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

+ **FAO(OS) (COMM) 37/2023**

M/S SOWIL LIMITED

..... Appellant

Through: Mr Ashish Dholakia, Sr. Advocate with  
Ms Sanapika Biswal, Ms Pavitra Kaur,  
Mr Subhoday Banerjee and Mr Aman K.  
Yadav, Advocates.

versus

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED

..... Respondent

Through: Mr A.P. Singh with Ms Akshada  
Mujwan, Ms Shrinkhla Tiwari and Mr  
Varnit Vashishtha, Advocates.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MR JUSTICE AMIT BANSAL**

**ORDER**

**26.02.2024**

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[Physical Hearing/Hybrid Hearing (as per request)]

**CM APPL. 8808/2023** *[Application filed on behalf of the appellant seeking  
condonation of delay of 267 days in filing the appeal]*

1. This is an application filed on behalf of the appellant seeking  
condonation of delay in filing the appeal.
2. According to the applicant/appellant, there is a delay of 267 days in  
filing the accompanying appeal preferred under Section 37 of the Arbitration  
and Conciliation Act, 1996 [in short, “1996 Act”].

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3. Mr Ashish Dholakia, learned senior counsel, who appears on behalf of the applicant/appellant, says that the delay was caused as the review petition, which was filed on 28.09.2022, was dismissed only on 18.01.2023.

4. According to Mr Dholakia, the review petition was delayed as in and about 31.08.2022, the applicant/appellant became aware of the award passed by the very same arbitral tribunal in a connected arbitration proceedings wherein, a favorable view was taken with respect to the aspect *qua* which relief had been declined to the applicant/appellant.

4.1 It is Mr Dholakia's contention that the award in which relief had been granted by the same arbitral tribunal is dated 30.12.2021.

5. To be noted, insofar as the subject award is concerned, it is dated 10.11.2021. Thus, according to Mr Dholakia, the knowledge of the award dated 30.12.2021 wherein the arbitral tribunal had granted relief was acquired in and about 31.08.2022 which, as noticed above, led to filing of the review petition on 28.09.2022.

6. According to us, this is not a good enough reason for condonation of delay. The applicant/appellant should have kept track of the proceedings in the other matter if, as contended on its behalf, there was commonality in the issues referred to the arbitral tribunal.

7. That apart, in our opinion, the applicant/appellant, if aggrieved by the decision rendered by the learned Single Judge in the petition preferred under Section 34 of the 1996 Act, it should have come up in appeal at the earliest and



not waited for becoming aware of the results in the other arbitration proceedings.

8. The courts have taken a dim view of the appeals being filed beyond the prescribed period of limitation. The leeway for entertaining appeals beyond the period of limitation has been given in “exceptional circumstances.” [See *State of Maharashtra vs. Borse Bros. Engineers & Contractors (P) Ltd.* (2021) 6 SCC 460]. This, in our view, is not an exceptional circumstance. Therefore, we are not inclined to condone the delay.

9. We may also note that the applicant/appellant has not assailed the decision of the learned Single Judge dated 18.01.2023 in this appeal whereby, the review petition was dismissed.

10. The application is, accordingly, dismissed.

**FAO(OS) (COMM) 37/2023 and CM APPL. 8809/2023** [*Application filed on behalf of the appellant seeking leave to file additional documents*]

11. In view of the order passed in CM APPL. 8808/2023, the appeal and the above-captioned application for filing additional documents are rendered infructuous and are, accordingly, closed.

**RAJIV SHAKDHER, J**

**AMIT BANSAL, J**

**FEBRUARY 26, 2024 /tr**

*Click here to check corrigendum, if any*

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