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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 31.01.2023

+ FAO(OS) (COMM) 179/2019 & CM Appl.34000/2019, 920/2021, 922/2021 & 29668/2021

UNION OF INDIA

..... Appellant

Through: Ms Monika Arora, CGSC.

versus

M/S INDERJIT MEHTA CONSTRUCTION
PVT LTD

..... Respondent

Through: Mr Praveen Chauhan, Advocate with
Mr Aakash Dubey, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.:

1. The present Appeal has been filed impugning the judgment dated 10.05.2018 passed by the learned Single Judge [hereinafter referred to as, "Impugned Judgment"] which dismissed a challenge to Arbitral Award dated 28.12.2016 [hereinafter referred to as, "the Award"] made by the Appellant herein.

1.1 There is a delay of 317 days in filing the Appeal.

2. This Court had on 03.11.2022, briefly heard the matter and passed the following directions:

"1. Ms Monika Arora, CGSC, who appears on behalf of the appellant/UOI, says that against the impugned judgment dated 10.05.2018 a review petition was preferred i.e.. Review Petition

No.361/2019.

1.1 We are told, that the said review petition was dismissed by the learned Single Judge on 17.01.2020.

2. Ms Arora says that the appellant/Union of India (UOI) would like to move an amendment application, along with a condonation of delay application, to enable it to assail the order passed in the review petition.

2.1 Accordingly, Ms Arora seeks accommodation.

3. Mr Praveen Chauhan, who appears on behalf of the respondent, says that there was delay, in not only filing the appeal, but also in preferring the review petition.

3.1 In filing the appeal, there has been a delay of 317 days.

3.2 Insofar as the review petition in O.M.P. (COMM) 244/2017 was concerned, there was a delay of 439 days.

4. The application filed for condonation of delay in preferring the review petition was dismissed by the learned Single Judge on the same date i.e., 17.01.2020.

5. According to us, Mr Chauhan is right, that before we proceed further, the appellant/UOI would have to explain the delay in filing the appeal.

6. As noticed above, the review petition, which was impregnated with delay, was dismissed on 17.01.2020, despite which no alacrity was shown by the appellant/UOI.

7. We are in November 2022, and up until now, no steps have been taken to prefer an amendment application.

7.1 However, this aspect of the matter will be examined on the next date of hearing, that is, if and when an application is moved on behalf of the appellant/UOI for amendment, and condonation of delay."

3. Today, Ms Monika Arora, CGSC who appears on behalf of the Appellant, has handed over a hard copy of the order dated 17.01.2020 passed in the Review Petition [i.e., Review Petition No. 244/2017].
- 3.1 Mr Praveen Chauhan, who appears on behalf of the Respondent, has also handed over a hard copy of the Review Petition as filed before the Learned Single Judge and submitted that the legal grounds as taken in the present Appeal and the Review Petition are substantially the same. Learned counsel for the Respondent submits that the Learned Single Judge has dismissed the Review Petition on merits as

well as for delay in its filing – a delay of 439 days. Learned counsel for the Appellant fairly concedes this position to be correct.

4. As can be seen from our order dated 03.11.2022, an opportunity was granted to the Appellant to file an application for amending the Appeal, to assail the order dated 17.01.2020 passed in the Review Petition. Ms Arora had also indicated that she would also be filing an appropriate application for condoning this delay as well. At the request of Ms Arora, the matter was directed to be listed on 08.12.2022. On that day, an accommodation was sought on behalf of Ms Arora as she could not appear in the matter.
 - 4.1 In these circumstances, we had posted the matter today while noting that an Application seeking amendment of the Appeal along with an Application for condonation of delay had not been filed as yet.
5. The position today is no different, neither has any Application seeking amendment of the Appeal been filed, nor has an appropriate Application for condonation of delay in seeking an amendment been placed on record by the Appellant.
6. Appeals under the provision of Section 37 of the Arbitration and Conciliation Act, 1996 are required to be filed within a period of 60 days in terms of the provisions of Section 13(1A) of the Commercial Courts Act, 2015 [hereinafter referred to as, “Commercial Courts Act”]. This period of 60 days would have expired on 09.07.2018.
 - 6.1 A perusal of the record of the Court shows that the Appeal was initially filed on 22.05.2019. The Appeal was thereafter re-filed on 24.07.2019 and listed for hearing for the first time on 29.07.2019. Thus, the re-filing and listing itself took more than 60 days by

Appellant.

7. The explanation as *inter-alia* provided by the Appellant in its Application filed under Section 5 of the Limitation Act, 1963 is that the delay of 317 days was *inter-alia* occasioned due to governmental procedures and concurrence required by a number of authorities to challenge the Impugned Judgment.
8. The expeditious disposal of Arbitral proceedings and proceedings filed under the Commercial Courts Act is requisite and mandated by law.
- 8.1 Since the Impugned Judgment was passed on 10.05.2018, a total number of 377 days had elapsed before filing of the present Appeal. Explanations which set out bureaucratic processes and the pursuing of other remedies cannot be accepted as a ground for condoning such a long period of delay. The application for condonation of delay is accordingly rejected.
9. Since we have dismissed the Application for condonation of delay, the Appeal cannot be sustained.
10. Resultantly, the Appeal and all pending Applications are dismissed.
11. The Registry is directed to release the balance amount which is available with it, that was deposited by the Appellant during the pendency of the Appeal along with the interest accrued thereon to the Respondent.
12. For this purpose, counsel for the parties will appear before the concerned Registrar on 22.02.2023.

13. Parties will act based on the digitally signed copy of the Order.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

JANUARY 31, 2023/ SA/r

