



\$~46

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

+ **C.R.P. 270/2024 & CM APPL. 54826/2024**

INDIA TRADE PROMOTION ORGANISATIONPetitioner

Through: Mr. Vikas Kumar, Mr. Vihaan Kumar
& Mr. Jefrin Johny, Advocates.

versus

Elets Technomedia Pvt. Ltd.Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

% **21.11.2024**

CM APPL. 67913/2024

1. The present Application under *Section 151 of the Code of Civil Procedure, 1908* (hereinafter referred to as “CPC, 1908”) has been filed on behalf of the Petitioner seeking early hearing of the present Revision Petition along with CM APPL. 54826/2024.

2. The advance notice of the present Application has been served upon the Respondent, but none is present on behalf of the Respondent.

3. Considering the reasons stated in the present Application, the Application is allowed and disposed of.

C.R.P. 270/2024

4. In view of the Order passed in CM APPL. 67913/2024 and also on the request of the counsel for the Petitioner, the Main Petition has been taken up today for consideration.

5. The present Revision Petition under *Section 115 read with Section 151 of CPC, 1908* filed on behalf of the Petitioner (Respondent in the petition



under S.34 Arbitration and Conciliation Act,1996) challenging the impugned Order dated 08.07.2024 *vide* which the Application under *Order IX Rule 9 of CPC, 1908* seeking restoration of the Petition under *Section 34 of the Arbitration and Conciliation Act, 1996* (hereinafter referred to as the “Act, 1996”) along with accompanying Application under *Section 5 of the Limitation Act, 1963* read with *Section 151 of CPC, 1908* filed by the Respondent-Petitioner, have been allowed.

6. *Learned counsel for the Petitioner* has argued that the Award was made on 21.11.2011 and thereafter, the Objections under *Section 34 of the Act, 1996* were filed by the Respondent Elets Technomedia Pvt. Ltd. which remained pending for seven years since it was not being pursued by the Respondent-Petitioner. the Counsel on behalf of the Respondent-Petitioner made a statement that he was not able to contact his client and the Petition under S.34 of the Act, was dismissed in default and for non-prosecution *vide* Order dated 14.01.2019.

7. After four years, the Application under *Order IX Rule 9 of CPC, 1908* seeking restoration of the Petition under *Section 34 of the Act, 1996* along with accompanying Application under *Section 5 of the Limitation Act, 1963* read with *Section 151 of CPC, 1908* was filed by the Respondent-Petitioner, on 21.09.2022. Despite there being a delay of 1430 days, the Application under *Order IX Rule 9 of CPC, 1908* along with accompanying Application under *Section 5 of the Limitation Act, 1963* read with *Section 151 of CPC, 1908* have been allowed by the learned District Judge, and S.34 petition restored, without noting that the Trial Court had issued the Court Notices to the Respondent-Petitioner before eventually dismissing the Petition under *Section 34 of the Act, 1996* in default for non-prosecution *vide* Order dated



14.01.2019.

8. Before the dismissal of Petition, the Court Notices were duly served upon the Respondent-Petitioner, as provided in the case of Virender Singh Behl vs. Y.K. Kapoor, 2000 (88) DLT 7 which provides that there should not be a dismissal in default for non-prosecution without first issuing the Court Notices to the parties.

9. Furthermore, the delay is required to be explained on day-to-day basis which has not been done. Moreover, no specific dates have been given when the Respondent-Petitioner herein came to know about the Order of dismissal of Objections under *Section 34 of the Act, 1996*. Also, no specific dates have been given as to when the present counsel was contacted.

10. It is clearly borne out from the record that non-appearance of the Respondent-Petitioner was intentional and there is no sufficient reason explained for the condonation of delay. The impugned Order dated 08.07.2024 condoning the delay and allowing the Application under *Order IX Rule 9 of CPC, 1908* seeking restoration of the Petition under *Section 34 of the Act, 1996*, is asserted to be liable to be set aside.

11. Submissions heard.

12. *First* and foremost, the majesty of law lies in determination of the disputes on merits. The law in regard to the condonation of delay is extremely liberal and it is only in such cases where it is found to be *mala fide* or contumacious, the delay may not be condoned.

13. In the present case, the record shows that the learned Counsel for the Respondent-Petitioner had been appearing, and had stated on various dates that he is not able to contact the Party. He even furnished the new address of the Party, wherein the Notice was directed to be issued, but there is no record



that the same was served. The learned Trial Court consequently dismissed in default the Objections under *Section 34 of the Act, 1996* vide Order dated 14.01.2019.

14. The explanation which is given on behalf of the Respondent-Petitioner is that he was not in contact with the Counsel and it is only when the Notice of *Execution Petition* was served upon it in the year 2022 that he became aware about the dismissal in default of Objections under *Section 34 of the Act, 1996*. Thereafter, Respondent-Petitioner immediately contacted the new Counsel who then moved the Application under *Order IX Rule 9 of CPC, 1908* seeking restoration of the Petition under *Section 34 of the Act, 1996* along with accompanying Application under *Section 5 of the Limitation Act, 1963* read with *Section 151 of CPC, 1908*.

15. The learned District Judge has rightly observed that there is no report as to whether the Court Notices sent to the Respondent-Petitioner were indeed served upon it. It further observed that such Order of dismissal is a nullity in the light of the decision of this Court in Virender Singh Behl (supra) and allowed the Application under *Order IX Rule 9 of CPC, 1908* along with Application under *Section 5 of the Limitation Act, 1963* and restored the Objections under *Section 34 of the Act, 1996*.

16. In view of above discussion, it is held that the Restoration Application has been allowed for cogent reasons. There is no merit in the present Revision Petition which is hereby dismissed along with pending Application.

17. The next date of hearing i.e., 24.04.2025 stands cancelled.

NEENA BANSAL KRISHNA, J

NOVEMBER 21, 2024/S.Sharma