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

Date of decision: 16.12.2024

+ **FAO(OS) (COMM) 66/2023, CM APPL. 16906/2023-Stay, CM APPL. 16907/2023-Delay 670 days, CM APPL. 16909/2023-Delay 591 days in re-filing.**

M/S SATYADHARA COMMUNICATIONS PVT LTD

.....Appellant

Through: Mr. Abid Ali Beeran, Adv appeared through VC

versus

M/S INDIASIGN PVT LTD

.....Respondent

Through: Mr. Gaurav Kejriwal, Mr. Anmoldeep Singh and Mr. Happy Chaubey, Adv

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

1. The present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [“the Act”] seeks to assail order passed by the learned Single Judge in O.M.P. (COMM.) No.208/2018. Vide the impugned order, the learned Single Judge has dismissed the application preferred by the appellant seeking setting aside of the Arbitral Award dated 08.04.2016.
2. We find that the appeal is accompanied by two applications, the first seeking condonation of 670 days delay in filing the appeal and the second



591 days delay in re-filing the appeal.

3. Upon notice being issued, replies opposing the applications have been filed. Learned counsel for the appellant submits that the delay in filing the appeal has been occasioned primarily due to the appellant having initially filed an appeal being FAO (OS) (COMM) No.366 of 2019 which appeal was permitted to be withdrawn on 17.12.2019 with liberty to the appellant to file a review petition before the learned Single Judge. Consequently, a review petition being R.A.No.46/2021 came to be filed by the appellant on 06.03.2021. The same was, however, dismissed on 16.04.2021, where after the appellant took expeditious steps to file an appeal and was able to file the present appeal on 05.07.2021 i.e. after about eighty days from the rejection of their review petition.

4. Despite the fact that the appellant itself has filed an application seeking condonation of 670 days delay in filing the appeal, learned counsel for the appellant seeks to submit that in view of the pendency of the aforesaid review petition before the learned Single Judge and the appeal having been filed within 80 days from the dismissal of the review petition, the same could, at best, be treated as being barred by delay of 20 days, by excluding the sixty days time prescribed for filing an appeal. This short delay, he therefore prays, be condoned.

5. Additionally, in support of the application seeking condonation of delay in re-filing of the appeal of 591 days, he submits, that though the appeal was filed on 05.07.2021, the defects pointed out by the registry could not be cured, as the appellant was able to contact its counsel only in January,



2023. Soon thereafter, the defects were cured and the appeal was re-filed on 16.03.2023.

6. Further, by drawing our attention to the order passed by the Apex Court in *Suo Motu* Writ Petition (C) No. 3 of 2020, he submits that the period between 16.03.2020 to 28.02.2022 was required to be, in any event, excluded for the purpose of computing limitation and therefore, contends that it is only the period after 01.03.2022, which could be taken into account for ascertaining the delay, which he submits, was *bona fide* and therefore, prays that the delay in re-filing of the appeal also deserves to be condoned.

7. On the other hand, learned counsel for the respondent opposes not only the application for condonation of delay in filing the appeal, but also the application for condonation of delay in re-filing the appeal. He submits that even if this Court were to take a liberal view in considering the appellant's prayer for condoning the delay in filing of the appeal by treating its action of filing a review petition as *bona fide*, the fact remains that the appellant has given absolutely no justification for the delay in filing the appeal after 80 days from the date of dismissal of its review petition as also of the inordinate delay in re-filing of the appeal.

8. He submits that even if the entire period between the date of initial filing of the appeal i.e. 05.07.2021 till 28.02.2022 were to be excluded in terms of the Apex Court's order, the appellant having still chosen to re-file the appeal only on 16.03.2023, there is absolutely no explanation for not re-filing the appeal after 01.03.2022. The inordinate delay of over one year on the part of the appellant in re-filing the appeal, he contends, cannot be said



to be either *bona fide* or for sufficient cause and that too for condoning the delay in filing of an appeal under Section 37 of the Act, where delay beyond the prescribed period can be condoned only in an exceptional circumstances. He, therefore, prays that both applications seeking condonation of delay alongwith the appeal be dismissed.

9. We have heard learned counsel for the parties and have also perused the record. We have also considered the decisions of the Apex Court relating to condonation of delay in filing of petitions under Section 37 of the Act.

