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

% *Date of Decision: 25.03.2025*

+ **FAO (COMM) 149/2024 and CM APPLs. 43723-24/2024**

M/S DELCO INFRASTRUCTURE PROJECTS

LTD & ORS.

.....Appellants

Through: Mr Rajshekhar Rao, Sr.
Advocate with Mr Divyansh
Mishra, Mr Yoshit Jain and Mr
Ajay Sabharwal, Advocates.

versus

INTEC CAPITAL LIMITED & ANR.

.....Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (Oral)

1. The appellants have filed the present application [being CM No.43723/2024], *inter alia*, praying that the delay of 467 (four hundred and sixty-seven) days in filing the present appeal, be condoned.

2. The appellants have filed the above-captioned appeal impugning an order dated 14.02.2023 [**impugned order**] whereby the application preferred by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 [**A&C Act**] being OMP(COMM) 18/2021 captioned *Delco Infrastructure Projects Limited and Ors. v. Intec Capital Limited & Anr.* was dismissed for non-prosecution.

3. The appellants had filed the said petition impugning the arbitral



award dated 04.11.2020 [**impugned award**] passed by an Arbitral Tribunal constituted of a Sole Arbitrator. The appellants also impugn an order dated 27.04.2024 whereby the application filed by the appellants seeking condonation of delay in filing petition for setting aside the impugned order (order dated 14.02.2023) was rejected. The learned Commercial Court had found that the appellants had failed to show sufficient cause for condoning the delay in filing the said application.

4. It is appellants' case that respondent no.1 had also instituted insolvency proceedings against the appellants before the National Company Law Tribunal [NCLT]. The appellants claim that their challenge to the impugned award [application under Section 34 of the A&C Act being OMP(COMM) 18/2021] and the proceedings before the NCLT, were handled by two different authorised representatives. Thus, the authorised representative of the appellants who was involved in the proceedings before the NCLT was not aware of the status of the proceedings instituted for setting aside of the impugned award. The appellants state that its authorised representative (Sh. Hare Ram Singh), who was pursuing OMP(COMM) 18/2021, had to relocate to his native village in Bihar and the appellants were under *bonafide* belief that the impugned award had been rendered infructuous.

5. It is stated that Sh. Hare Ram Singh had undergone stenting procedures and was receiving treatment for Chronic Obstructive Pulmonary disease and for this reason he had relocated to his village in Bihar in July 2022, and has been residing there since. In view of his ill-health, he was unable to discharge his professional commitments. It is also stated that in September 2023, Sh. Hare Ram Singh was admitted to a hospital on account of his ailments.



6. The appellants claim that they were not aware of the impugned order dated 14.02.2023 passed by the learned Commercial Court and the same was discovered by the appellants sometime in February 2024. And, they swiftly filed a restoration application, which was dismissed by the learned Commercial Court by the order dated 27.04.2024.

7. We are unable to accept that the appellants have been able to establish that they were prevented from filing the appeal within the stipulated period of sixty days from the date of the impugned order. Concededly, the appellant had become aware of the impugned order dated 14.02.2023 in November 2023. However, it took no immediate steps even after becoming aware of the impugned order dated 14.02.2023. The appellants waited for almost three months for filing an application before the learned Commercial Court for seeking restoration of their petition under Section 34 of the A&C Act, which was dismissed for non-prosecution. There is no credible explanation for the said delay.

8. As stated above, the only explanation provided by the appellants for the delay in filing the present appeal is that their authorised representative, Sh. Hare Ram Singh was unwell and had relocated to Bihar. However, the said authorised representative had relocated to Bihar in July 2022. Thus, his relocation cannot possibly be entertained as an explanation for the delay in filing the present appeal.

9. The application filed by the appellants for seeking condonation of delay in filing the application for setting aside the impugned order dated 14.02.2023 was rejected by the learned Commercial Court by an order dated 27.04.2024. However, the appellants did not take any immediate steps to file the present appeal. The present appeal was filed on 24.07.2024, that is, almost ninety days after the order dated 27.04.2024. There is no explanation



whatsoever as to the cause that prevented the appellants from preferring the appeal immediately after 27.04.2024.

10. In *N.V. International v. State of Assam & Ors.: (2020) 2 SCC 109*, the Supreme Court had taken a view that the delay in filing an appeal under Section 37 of the Act cannot be condoned beyond a period of thirty days. However, this decision was overruled by the Supreme Court in a subsequent decision in *Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. Borse Brothers Engineers & Contractors Pvt. Ltd.: (2021) 6 SCC 460*. The Supreme Court held that the power of the court to condone the delay in filing the appeal under Section 37(1) of the Act was not restricted to a period of thirty days as specified under the proviso to Section 34(3) of the A&C Act. However, the Supreme Court also observed as under:

“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...

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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(1-A) 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....”

11. It is essential to adhere to time lines in matters involving commercial disputes. Any delay in filing appeals under Section 13(1A) of the



Commercial Courts Act, 2015 cannot be condoned unless the court is satisfied that the appellants were prevented from sufficient cause from filing the appeal within the stipulated time. The court must be satisfied that such cause is genuine and not an illusion to disguise lack of diligence.

12. In the facts of the present case, we are unable to accept that the appellants have shown any sufficient cause for condoning the delay in filing the present appeal.

13. The appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 25, 2025
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