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

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Date of Decision : 25.02.2025

+ **W.P.(C) 2383/2025 & CM APPL. 11272/2025**

GOVERNMENT OF MADHYA PRADESH
DEPARTMENT OF ENERGY

.....Petitioner

Through: Mr Nidesh Gupta, Sr Advocate with
Mr Aashish Anand Berenard, Mr
Vikram Dwivedi and Mr Paramhans
Sahani, Advocates.

versus

POWER FINANCE CORPORATION LTD

.....Respondent

Through: Mr Deepak Khurana, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice.
2. The learned counsel for the respondent accepts notice.
3. With the consent of the learned counsels for parties, the petition is taken up for hearing.
4. The petitioner (Government of State of Madhya Pradesh, Department of Energy) has filed the present petition, *inter alia*, impugning an order



dated 10.11.2022 (hereafter *the impugned order*) passed by the learned Debts Recovery Tribunal-III, Delhi (hereafter *the DRT*) whereby the petitioner's application for condonation of delay in filing the written statement (hereafter *the WS*) to the Original Application (TA No.29/2022) captioned *Power Finance Corporation Limited v. Government of Madhya Pradesh, Department of Energy* filed before the learned DRT, was rejected on the ground that it was barred by limitation.

5. The petitioner also impugns an order dated 15.04.2024 (hereafter *the recall order*) whereby the application of the petitioner for recalling of the impugned order was summarily rejected.

6. Being aggrieved, the petitioner had appealed before the learned Debts Recovery Appellate Tribunal, Delhi (hereafter *the DRAT*), however it is stated that the appeal (Misc Appeal No.179/2024 captioned *Government of Madhya Pradesh, Department of Energy v. Power Finance Corporation Limited*) was listed before the learned Tribunal on more than fourteen occasions in the recent past but was not taken up for hearing. It has been repeatedly adjourned.

7. In the aforesaid context, the petitioner also prays in the alternative that the directions be issued to the learned Tribunal to decide the aforesaid appeal in a time bound manner.

8. We do not consider it apposite to issue any directions to the learned Tribunal in this regard. However, in the peculiar circumstances of the present case and considering the issue involved is in narrow compass, we



consider it apposite to decide the dispute on merits.

9. The learned DRT has passed the impugned order on the ground that the WS was not filed by the petitioner within the stipulated period of thirty days and the delay in filing such WS exceeds the further period of fifteen days that could be condoned by the learned DRT. Additionally, the learned DRT also held that the petitioner had not furnished sufficient cause for justifying the delay in filing the WS.

10. There is no cavil that it is mandatory that a WS of defense is required to be filed within the period of thirty days of the service of the Original Application (hereafter *the OA*) on the defendants and the delay in filing the WS beyond the period of fifteen days cannot be condoned.

11. Thus, in the given facts of the case, the questions that falls for consideration are – (i) whether the WS filed by the petitioner was within the period of delay that could be condoned by the learned DRT; and if so, (ii) whether the petitioner had furnished sufficient cause for condonation of such delay.

12. At this stage, it would be relevant to refer to the events, which are undisputed.

13. The respondent had filed the OA (Original Application No.509/2022) under Section 19 of the Recovery of Debts and Bankruptcy Act, 1993 (hereafter **the RDB Act**). The notice issued by the learned DRT along with the complete copy of the OA was served to the petitioner by email on 30.08.2022 and was delivered through courier on 02.09.2022. Undisputedly,



the period of thirty days available for filing the WS commenced from 30.08.2022 and thus, the petitioner was required to file the WS to the OA on or before 30.09.2022. The petitioner filed its WS electronically on 14.10.2022 and, thereafter, filed the hard copy of the WS in the Registry of the learned DRT on 20.10.2022.

14. It is the petitioner's case that since it had filed the WS within the period of fifteen days from 30.09.2022, the learned DRT had the jurisdiction to condone the delay in filing the same. However, the learned DRT has proceeded on the basis that the period of the limitation was required to be reckoned with reference from the date on which the petitioner had filed the WS physically, that is, on 20.10.2022. It is the petitioner's case that the date of the filing of the electronic WS was required to be considered as the date of the filing of WS for the purposes of limitation and not the date on which the physical copy of the WS was filed.

15. It is material to note that in exercise of powers under clause (ccd) of sub-Section 2 of Section 36 of the RDB Act, the Central Government had amended the Debts Recovery Tribunals and Debts Recovery Appellate Tribunals Electronic Filing Rules, 2020 (hereafter **the *Electronic Filing Rules***) to stipulate that e-filing of the pleading is mandatory where the debt to be recovered as mentioned in the OA is ₹ 100 crores or above.

