



2026:DHC:1458-DB



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

+ **RFA(COMM) 532/2024 & CM APPL. 72308/2024**

VICTORIA CROSS INDIA PVT LTDAppellant

Through: Mr. Rohan Jaitley, Adv. with
Mr. Harsh Pratap Shahi, Mr. Areeb
Amanullah, Mr. Dev Pratap Shahi, Mr.
Varun Pratap Singh, Mr. Yogya Bhatia,
Advs.

versus

VICTRORINOX AGRespondent

Through: Mr. Shravan Kumar Bansal,
Mr. Rishi Bansal and Ms. Shruti
Manchanda, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

% **17.02.2026**

C. HARI SHANKAR, J.

CM APPL. 72307/2024 (delay)

1. By this application, the appellant in RFA(Comm) 532/2024 seeks condonation of delay of 195 days in filing the present appeal, which has been preferred under Section 13 of the Commercial Courts Act, 2015 against a judgment dated 23 March 2024 passed by the learned District Judge (Commercial-08), Tis Hazari Courts¹.

¹ "learned Commercial Court" hereinafter



2026:DHC:1458-DB



2. As the earlier application filed for condonation of delay did not contain sufficient particulars, Mr. Jaitley, learned Counsel for the appellant, sought and was granted permission to file an additional affidavit explaining the delay of 195 days in preferring the appeal. He has done so.

3. We deem it appropriate to reproduce paras 16 to 22 of the affidavit thus, as the earlier paragraphs deal with the merits of the matter:

“16. That Defendant No.1 (Late Mr. Dinesh Gupta) would look after the day to day affairs, take key decisions over vital aspects for course of business including trademark and copyright related subject with respect to Appellant Company (Defendant No.3) and Defendant No.4-Partnership Firm, until his lifetime/date of demise-08.07.2022. It was only after such passing of impugned Final Order and Judgment dated 23.03.2024 being challenged herein under Appeal, that the Defendant No.2 (Ms. Komal Gupta) was required to look after the day to day affairs and take such key decisions on her own i.e. without the able guidance of her late husband-Defendant No. 1 (Late Mr. Dinesh Gupta) who would have otherwise looked into the day to day affairs, take key decisions with respect to ‘VICTORIA CROSS’ / ‘VICTORIACROSS’ through the related entities and Defendant No.2 (Ms. Komal Gupta) would only discharge necessary obligations and fiduciary duties as being included in the setup as part of business structure being controlled by family. It is apposite to highlight that Ms. Komal Gupta was appointed as Partner and Director in concerned Entities i.e. Partnership Firm (Defendant No.4) and Appellant-Company for the reasons of being a family member i.e. wife of Defendant no.1 (Late Mr. Dinesh Gupta), and had at all times acted only in discharge of necessary obligations and fiduciary duties in consultation with Defendant No.1.

17. That it is necessary to outline, that even though the demise of Defendant No.1-Late Mr. Dinesh Gupta occurred on 08.07.2022 but its serious implications and consequences were felt only after passing of such impugned final order and judgment dated 23.03.2024 as there prevailed exparte ad-interim injunction against



2026:DHC:1458-DB



all the Defendants, including the Appellant from 30.07.2019 till the date of passing of the impugned final order and judgment dated 23.03.2024. Quite notably, from 30.07.2019 to 23.03.2024 (almost 5 years), no business operations, no usage of the trademark, and no day-to-day functioning with respect to usage of ‘Victoria Cross / VictoriaCross’ took place by any of the related entities in Defendant No. 1 to 4 to Suit Proceedings, resulting in a prolonged period of non- operations. However, once the impugned final order and judgment dated 23.03.2024 was passed, decisions with respect to deciding upon the affairs of the Appellant and related entities of ‘VICTORIA CROSS’/ ‘VICTORIACROSS?’, had to be made and this was the very first instance wherein Defendant No.2- Ms. Komal Gupta was compelled to look into the affairs and take decisions on her own owing to demise of Late Mr. Dinesh Gupta.

