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

\+ FAO(OS) (COMM) 25/2025, CM APPL. 8539/2025, CM APPL. 8540/2025, CM APPL. 8541/2025, CM APPL. 8542/2025 & CM APPL. 21073/2025

M/S STRATEGIC INFRA SERVICES PVT LTD .....Appellant

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Pallav Mongia, Mr. Anubhav Mishra, Ms. Sugandh and Mr. Shashank, Advs.

versus

M/S ENERGY EFFICIENCY SERVICES LTD .....Respondent

Through: Mr. Samdarshi Sanjay and Mr. Ashish Kumar Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGEMENT (ORAL)

% **21.05.2025**

C. HARI SHANKAR, J.

1. We have heard Mr. Akhil Sibal, learned Senior Counsel for the appellant, and Mr. Samdarshi Sanjay, learned Counsel for the respondent, on CM APPL. 8541/2025 and CM APPL. 8542/2025 which seek condonation of delay of 554 days in filing and 194 days in re-filing the present appeal. The cumulative delay would be of 748 days.

2. The justification for the delay of 554 days in filing the appeal is thus provided in para 4 of the CM APPL. 8541/2025:

"4. It is humbly submitted on behalf of the Applicant that the delay was neither intentional nor deliberate and due to unavoidable circumstances. The below mentioned are the reasons for the delay in filing the present appeal:

a. The Ld. Single Judge of this Hon'ble Court by Impugned Order dated 23.11.2022 dismissed the petition under Section 34 of the Act filed by the Applicant/Appellant herein challenging the arbitral award dated 01.07.2022 passed by the Ld. Arbitral tribunal. It is submitted that the Applicant/Appellant herein was represented by one of the directors of the Applicant/Appellant company, Mr. Pradeep P. Patil. It is pertinent to mention that from the date EESL issued the Tender notice till the Impugned Order passed by the Ld. Single judge of this Hon'ble Court, Mr. Pradeep P. Patil was the only representative of the Applicant/Appellant who was directly involved in the dispute and is aware of the matter details exhaustively.

b. It is pertinent to mention that Mr. Pradeep P. Patil was handling the matter for the company, and he was the only one on behalf of the Applicant/Appellant in the position to instruct the lawyers. Due to the complex nature of the dispute and the execution of the contract that happened over a long period of time, all the data/emails related to the dispute were with Mr. Pradeep P. Patil only.

c. On 10.12.2022, Mr. Pradeep P. Patil met a road accident. Due to the accident, he suffered mental trauma and was diagnosed with post-traumatic stress disorder and generalized anxiety disorder. This disorder eventually led to a state of depression, prompting him to seek appropriate treatment from a psychiatrist and psychologist as a result of his deteriorating mental health. Therefore, with no other option left he applied for medical leave for his official duties till his complete recovery. Since he was the only person who was involved in the dispute therefore after his health conditions, the process went on hold due to unavoidable conditions and beyond the control of the Applicant/Appellant. It is further submitted that since his absence was immediate and abrupt, any other person did not have the opportunity to step and advise the Applicant/Appellant on the merits of the case. The same was intimated to the departments by an internal email dated 22.12.2022 that everyone must refrain from approaching Mr. Pradeep P. Patil because of his mental illness.

d. After taking consultation, medication, and therapy, it took Mr. Pradeep P. Patil more than 5 months to recover from his mental condition. Consequently, only after getting the fitness certificate from the Psychiatrist, he resumed his office after 15.06.2023.

di. Upon his recovery and resuming office, Mr. Pradeep P. Patil resumed his office and effectively but gradually started involving in the day-to-day affairs of the Petitioner. Eventually, he got to know that the Respondent, EESL filed an execution petition bearing no. OMP (ENF.) (COMM) 238 of 2022 before this Hon'ble High Court. While the execution petition was being defended, Mr. Pradeep P. Patil even after his health conditions, advised the Applicant/Appellant to consult an advocate in Bangalore and sought his legal opinion for filing the appeal under Section 37(1)(c) before this Hon'ble High Court. Consequently, after internal discussions and approval from the board, it was decided that the Applicant/Appellant would approach an advocate to take advice on the matter in Bangalore. Considering the voluminous documents, 2 sets of litigation, and the complexity of the dispute various conferences (both physical and virtual) dated 06.08.2023 and 14.08.2023 were conducted between the counsel and the Applicant/Appellant. As per the directions of the counsel, the Applicant/Appellant handed over a set of documents for expert legal review to the counsel on three different occasions. It is pertinent to mention that the documents shared were per the counsel's directions. The Applicant/Appellant on 18.08.2023, 19.09.2023, and 10.10.2023 shared the documents with the advocate engaged by the Applicant/Appellant. Nevertheless, even after the passing of 2 months due to the busy schedule of the counsel and voluminous documents approach towards the dispute and vacations on the occasion of Dussehra and Diwali, the advocate engaged by the Applicant did not provide any opinion.

f. Further, it is pertinent to mention that due to winter vacation, courts were on leave from 22.12.2023 to 02.01.2024. With no other option left but to proceed further with the matter, the directors of the company decided to approach other counsel. Consequently, the Applicant/Appellant approached the present counsel based in Delhi in the month of January 2024.

