inconvenience, harassment, mental agony allegedly caused to the respondent, and litigation charges of Rs.1 lakh, have also been awarded against the petitioner. She submits that prejudice caused to the petitioner was writ-large from the Impugned Order.

5. She further submits that the petitioner is ready and willing to abide by any condition that this Court may impose, including payment of costs in case the appeal filed by the petitioner is restored before the learned NCDRC. In support she places reliance on the judgment of the Supreme Court in *Mysore Urban Development Authority v. Sachdeepak Singh Arora*, (2020) 19 SCC 334; *Singal Udyog v. National Insurance Company Ltd & Ors.*, (2020) 19 SCC 154; and the order dated 01.08.2019 of this Court in CM(M) 116/2019, *TDI Infrastructure Pvt.Ltd. v. Sinder Paul Garg*.

6. On the other hand, the learned counsel for the respondent submits that the petitioner was unable to make out any cause, leave alone sufficient cause, for not filing the appeal within the time stipulated under the Consumer Protection Act, 1986 (hereinafter



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referred to as the 'Act'). He submits that in terms of the Act, the limitation for filing the appeal is only 30 days. However, in the present case, it would be evident that the petitioner was not even processing the filing of the appeal within the limitation period. He submits that even thereafter, most lethargical attitude was adopted by the petitioner in filing of the appeal before the learned NCDRC. He submits that the learned NCDRC has, therefore, rightly dismissed the appeal on the ground of it being barred by limitation.

7. He submits that even before the learned NCDRC, the petitioner has failed to comply with the order dated 18.07.2018.

8. He submits that the learned NCDRC also examined the appeal on merit only for the purpose of satisfying itself that no grave prejudice would be caused to the petitioner herein in case the appeal is dismissed on the ground of limitation, and held that no prejudice would be caused to the petitioner as the order passed by the learned State Commission appears to be correct.

9. I have considered the submissions made by the learned counsels for the parties.

10. In the present case, the cause shown by the petitioner for the delay in filing of the appeal before the learned NCDRC, has been reproduced by the learned NCDRC in its Impugned Order, as under:

"5.:

2. It is submitted that a copy of the afore-mentioned order of the Ld. State Commission was provided to the Appellant Company by the Ld. State Commission on 18.12.2015.

3. It is submitted that upon receiving the order from the Ld. State Commission, the Appellant



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Company evaluated the matter internally at various levels. It was finally decided that in view of the fact that the impugned order was passed without appreciating the submission and contentions raised by the Appellant herein, the present was a case fit for filing an appeal before this Hon'ble Commission. However, on account of the intervening winter break and the Courts remaining closed during the said period, the office of the counsel for the Appellant was not functional. It was only after the winter break when the office of the counsel for the Appellant resumed work that the Appellant informed its counsel of its decision to pursue the matter by way of a statutory appeal in this Hon'ble Commission. Towards the same, the Appellant forwarded the necessary documents to the office of its counsel.

4. That upon receipt of the documents from the Appellant Company, the office of its counsel studied the matter in detail and started preparing the appeal. However, while preparing the appeal, there were certain queries and clarifications that required explanation by the Appellant Company. The counsel for the Appellant accordingly sent a detailed email dated 13.02.2016 to the Appellant raising the said queries and requesting for necessary clarifications/instructions.

5. Meanwhile, without prior intimation, the concerned officer of the Appellant Company, Mr. Anil Kohli, resigned from his employment with the Appellant company. The email dated 18.02.2016 sent by Mr. Anil Kohli putting to notice of his resignation from service with the Appellant company is annexed herewith and marked as ANNEXURE A-1.

6. However, since the resignation of Mr. Kohli was sudden, the Appellant company was unable to take over the work earlier being



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handled by Mr. Kohli at such short notice. In these circumstances, the clarifications sought in captioned matter could not be addressed.

7. Despite the fact that the clarifications sought had not been received from the Appellant company, the counsel for the Appellant prepared and forwarded a draft of the appeal to the Appellant company on 02.03.2016. However, as the clarifications sought by the counsel for Appellant required the record maintained at the local office of the Appellant Company at Haryana to be consulted, the office of the Appellant Company at New Delhi had to seek information / instructions from the local office of the Appellant Company at Haryana.