18. That subsequent to passing of impugned final order and judgment dated 23.03.2024, the Defendant No.2-Ms. Komal Gupta on account of lack of exposure towards running of day to day affairs and no major involvement in any of the key decisions over vital aspects for course of business, trademark and copyright related subjects, legal case related decisions with respect to VICTORIA CROSS/ VICTORIACROSS through its related entities (prior to demise of Defendant No. 1, all of such day to day affairs and key decisions were taken by Defendant No.1) and owing to her mental health upon losing her husband during the Suit Proceedings under challenge in present Appeal, the Defendant No.2 being put in such shoes for the first without complete knowledge with respect to affairs, documents, etc., was unable to understand/comprehend the modalities required for challenging the impugned order from her end.

19. That Defendant No.2 never being entrusted with the day to day affairs and decision making and being put in such shoes for the first time after the passing of impugned final order and judgment dated 23.03.2024 on account of demise of her husband- Defendant No.1 during the Suit Proceedings, the Defendant No.2- Ms. Komal Gupta decided to dissolve the Partnership Firm- Victoria Cross Incorporation (Defendant No. 4 in the Suit Proceedings) which was duly dissolved on 29.05.2024. It is pertinent to note that this decision making solely at the ends of Ms. Komal Gupta and the process for dissolution of Partnership Firm (Defendant No. 4 in the Suit Proceedings) consumed around 66 days from the date of passing of impugned order, resulting as one of the factors for delay in filing the Appeal.

True Copy of Dissolution Deed dated 29.05.2024 of Partnership Firm- Victoria Cross Incorporation (Defendant No. 4 in the



2026:DHC:1458-DB



Suit Proceedings) is annexed herewith and marked as Annexure 'AA-1'

20. That subsequently upon express volition of Ms. Komal Gupta deciding to not continue or be associated with business and works w.r.t. “VICTORIA CROSS / VICTORIACROSS?”, for the reasons of not being able to cope and understand the functioning post the demise of her husband, it was eventually decided around Mid of July, 2024 that she shall assign all her rights to Appellant and consequently, Three (3) Assignment Deeds all of them duly dated 29.07.2024 with respect to all the Registrations and Applications pertaining to VICTORIA CROSS/ VICTORIACROSS’ Trademarks and Copyright, of which she was the owner and proprietor, shall be assigned to Assignee- Victoria Cross India Pvt. Ltd. (Appellant herein) being acted through its other Director-Mr. Arun Singh, Authorised Representative and Deponent herein. The Stamp Papers were purchased on 16.07.2024 and were executed on 29.07.2024. This Assignment of Copyright and Trademark could only be done by Ms. Komal Gupta (Defendant No.2 in Suit Proceedings)- Assignor to aforesaid Assignment Deeds, only after around 125 days from the date of passing of impugned order, resulting as one of the factors for delay in filing the Appeal.

True Copy of Assignment Deeds dated 29.07.2024 executed by Ms. Komal Gupta in favour of Appellant herein are annexed herewith and marked as Annexure 'AA-2 (Colly)'

21. That soon after the aforesaid Assignment, the Defendant No. 2 left her position as Director and Shareholder in the Appellant on 19.08.2024 by transferring the entire Shareholding and Directorship in- Mr. Laxman Singh Negi, joined at the position of Director on 20.08.2024. However, the administrative modalities. at the ends of Ministry of Corporate Affairs consumed another around 40 days from the aforesaid date of 20.08.2024 to confirm the Directorship of Mr. Laxman Singh Negi as the Director of Appellant substituting Defendant No.2 (Ms. Komal Gupta) and consequently, the date of appointment as per Form DIR-12 could only be confirmed on 30.09.2024, only pursuant to which any decisions by the new Board of Directors of the Appellant could have been passed inter alia filing of the present Appeal. Therefore, all such major change with respect to change in Directorship and Shareholding of Appellant owing to Defendant No.2- Ms. Komal Gupta, not able to look after the affairs and take key decisions, consumed around 190 days from the date of passing of impugned order, resulting as one of the factors for delay in filing the Appeal.



2026:DHC:1458-DB



True Copies of Resolution passed by the Directors of the Appellant on 19.08.2024, Master Data of Appellant from MCA Portal reflecting change in Directorship from 20.08.2024 and Form DIR 12 confirming the change of Directorship on 30.09.2024 are annexed herewith and marked as Annexure 'AA-3 (COLLY)'.