16. At this stage, we also consider it apposite to set out Section 19(5)(i) of the RDB Act, which reads as under:-

“19. Application to the Tribunal.

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(5) (i) the defendant shall within a period of thirty



days from the date of service of summons, present a written statement of his defence including claim for set-off under sub-section (6) or a counter-claim under sub-section (8), if any, and such written statement shall be accompanied with original documents or true copies thereof with the leave of the Tribunal, relied on by the defendant in his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, the Presiding Officer may, in exceptional cases and in special circumstances to be recorded in writing, extend the said period by such further period not exceeding fifteen days to file the written statement of his defence;”

17. The learned counsel for respondent (Power Finance Corporation Limited) has also referred to sub-rule (1) of the Rule 12 of The Debts Recovery Tribunal (Procedure) Rules, 1993 (hereafter *the Procedure Rules*). The same is reproduced below:

“12. Filing of reply and other documents by the respondent
(1) The defendant may file two complete sets containing the reply to the application along with documents in a paper book form with the registry within one month of the service of the notice of the filing of the application on him.”

18. The Rule 3 and 4 of the Electronic Filing Rules as amended by the Debts Recovery Tribunals and Debts Recovery Appellate Tribunals Electronic Filing (Amendment) Rules, 2021 (hereafter the *Amendment Rules*) is set out below:

“**3. Applicability.** - (1) These rules shall apply to e-filing, display of interim or final orders or directions passed by the Tribunals on the common website in the e-DRT system and to the electronic issuance and e-service of intimations.



(2) The e-filing of pleadings by applicants is mandatory and any other form of filing shall not be taken on record.”

Provided that e filing of pleading shall be mandatory where the debt to be recovered, as mentioned in the application, is rupees one hundred crore and above.

4. Procedure for e-filing.- (1) Pleadings as prescribed for specific purposes under the Recovery of Debts and Bankruptcy Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, may be filed by an applicant in electronic form, through the e-DRT system;

(2) After e-filing, the applicant shall file a hard copy of the said pleading, along with a copy of the acknowledgment for e filing within seven working days of the day of e-filing in person or by his agent or by a duly authorized legal practitioner before the Registry of the Tribunal;

(3) **Where the pleading is filed in electronic form and in paper form by the applicant, before the Registry, the date of filing of the pleadings in the Tribunal shall be the date of submission of the last page of a pleading through the e-DRT system;**

(4) The Tribunal may exercise its discretion to allow certain related documents to be filed only in the conventional manner, even when the applicant has made the pleading e-filing.”

[emphasis added]

19. It is apparent from the conjoint reading of the Procedure Rules that it is necessary for the defendant to file two complete sets containing its reply to the OA alongwith the documents in the paper book form with the Registry within one month of the service of the notice of filing of the OA on him. It was also mandatory for the defendant to file the same electronically in terms of Rule 3 of the Electronic Filing Rules. The question whether the date of



filing the physical copy of the WS or the electronic filing is required to be considered for the purposes of limitation as stipulated under Section 19(5)(i) of the RDB Act, is required to be answered in reference to Sub-rule (3) of Rule (4) of the Electronic Filing Rules, which expressly provides that if pleadings are filed in electronic form and in paper form by the applicant before the Registry, the date of filing the pleadings shall be the date of submission of last page of pleadings through the e-DRT system. Admittedly, the same was done on 14.10.2022, which was within the period that could be condoned by the learned DRT.

20. In view of the above, the impugned order, which proceeds on the basis that the petitioner's filing of the WS was beyond the period that could be condoned, is erroneous.

21. It is material to note that the respondent had not objected to the petitioner's application for condonation of delay before the learned DRT. This is expressly noted in paragraph no.3 of the impugned order. Notwithstanding that there was no objection in this regard, the learned DRT proceeded to reject the petitioner's application for seeking condonation of delay on an erroneous assumption that the WS was filed beyond the period of fifteen days that could not be condoned.

22. The next question to be addressed is whether the petitioner has sufficient cause for explaining the delay in filing the WS. The learned counsel for the respondent submitted that the learned DRT had rejected the petitioner's application for condonation of delay as it did not furnish any 'sufficient cause' for condoning the delay.



23. It is necessary to note that the language of the proviso to Section 19(5)(i) of the RDB Act makes it clear that the DRT is not required to take a liberal approach in matters of condoning the delay in filing the WS. The same is clear from the use of the expressions ‘exceptional cases’ and ‘special circumstances’ in the proviso to Section 19(5)(i) of the RDB Act. Thus, the learned DRT is required to be satisfied that the defendant has presented an exceptional case or special circumstances for extending the period for filing the WS. Further, it is necessary that the learned Presiding Officer of the DRT record the same in writing.