g. Thereafter, the counsel of the Applicant shared the legal opinion with the Applicant/Appellant in February 2024. Based on the same, the Applicant directed the counsel for the drafting and filing of the captioned appeal under Section 37(1)(c) of the Act in the month of March 2024.

h. Therefore, after the confirmation from the Applicant/Appellant, the counsel started preparation of the captioned appeal to seek relief as prayed.

i. In the meantime, through a LinkedIn post in the first week of March 2024, the Applicant/Appellant found out that the Respondent has filed a petition before the Hon'ble Karnataka Electricity Regulatory Commission ("Hon'ble Commission") against the Gulbarga Electricity Supply Company Limited ("GESCOM"). The Respondent in that petition sought relief for the same amount which has already been awarded by the ld. Tribunal towards the non-payment of dues for the bulbs on an EMI basis. The Respondent hid this vital fact from the ld. Tribunal that the amount sought from the Appellant towards the distribution of bulbs on an EMI basis was to be collected from the Gulbarga Electricity Supply Company Limited ("GESCOM").

j. The Applicant/Appellant, suspecting potential fraud, initially sought to obtain information related to the petition by accessing the website and visiting the Karnataka Electricity Regulatory Commission (KERC) in March 2024. The Applicant/Appellant also engaged a clerk to receive the relevant information related to the dispute. Therefore, the clerk visited the Hon'ble Commission and the Registry informed the clerk that the Registry would provide a copy of the petition. Nevertheless, in the second week of April, the Registry of the Hon'ble Commission denied the request of the Appellant. Thereafter, the Appellant again engaged a different clerk and filed an application on 09.05.2024 before the Hon'ble Commission for a copy of the petition. The Hon'ble Commission by its office order dated 13.06.2024 rejected the application of the Appellant which was filed through a local clerk on the ground that the Appellant is not a party in the dispute before the Hon'ble Commission.

k. It is pertinent to mention before this Hon'ble Court that there is an apprehension that the Respondent has filed such similar petitions before the Electricity Regulatory Commission of States for which, the Letter of Award was issued in the favor of the Applicant/Appellant."

3. On a reading of the aforesaid paragraphs, and after having heard learned Counsel for the parties, we are not satisfied that any sufficient cause has been made out for condoning delay, within the meaning of Section 13 of the Commercial Courts Act, 2015 read with Section 5 of the Limitation Act, 1963.

4. Following the judgment of the Supreme Court in ***State of Maharashtra v Borse Bros Engineers & Contractors (P) Ltd*[1]*,*** it is a settled position that limitation for filing appeals has to be reckoned in accordance with Section 13 of the Commercial Courts Act which provides for 60 days for filing the appeal.

5. The Supreme Court has, in various decisions, held that limitation periods in the case of proceedings under the Commercial Courts Act, have to be strictly followed.

6. In the present case, the explanation given by the appellant for the delay of 554 days in filing this appeal is that

(i) one Mr. Pradeep P. Patil, who was handling the matters relating to the present litigation met with a road accident on 10 December 2022, whereafter he suffered certain psychological disturbances from which he ultimately recovered only on 15 June 2023,

(ii) consequent on his recovery, Mr. Patil resumed office and gradually started involving himself in day-to-day affairs of the appellant,

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[1] **(2021) 6 SCC 460**

(iii) he *later* got to know that the respondent had filed OMP (ENF) (COMM) 238/2022 before this Court, on coming to learn of which Mr. Patil advised the appellant to consult a Counsel in Bangalore for filing the present appeal before this Court,

(iv) conferences with the said Counsel were held on 6 August 2023 and 14 August 2023 and the documents relating to the appeal were shared with the Counsel on 18 August 2023, 19 September 2023 and 10 October 2023, for all of which no evidence is forthcoming on record,

(v) Courts were on leave from 22 December 2023 to 2 January 2024,

(vi) the legal opinion of the Counsel was shared with the appellant in February 2024, for which, too, there is no evidence, based on which the appellant directed the Counsel to file the present appeal,

(vii) in March 2024, the appellant came to learn through a LinkedIn post that the respondent had filed a petition against the Gulbarga Electricity Supply Company Limited before the Karnataka Electricity Regulatory Commission, in which the amount forming subject matter of dispute in the present appeal was claimed by the respondent from GESCOM, and

(viii) it is only thereafter that the appellant appears to have filed the present appeal.

7. Having noted the contentions contained in the applications, we are unable to satisfy ourselves that the appellant has made out a case of sufficient cause within the meaning of Section 5 of the Limitation

Act read with Section 37 of the Arbitration and Conciliation Act, 1996 and the law declared by the Supreme Court in that regard, as would enable us to entertain this appeal after as inordinate delay as 554 days. The appellant has clearly been indolent, and has allowed time to pass by, without showing any inclination to file the present appeal.

8. We may also note, in this connection, the contention of Mr. Samdarshi Sanjay that, in the execution proceedings pertaining to the present litigation, the director of the appellant filed his affidavit on 11 August 2023 and detailed affidavit on 9 November 2023.

9. In any event, as we are of the opinion that no sufficient cause has been shown by the appellant for condonation of delay in filing and re-filing the present appeal, CM APPL. 8541/2025 and CM APPL. 8542/2025 are dismissed.

10. FAO(OS) (COMM) 25/2025 is also, therefore, dismissed on the ground of limitation without entering into merits.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MAY 21, 2025/*AS/*ar

Click here to check corrigendum, if any