22. That the Trial Court Record is a voluminous one of more than 1100 pages and was in the Hard Copy format, which further acted as a constraint to get the records instantly from the office of the previous counsels who were duly engaged before the Trial Court only after around more than 70 days of passing of the Impugned Order the trial court records could be procured from the Ld. Counsel engaged before the Trial Court, resulting as one of the factors for delay in filing the Appeal. The procurement of records before the Trial Court was pivotal to understanding the case and engagement of new counsels for preferring the Appeal.”

4. The application has also placed reliance on para 63 of the judgment of the Supreme Court in ***Government of Maharashtra v. Borse Brothers Engineers & Contractors Pvt. Ltd.***², specifically with reference to the enunciation, in the said paragraph, of the proposition that, in a fit case, if a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond the maximum period of 60 days available under Section 13(1A) of the Commercial Courts Act may be condoned.

5. To our mind, it may not be correct to read the said observation in isolation. We, therefore, deem it appropriate to reproduce para 63 of the decision in ***Borse Brothers in extenso*** thus:

“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

² (2021) 6 SCC 460



2026:DHC:1458-DB



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. 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.”

6. Clearly, in para 63, the Supreme Court has held that, in commercial appeals, ordinarily long periods of delay beyond the period of 60 days available in the Commercial Courts Act should not be condoned. If the delay is short, and is found to be *bona fide* and not negligent, the Court may, in a given case, condone the delay.

7. This position stands reiterated in the following passages from *Jharkhand Urja Utpadan Nigam Ltd. v. BHEL*³:

19. At this stage, we must look into some of the relevant findings recorded by the High Court. The High Court, in para 18 of its judgment, framed the following question for its consideration. Para 18 reads thus:

“18. The question for consideration is:

“whether the applicants herein can plead that the period of limitation for filing the appeal to Commercial Appellate Division of this Court did not commence at all because the certified copy of the judgment had not been issued to the applicants by the Commercial Courts?””

20. The High Court, thereafter, proceeded to answer the aforesaid question as under:

“19. In order to answer this question, we cannot lose sight of the whole purpose of enactment of the Commercial Courts Act, 2015 i.e., to provide for speedy disposal of high value commercial dispute.

³ 2025 SCC OnLine SC 910



2026:DHC:1458-DB



20. No doubt there was a similar provision in Haryana Consumer Protection Rules, 1988 framed under the Consumer Protection Act, 1986 which was considered by the Supreme Court in the case of Housing Board, Haryana (1 supra).

The said provision in the Haryana Consumer Protection Rules, 1988 also provided for communication of the order of the District forum to the parties free of charge in order to avoid the delay as well as to save the parties from the burden of expenses that may be incurred for obtaining the certified copy.

The Supreme Court held that the scheme of the Consumer Protection Act was to provide for better protection of the interest of the consumers as a measure for economical and speedy remedy for the settlement of the dispute and the matters connected therewith and therefore, the said rule should be understood in a manner so that it would protect the interest of the parties before the District forum by making it obligatory on the District forum to provide a copy of the order duly signed and dated by the members of the Bench; and the period of limitation prescribed with regard to filing of an appeal under Section 15 of the said Act therefore, has to be computed as commencing from the date of communication of the order in the manner laid down in the rules.

It was in that context that it was held that mere pronouncement of an order in the open Court would not be enough, but under the scheme of the rules copy of the said judgment has to be communicated to the parties affected by the said order so that the parties adversely affected therefrom may have a fair and reasonable opportunity of knowing the text, reasons and contents thereof so as to formulate grounds of attack before the appellate or before the higher forums. In absence of such communication of signed and dated order, it was held that the parties adversely affected by it will have no means of knowing the contents of the order so to challenge the same and get it set aside by the appellate authority or by the higher forums.

21. Normally petitioners before the District forums under the Consumer Protection Act, 1986 are individuals and not corporate entities like the appellant/instrumentality of the State. So, there is justification for taking the view as regards petitioners in District forums that the provisions in the Haryana Consumer Protection Rules, 1988 which mandated communication of the order of the said forums to the parties



2026:DHC:1458-DB



free of charge was to save the parties from the burden of expenses that may be incurred for obtaining the certified copy.

