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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 158/2024 and CM Nos.45516/2024 and 45517/2024**

M/S GTL INFRASTRUCTURE LIMITEDAppellant
Through: Mr Shwetank Shantanu and Mr
Pratap Shanker, Advocates.

versus
SMT. MANJEET KAURRespondent
Through:

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

ORDER
% **08.08.2024**

1. The appellant has filed the present appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an order dated 04.07.2024 passed by the learned Commercial Court in OMP(COMM) 39/2024 captioned *M/s GTL Infrastructure Ltd. v. Manjeet Kaur*.
2. The appellant had filed the said application under Section 34 of the A&C Act impugning an arbitral award dated 10.02.2023. The learned Commercial Court had found that the application preferred by the appellant was barred by limitation.
3. The appellant claims that it had received the signed copy of the impugned award and, admittedly, the period of limitation as stipulated under Section 34(3) of the A&C Act is required to be reckoned from 10.02.2023. The three-months period available for the appellant to file the application under Section 34 of the A&C Act expired on 10.05.2023. The appellant claimed that it electronically filed the application under Section 34 of the



A&C Act on 09.06.2023 along with an application for seeking condonation of delay in filing the said application.

4. In terms of the proviso to Section 34(3) of the A&C Act, the Court can condone a delay of not exceeding thirty days in filing an application under Section 34 of the A&C Act subject to the petitioner satisfying the Court that it was prevented from filing the application by sufficient cause. In the present case, the period of thirty days expired on 09.06.2023 and the appellant had filed the application on the last day of the period of thirty days that could be condoned. The application as filed was defective and was returned for re-filing. Admittedly, the appellant took no steps to re-file the same till October, 2023. The appellant states that an attempt was made to re-file the application in the first week of October, 2023. However, the software for re-filing had undergone an upgradation and the appellant claimed that it was required to accordingly upgrade the software for filing the application.

5. He also claims that filing done earlier was not available and therefore, he had to reconstruct the file.

6. The appellant finally re-filed the application on 20.05.2024.

7. There is no credible explanation for the delay between 09.06.2023 and the first week of October, 2023 – a period of about four months. We also find no credible explanation for the delay after the first week of October 2023 to 20.05.2024, a period of approximately eight months.

8. In ***Delhi Development Authority v. M/s Durga Construction Co.: 2013 SCC OnLine Del 4451***, this Court had considered the question whether the period of re-filing is required to be included in the period of three months as available under Section 34(3) of the A&C Act. This Court



held that Section 5 of the Limitation Act, 1963 was not applicable for delays in re-filing. And, the Court's power to condone the delay in re-filing was not limited to a period of thirty days. However, the Court also observed that given the legislative intent, the Court would not take liberal approach while considering the delay in re-filing. In the present case, even if it is accepted that the appellant had, in fact, filed a substantive application for setting aside the impugned award on 09.06.2023 – for which there is no unimpeachable evidence – we find no reason for condoning the delay of about eleven months, in re-filing the said application.

9. We find no infirmity with the decision of the learned Commercial Court in rejecting the appellant's application for setting aside the impugned award on the ground of delay.

10. The appeal is unmerited and accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 08, 2024

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Click here to check corrigendum, if any