8. It is submitted that around the same time the local office of the Appellant Company at Haryana came under attack in the Jat Agitation and suffered losses and heavy damage during the said Jat Agitations that had engulfed the entire State of Haryana in the month of Month and April. The Local office of the Appellant Company was burnt and damaged by certain unscrupulous elements of the society who were resorting to illegal and violent means of protest. It is submitted that due to the said protest not only the local office but the state of Haryana as a whole had become inaccessible and cut off. It is only in the end of April when the said agitations receded and the situation had somewhat returned to normalcy that the Appellant Company took steps towards retrieving lost and damaged documents and reconstructing the local office. A copy of Police Complaints lodged by and on behalf of Appellant Company is annexed herewith and marked as ANNEXURE A-2.

9. That meanwhile the concerned associate dealing with the captioned matter, Ms. Agniva Ghosh, quit the office of the counsel for the



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Appellants due to certain personal emergency. Therefore, the matter could not be pursued effectively.

10. It is submitted that it was in the aforementioned inevitable and irrepressible circumstances and due to no fault on part of the Appellant that the instant appeal could not be prepared and filed in time.

11. That it was only subsequently, when the a new legal manager was hired by the Appellant Company after the Jat Agitations had been put to rest, who then took stock of the pending work of Mr. Anil Kohli and cross checked the draft appeal after retrieving the documents from local office. Due to the voluminous nature of the work that had to be taken over from that being handled by Mr. Kohli, it took some time to the new legal manager appointed by the Appellant Company to take stock of the instant matter. It was thus only in the month of June, 2016 that the said new legal manager of the Appellant Company evaluated the appeal sent by the counsel for the Appellant and with some added comments and clarification to the queries that were raised by the counsel in the draft appeal.

12. However, due to the ensuing summer vacations, the office of the counsel for the Appellant was not functional during the month of June, 2006. It was, therefore, that it took some time to the counsel for the Appellant to revert on the said queries and sent the revised draft appeal for the approval of the Appellant Company.

13. It is submitted that the draft appeal sent by the counsel for the Appellant was evaluated at the end of the Appellant Company and the approved was sent to the office of the counsel for Appellant in the month of July, 2016. It is therefore in these circumstances that the present appeal is being filed with a delay of



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190 days.”

11. Though the above explanation shows certain amount of laxity on part of the petitioner to file appeal before the learned NCDRC, at the same time, it cannot be said that the above does not disclose a sufficient cause for condoning the delay by the petitioner in filing of the appeal, especially where there were certain reasons which were beyond the control of the petitioner leading to the delay in filing of the appeal.

12. The learned NCDRC, in its Impugned Order, has also observed that the petitioner had failed to comply with its direction contained in the order dated 18.07.2018. The learned NCDRC has stated that such non-compliance is not viewed favourably. I need not say any further on that in the present order, except to say that the petitioner was certainly in default of compliance with the said order, and an adverse inference in this regard has rightly been drawn by the learned NCDRC.

13. Taking into account the overall facts and circumstances, however, the delay was not so substantial that could not have been condoned. The learned NCDRC did not explore the option of putting the petitioner to terms for condoning the delay.

14. In my view, taking into account the facts and circumstances of the present case, and the submissions made by the learned counsels for the parties, interest of justice would be met if the Impugned Order dated 14.03.2019 passed by the learned NCDRC is set aside and the delay in filing of the appeal, that is, the First Appeal No.1150/2016,



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titled as *M/s TDI Infrastructure Ltd. v. Sushil Kumar Goyal*, is condoned, subject to the condition that the petitioner pays costs of Rs. 1 lakh to the respondent, and also deposits with the learned NCDRC the decretal amount within a period of six weeks from today.

15. The learned counsel for the petitioner has handed over the costs of Rs. 1 lakh imposed by this judgment to the learned counsel for the respondent in Court.

16. As noted by the learned NCDRC itself, the dispute between the parties is of the vintage of 2011. More than twelve years have since passed. Accordingly, the learned NCDRC is requested to expedite the adjudication of the appeal on merits, and decide the same preferably within a period of three months of the communication of this order.

17. In this process, the learned counsels for the parties agree that they would not be seeking any unwarranted adjournment before the learned NCDRC.

18. The petition, along with the pending application, is disposed of in the above terms.

NAVIN CHAWLA, J

DECEMBER 18, 2023/Arya/ss

Click here to check corrigendum, if any