22. We are afraid that the logic behind the provision contained in Haryana Consumer Protection Rules, 1988 framed under the Consumer Protection Act, 1986 cannot be applied to the litigants before the Commercial Court. For Commercial entities and in particular litigants like the applicants herein who are the State Government Undertakings, the expenses of obtaining a certified copy of a judgment of the Commercial Court would be very small compared to the stakes involved in the litigation.

23. Therefore, they cannot be put on the same footing as a petitioner before the District Consumer forum; and the logic of counting the period of limitation from the date of communication of the order of consumer forum, cannot be applied to a Commercial dispute to which Commercial entities are parties.

24. In our opinion, Order XX Rule 1 CPC as amended and made applicable to the Commercial Courts is to be treated as only directory and not mandatory. So notwithstanding the provision contained in the amended Order XX Rule 1 CPC (mandating issuance of copies to the parties to the dispute through electronic mail or otherwise), if such copies are not issued within a reasonable time, the parties to the dispute have to apply for the same, and after obtaining it, prefer an appeal within the time prescribed in Section 13(1-A) of the Commercial Courts Act, 2015.

25. This is because the speedy resolution of high value commercial dispute cannot be lost sight of. Such an interpretation would be in tune with the scheme and object of the Commercial Courts Act, 2015 and any interpretation of the nature advanced by the counsel for the applicants would defeat the whole purpose of the object of the Commercial Courts Act, 2015 to provide for speedy disposal of high value commercial disputes.

26. Therefore, we reject the contention of the counsel for the applicants that the period of limitation for filing the appeal to the Commercial Appellate Division of the High Court would not commence unless the judgment of the Commercial Court in the Commercial suit was communicated by the said Commercial Court to the parties.

27. We shall next consider whether the delay of 301 days in filing this Commercial Appeal can be condoned in exercise



2026:DHC:1458-DB



of power conferred on this Court under Section 5 of the Limitation Act, 1963.

28. The extent of applicability of Section 5 of the Limitation Act, 1963 to cases falling under the Commercial Courts Act, 2015 fell for consideration of the Supreme Court in *Government of Maharashtra* (2 supra).

29. The Supreme Court in Para 19 of its judgment in *Government of Maharashtra* (2 supra) discussed the statement of objects and reasons behind enacting of the Commercial Courts Act, 2015 and held that period of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed.

In para 32, it held that the condonation of delay under Section 5 of the Limitation Act, 1963 has to be seen in the context of the object of speedy resolution of the dispute.

In para 58, the Supreme Court held that given the object sought to be achieved under the Commercial Courts Act, 2015 i.e., the speedy resolution of the disputes, expression “sufficient cause” in Section 5 of the Limitation Act, 1963 is not elastic enough to cover long delays beyond the period provided by the appeal provision itself; and that the expression “sufficient cause” is not itself a loose panacea for the ill of pressing negligent and stale claims.

In other words, the Supreme Court indicated that in exercise of power under Section 5 of the Limitation Act, 1963 a delay beyond the period of 60 days from the date on which the appeal could have been filed can be condoned (i.e., below 120 days from the date of pronouncement of the judgment) by invoking Section 5 of the Limitation Act, 1963, but where there is negligence, inaction or lack of bona fides, such power ought not to be exercised.

It went further in para 59 by observing that merely because the Government is involved, a different yardstick for condonation of delay cannot be laid down. (This rule would thus apply equally to instrumentalities of Government like the applicants herein).

It held in para 62 that merely because sufficient cause has been made out in the facts of a given case, there is no right in the applicants or the appellants to have the delay condoned.

It concluded in para 63 as under:



2026:DHC:1458-DB



“63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration An and the Commercial Courts Act, for appeals pled under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(l-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. 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.”

(emphasis supplied)

30. Thus, the Supreme Court in *Government of Maharashtra* (2 supra) permitted condonation of delay beyond 60 days in a case falling under the Commercial Courts Act only by way of exception and not by way of rule. If the applicants for condonation of delay had not acted bona fide and had acted in a negligent manner as in the instant case, the delay is not liable to be condoned.

