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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 28th May, 2025
+ **FAO (COMM) 142/2025 & CM APPLs. 32316-18/2025**
UNION OF INDIAAppellant
Through: Mr. Farman Ali, Mr. Taha Yasin, Ms.
Usha Jamnal and Mr. Dhruv Arora,
Advs.
versus
M/S RAJIV AGGARWAL (ENGINEERS AND
CONTRACTORS)Respondent
Through: None.
CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present appeal has been filed by the Appellant- Union of India under Section 37(1) (c) of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*') read with Section 13(1) of the Commercial Courts Act, 2015, *inter alia*, assailing the judgement dated 1st July, 2023 (hereinafter, '*impugned judgment*') passed by the Id. District Judge, Commercial Court-02, Central District, Tis Hazari Courts, Delhi in ***OMP (COMM) No. 108/2023 titled Union of India v. M/s Rajiv Aggarwal (Engineers & Contractors)***. *Vide* the impugned judgement, the petition under Section 34 of the Act has been dismissed on merits.
3. The brief background of the present case is that a tender was invited by the Northern Railway for construction of the boundary wall, road wheel lathe, and all other allied works at the Coaching Terminal at Shakur Basti and the Diesel Shed at Shakur Basti. The total cost which was accepted was



Rs.2,50,67,545/-. The contract was formally awarded to the Respondent on 16th December, 2015 and the completion date was 15th September, 2016.

4. According to the contractor who is the Respondent before this Court, the Railways had terminated the contract on 13th June, 2016 which was illegal.

5. Disputes arose because of delay in the project for which the contractor blamed the Railways and the Railways took the opposing stand. The contractor then invoked the arbitration clause and filed a claim petition before the Id. Arbitrator. The matter was referred to the Delhi International Arbitration Centre (hereinafter, '*DIAC*') and a sole Arbitrator was appointed.

6. An award was rendered on 15th June, 2018 wherein the Id. Sole Arbitrator framed various issues and awarded some of the claims of the Contractor by award dated 15th June, 2018, pronounced on 24th July, 2018.

7. Thereafter, the said award was challenged by the Appellant under Section 34 of the Act in ***OMP (COMM) No. 108/2023***. *Vide* the impugned judgment, the Id. District Judge dismissed the petition filed under Section 34 of the Act on the ground that the Arbitral Tribunal had duly explained the reasons for arriving at its decision and the reasoning provided in the Award is just, fair and reasonable.

8. The present appeal has been filed under Section 37 of the Act challenging the impugned judgment upholding the award.

9. Under Section 37(1)(c) of the Act, an appeal would be maintainable against an order setting aside or refusing to set aside an arbitral award. However, the time period for filing such an appeal is governed by Section 13 of the Commercial Courts Act, 2015. The period provided for filing of an appeal as per Section 13(1) of the Commercial Courts Act, 2015 is 60 days from the date of judgment/ order, however, by way of judicial decisions, the



provisions of the Limitation Act, 1963 have also been held to be applicable to such appeals.

10. The time period within which an appeal under Section 37 of the Act can be filed has been discussed and laid down in detail by the decision of the Supreme Court in ***Government of Maharashtra (Water Resources Department) Represented By Executive Engineer v. Borse Brothers Engineers & Contractors Pvt. Ltd.***, (2021) 6 SCC 460. In the said judgment the Supreme Court has considered the decisions in ***N. V. International v. State of Assam***, (2020) 2 SCC 109 and ***Union of India v. Varindera Constructions Ltd.***, (2020) 2 SCC 111 .

11. In ***Varindera Constructions (Supra)***, the Court had held that a total of 120 days would be available for filing of such an appeal.