10. As per what has been placed before us, the appellant has miserably failed to show any cause, much less any '*sufficient cause*' and/ or plausible reason for us to condone the inordinate delays of prolonged periods of 670 days delay in filing the appeal and 591 days delay in re-filing the appeal before this Court. The reasons adduced by the appellant to explain the delay, both in filing and re-filing of the appeal are extremely vague and cryptic and clearly show an absolutely casual approach adopted by the appellant in filing the appeal. We are of the view that whence the present appeal has been filed under Section 37 of the Act and arises out of a commercial dispute, where the parties are expected to act with utmost promptitude, appellant was expected to act diligently in filing the present appeal within the statutory period.

11. In this regard, we find that the Hon'ble Supreme Court has laid down the extent of leniency to be exercised in such matters arising under the Act. In fact, in ***Government of Maharashtra vs. M/s. Borse Brothers Engineers and Contractors Pvt. Ltd.***, 2021 6 SCC 460, the Hon'ble Supreme Court has



summarized the position qua condonation of delay in a matter under the Act, which is permissible only in exceptional circumstances as under:-

“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 filed 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. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party’s inaction, negligence or laches.”

12. In our considered view, not only has the appellant failed to demonstrate any plausible reasons for the delay caused in filing of the present appeal, it is also not the case of the appellant that there was any exceptional circumstance(s) which precluded the appellant from filing the present appeal during the prescribed statutory period. The same is of vital importance as it is not merely the number of days of delay, which would be material for considering the application seeking condonation of delay but it is the sufficiency of reasons for the delay which would be relevant to determine whether the delay should be condoned.

13. For this, we find able support in ***Borse Brothers Engineers (supra)***, wherein the Hon’ble Supreme Court while declining to condone the delay of 131 days beyond the 60 days period provided for filing of an appeal under the 2015 Act held as under:-

“65. Apart from this, there is a long delay of 131 days beyond the 60-day period provided for filing an appeal under section 13(1A) of the



Commercial Courts Act. There is no explanation worth the name contained in the condonation of delay application, beyond the usual file- pushing and administrative exigency. This appeal is therefore dismissed.”

14. In fact, it also emerges that in the same decision, the Apex Court while dealing with SLP (C) No.15278/2020 had declined to condone even the delay of 75 days in filing an appeal which was otherwise required to be filed within 60 days under the 2015 Act by also holding as under:-

“67. That apart, on the facts of this appeal, there is a long delay of 75 days beyond the period of 60 days provided by the Commercial Courts Act. Despite the fact that a certified copy of the District Court’s judgment was obtained by the respondent on 27.04.2019, the appeal was filed only on 09.09.2019, the explanation for delay being:

“2. That, the certified copy of the order dated 01/04/2013 was received by the appellant on 27/04/2019. Thereafter the matter was placed before the CGM purchase MPPKVVCL for the compliance of the order. The same was then sent to the law officer, MPPKVVCL for opinion.

3. That after taking opinion for appeal, and approval of the concerned authorities, the officer-in-charge was appointed vide order dated 23/07/2019.

4. That, thereafter due to bulky records of the case and for procurement of the necessary documents some delay has been caused however, the appeal has been prepared and filed to pursuant to the same and further delay.

5. That due to the aforesaid procedural approval and since the appellant is a public entity formed under the Energy department of the State Government, the delay caused in filing the appeal is bonafide and which deserve[s] to be condoned.”

68. This explanation falls woefully short of making out any sufficient cause. This appeal is therefore allowed and the condonation of delay is set aside on this score also.”

15. Be that as it may, even while adverting to the merits, we find that the



learned Single Judge after taking into consideration Clause 10 of the Arbitration Agreement dated NIL, held that the arbitration agreement was itself extremely wide and clear. Learned Single Judge further agreed with the findings of the learned Arbitrator that the statement of account filed by the respondent was duly supported by the relevant documents as also that the learned counsel for the appellant was unable to show any discrepancy therein.

16. In the light of the aforesaid, we find that the reasons set out by the appellant for seeking condonation of delay(s), both, of 670 days delay in filing the appeal and 591 days delay in re-filing the appeal respectively cannot be said to be falling within the category of either 'sufficient cause' or 'exceptional circumstances'.

17. Both applications, for delay in filing as also re-filing, are accordingly dismissed. Consequently, the appeal alongwith the pending application, is also dismissed as being barred by limitation.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

DECEMBER 16, 2024/Ab/bh