31. In the instant case, the delay in filing the appeal is 301 days - way beyond 60 days + 60 days = 120 days permitted by the judgment of the Supreme Court to be condoned in exercise of power under Section 5 of the Limitation Act, 1963. Therefore, such inordinate delay caused by negligence of the applicants is not liable to be condoned.

32. We may also point out that the applicants were represented before the Commercial Court, Ranchi by counsel and the judgment was obviously pronounced in the presence of the counsel.

Though the order was pronounced on 09.10.2023 it appears that the application for issuance of certified copy was made on 30.08.2024, it was made ready on 07.09.2024, and the appeal was filed on 04.10.2024.

If the Commercial Court had not communicated the copy of its judgment to the applicants within the reasonable time, it was incumbent on the part of the counsel for the applicants or the employees in the Legal Department of the applicants to apply for issuance of certified copy from the Commercial



2026:DHC:1458-DB



Court, but they have failed in their duty to apply for it when they did not receive it within a reasonable time.

Their negligence resulted in the inordinate delay of 301 days in filing this appeal.

33. The applicants cannot blame the respondent for not communicating to them about the disposal of the appeal and for not making any demand of payment in terms of the decree of the Commercial Court.

34. They also cannot take advantage of the negligence of the counsel engaged by them in not informing the applicants about the judgment of the Commercial Court. This is because the applicants have a Legal Department and employees engaged by the applicants in that department have a duty to monitor what is happening in the cases to which the applicants are parties, keep track of the progress of the said cases and the decisions therein, and ensure that applications for issuance of certified copy are made to the concerned court so that the appeals, if required, can be preferred within the period of limitation prescribed by law.”

21. We are in complete agreement with the line of reasoning assigned by the High Court.

8. In the present case, the delay is of as much as 195 days from the date by which the appeal was required to be filed.

9. We have perused the contents of the additional affidavit filed by the appellant and heard Mr. Rohan Jaitley, learned Counsel for the appellant, at length.

10. Mr. Jaitley submits that the delay was occasioned because Defendant 2 in the suit, Ms. Komal Gupta, the wife of Mr. Dinesh Gupta, was traumatised owing to her husband’s death and, as there was a stay operating, the appellant was also non-operational till the passing of the impugned judgment dated 23 March 2024. It was only after the impugned judgment was passed that Ms. Komal Gupta, as



2026:DHC:1458-DB



she was not in a position to handle the affairs, dissolved the partnership firm which was the holder of the rights in the trademark in question and thereafter assigned the rights to the appellant company which is now prosecuting the appeal. She also subsequently resigned her from directorship of the company.

11. We have considered the submissions in the light of averments contained in the additional affidavit filed by the appellant and, keeping in mind the law declared in *Borse Brothers* and *Jharkhand Urja Utpadan*.

12. The demise of Mr. Dinesh Gupta, though an unfortunate circumstance, can hardly be of any relevance, as he died on 8 July 2022, which was almost a year and half prior to the passing of the judgment under challenge on 23 March 2024.

13. Even if it were to be assumed that for the entire period from 8 July 2022 till 23 March 2024, the affairs of the partnership firm remained in a hiatus and suddenly rejuvenated after the impugned order was passed on 23 March 2024, there is nonetheless no explanation for (i) the period of 66 days from the passing of the impugned order till the dissolution deed dated 29 May 2024, (ii) the period of two months from the dissolution deed dated 29 May 2024 and the assignment deed dated 29 July 2024, and (iii) the period thereafter, till the filing of the present appeal.

14. In the process, a delay of 195 days in filing the appeal has been



2026:DHC:1458-DB



occasioned.

15. We do not enjoy, while dealing with aspects of delay in commercial appeals, the same latitude which we enjoy while dealing with non-commercial appeals or appeals filed under Section 96 of the CPC. We are governed by the principles enunciated in *Borse Brothers* and *Jharkhand Urja Utpadan*.

16. Applying the said principles, we are not satisfied that a case for condonation of delay of as much as 195 days has been made either in the original application for condonation of delay or in the averments contained in the additional affidavit filed by the appellant.

17. Accordingly, the prayer for condonation of delay is rejected.

18. The application is dismissed.

RFA(COMM) 532/2024

19. Accordingly, RFA(Comm) 532/2024 is also dismissed on the ground of delay without going into merits.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

FEBRUARY 17, 2026

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