12. In ***Borse Brothers (Supra)***, the Supreme Court was dealing with three cases arising from judgments of the Bombay High Court, the Delhi High Court and the Madhya Pradesh High Court. The former two High Courts had taken a view that delay in filing of an appeal under Section 37 of the Act beyond 120 days would not be condonable, however, the Madhya Pradesh High Court had taken a view that a delay of 57 days would be liable to be condoned. While dealing with these cases, the Supreme Court 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 of 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 filed 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. 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."*

13. A conjoint reading of the above two extracts of the judgment in ***Borse Brothers (Supra)*** would show that the object of speedy disposal under the Act would only be achieved by making such appeals also bound by the limitation period which is prescribed for filing of petitions under Section 34 of the Act. The delay beyond the prescribed period has been held to be not condonable. Under such circumstances, the Supreme Court refused to condone delay of 131 days in ***State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.*** 2020 SCC OnLine Bom, 427 days in ***Union of India v. Associated Constructions Co.,*** 2019 SSC OnLine Del 10797 as also 75 days in ***Borse Brothers (Supra)***.

14. Coming to the facts of the present case, the present petition has been filed by the Union of India with an application for condonation of delay of 613 days. The reasons given in the application are that the matter was initially marked to different panel Counsel of the Railways and the file movement



constitutes sufficient cause for condoning the delay. The relevant portion of the application is set out below:

“3. It is respectfully submitted that the Appellant received the Impugned Order passed by the Ld. District Judge, Commercial Court, Delhi, on 05.06.2023. After receipt of the said order, necessary steps were promptly initiated in relation to the present matter. The case file was thereafter forwarded to the Sr. Law Officer/DLI, Railway, along, and the contesting advocate was requested to furnish a legal opinion on the Impugned order. The legal opinion from the learned counsel was received on 07.08.2023. Subsequently, the Sr. Law Officer/DLI, Railway, also opined in favour of preferring an appeal against the said order. Accordingly, the file was processed for obtaining the requisite approval from the competent authority for filing the appeal. After, grant of the necessary approval, the Appellant approached the Litigation Cell, Delhi High Court, for the nomination of counsel to represent the Union of India in the matter. The Litigation Cell, further sought the opinion of the Deputy DGM/Law, Northern Railway Headquarters, through proper official channels. The said Opinion was duly obtained and forwarded to the Litigation Cell, Delhi High Court. Thereafter, the counsel was nominated by the Litigation Cell for drafting and filing the appeal. Thereafter, the complete set of relevant documents was provided to the nominated counsel on 18.03.2024. However, due to certain administrative issues, the previously nominated counsel was changed, and a new counsel was detailed for filing the appeal. The draft appeal was then prepared, processed, checked, and legally vetted. The same was duly signed and handed over to the present counsel for filing before this Hon’ble Court.

4. That in view of above mentioned obligatory and unavoidable circumstances, there is some delay in filling of the aforesaid appeal which is neither



intentional, nor deliberate either on the part of department or any authorities rather due to movement of file and also due to compliance of official procedure by the authorities which was beyond the control of the appellant.”

15. The Court has considered the matter. The law in this regard is quite well settled and clear. Recently, in a similar case involving an appeal under Section 37 of the Act, a Co-ordinate Bench of this Court in ***Delco Infrastructure Projects Pvt. Ltd. & Ors. V. Intec Capital Ltd. & Anr., 2025 SCC OnLine Del 2158*** has also refused to condone the delay under Section 13(1)(a) of the Commercial Courts Act, 2015 in the following terms:

“10. In N.V. International v. State of Assam, (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...

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.”

16. The reasons given in the application for condonation of delay would not constitute sufficient cause. Moreover, the award is dated 15th June, 2018 and the judgment pronounced by the Commercial Court is dated 1st July, 2023. There was no reason as to why such a long period of delay ought to be condoned inasmuch as mere file movement is not a sufficient cause in such matters.

17. Under the overall facts and circumstances of this case and in view of the pronouncement in ***Borse Brothers (Supra)***, the delay would not be liable to be condoned.



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18. The appeal is dismissed on the ground of being barred by limitation. Pending applications, if any, are also disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 28, 2025
dj/ck