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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 18/2024 CM APPL. 4633/2024 CM APPL. 4634/2024**
CM APPL. 4635/2024 CM APPL. 4636/2024 CM APPL. 4637/2024
CM APPL. 4638/2024

UNION OF INDIA

..... Appellant
Through: Mr.Ruchir Mishra, Mr.Sanjiv Kr
Saxena, Mr.Mukesh Kr Tiwari,
Ms.Poonam Shukla and Ms.Reba
Jena Mishra, Advocates.

versus

M/S. B.B.CONSTRUCTION

..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

24.01.2024

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CM APPL. 4633/2024

1. The appellant has filed captioned appeal impugning an order dated 01.07.2023 (hereafter '**the impugned order**') passed by learned Commercial Court in OMP (COMM) No.114/2019 captioned ***Union of India v. M/s B.B. Construction***. The said application was filed by the appellant impugning the Arbitral Award dated 03.08.2019 passed by the learned Arbitral Tribunal.
2. The time available for the appellant to file the captioned appeal is sixty days from the date of the said order. However, the appeal has been filed after the delay of fifty days.



3. The application filed by the appellant explaining the delay indicates that the appellant had taken one month to apply for the certified copy of the impugned order. The certified copy was applied on 01.08.2023
4. It is stated that the certified copy of the impugned order was made available on 08.08.2023. Thereafter, Deputy Chief Engineer/Construction, DRM Office sent a letter to the concerned authorities for approval and further directions. The date on which the said letter was sent is not set out in the present application. However, it is stated that thereafter, on 06.09.2023, the CE/C/NW Kashmere Gate sent a letter to the Executive Director, Civil Engineering, Railway Board. As on that date, the time for filing the appeal was almost over. Thus, within the limitation period for filing the appeal, the appellant had effectively taken no steps to prefer the present appeal.
5. It is stated that three weeks, thereafter (on 29.09.2023), the Executive Director, Civil Engineering, Railway Board requested for certain other documents relating to the matter. These were then provided to the Executive Director almost a month later, that is, on 27.10.2023. Thereafter, the Railway Board sent a letter to the Central Agency for assailing the impugned award. It is stated that thereafter, the opinion of the learned ASG was sought which was provided on 17.11.2023. Thereafter, a request was made to the Litigation In-charge, High Court of Delhi for appointment of a counsel which was confirmed on 23.11.2023.
6. It is stated that thereafter, the process for preparing the appeal was commenced. The appeal was drafted and thereafter, filed in this Court.
7. In addition, it is also noticed that there is a delay of 18 days in re-filing the present appeal (CM APPL. 4634/2024).
8. We are unable to accept that the said delay can be countenanced. One



of the objects for enacting the Commercial Courts Act, 2015 is to ensure expeditious disposal of commercial disputes. The said objective would be frustrated if delay in filings is condoned as a matter of course. It is thus necessary that the time lines as stipulated be strictly observed.

9. In *NV International vs State of Assam: (2020) 2 SCC 109*, the Supreme Court, taking a cue from Section 34(3) of the Arbitration and Conciliation Act, 1996 held that a delay beyond 30 days could not be condoned. This decision was overruled by the Supreme Court in *Government of Maharashtra (Water Resources Department) represented by the Executive Engineer vs Borse Brothers Engineers and Contractors Private Limited.: (2021) 6 SCC 460* and it was held that Section 5 of the Limitation Act 1963 was applicable. However, the Supreme Court also held as under:

“53. The question still arises as to the application of Section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in *N.V. International*¹ which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.

* * *

58. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression “sufficient cause” is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression “sufficient cause” is not itself a loose panacea for the ill pressing negligent and stale claims.

* * *

63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and



the Commercial Courts Act, for appeals under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule....”

10. In the present case, we find that the approach of the appellant is lackadaisical, which is evident from the fact that effectively no steps were taken within the period of limitation for filing the appeal. The appellant had not even commenced the process of seeking approvals for filing the appeal during this period.

11. The application is, accordingly, dismissed. Consequently, the above captioned appeal is also rejected. All pending applications are also closed.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

JANUARY 24, 2024

M/R

Click here to check corrigendum, if any