24. In the present case, the only explanation provided by the petitioner in its application seeking condonation of delay before the learned DRT was that on receipt of the OA on 02.09.2022, the same was forwarded to the relevant Section. Thereafter, deliberations were held and the matter was discussed with the office of the Advocate General at Jabalpur, Madhya Pradesh. Thereafter the reply was prepared. It is stated that since the administrative approvals were required for finalisation of the reply and Dusshera holidays intervened, the filing of the WS was delayed. The relevant extract of the application setting out the explanation of delay is reproduced below:-

“1. It is most respectfully submit that the respondents/State of MP is filing its reply to the Original Application filed by the applicant. In this regard it is most respectfully submitted that the hard copy of the Original Application was received at the Ministry (Mantralaya), Bhopal on 02.09.2022 and thereafter, same was forwarded to the relevant section, accordingly deliberations were held and the matter was discussed with the Office of Advocate General at



Jabalpur by the Department and then only reply was prepared.

2. It is submitted that since the administrative approvals have to be taken for finalization of the reply and also in between there were Dusshera Holidays, therefore, there is delay occurred in filing of reply.”

25. The explanation as provided by the petitioner lacks specifics and does not explain each day of the delay. However, it does set forth certain elements which had resulted in delay. The first cause of delay is the time taken for discussion with Advocate General at Jabalpur. The second cause is that the administrative approvals that were required. And the third cause is the Dusshera holidays.

26. Considering the language of the proviso to Section 19(5)(i) of the RDB Act, it was necessary for the petitioner to provide further details in explaining each day delay. However, it is noted that the petitioner had furnished a detailed affidavit before the DRAT, pursuant to the liberty granted by the learned DRAT. It is relevant to set out the following extract from the affidavit of the petitioner for presenting special circumstances for the purposes of seeking condonation of the delay:-

“14. On the very next day, i.e., 8.09.2022, a meeting was conducted with officers of the MP Power Management Co. Ltd., the Principal Secretary, Energy Department of the State of MP and the counsel for GoMP, who was appearing before NCLT, and it was suggested that a forensic audit be conducted in view of the judgement/ observations made by the NCLAT in Company Appeal (AT) 237 OF 2017 vide judgement dated 12.03.2018 and as upheld by the Supreme Court in Civil Appeal 5028/2018 vide order dated 18.5.2018.



15. Thereafter, on 9.9.2022, the applicant (PFC) served copy of the impleadment application and interim applications on the State Government and by letter dated 9.9.2022, the same were forwarded to MP Power Management Co. Ltd. A copy of the letter dated 9.9.2022 is being filed as **Annexure A/2.**

16. On 13.09.2022 a written legal opinion was issued by the Additional Advocate General to GoMP for issuing a request to Union of India for conducting a forensic audit as per NCLAT and Supreme Court judgement.

17. Thereafter, on 22.09.2022, the OIC of the case was appointed and the matter was sent to the counsel for drafting of the written statement. A copy of the order no. 637 dated 22.09.2022 appointing the OIC is being filed as **Annexure A/3.**

18. That, the counsel drafted the written statement and the same was shared with the company for approval on 22.9.2022 and then comments were shared with the OIC and the first draft was prepared by 26.9.2022.

19. That, it is pertinent to mention that as the applicant is a central government PSU and the Defendant (at DRT) is the State of MP, and, therefore, in an attempt to avoid litigation between Union and State, it was decided to resolve the dispute through discussions as the NCLAT had already given a judgement and the same was upheld by the Hon'ble Supreme Court and, therefore, the Chief Secretary of the State of Madhya Pradesh wrote a letter to the Union of India highlighting the present dispute with an aim to resolve it amicably and not enter into litigation dispute. A copy of the letter dated 10.10.2022 is being filed as **Annexure A/4.**

20. However, the preparations for finalization of reply were still ongoing, as in the event there was no settlement then the reply was to be filed and, therefore,



another draft copy of the reply was shared on 9.10.2022 and the same was finalized on 14.10.2022 after numerous emails exchanges between the Counsel and the OIC. That, however, since no resolution was forthcoming and the period of 45 days was lapsing, the respondent filed its written statement, along with the application for condonation of delay, on 14.10.2022.

21. Thus, it is evident that the respondent was seized of the matter from the date of service of the notice and the delay, if any, in filing the written statement is not deliberate, but rather on account of bonafide and exceptional reasons and, therefore, the delay deserves to be condoned in the interest of justice.”

27. The aforesaid affidavit, thus, indicates that there were certain mitigating circumstances which that had resulted in the delay in filing the WS. Considering that the DRT’s discretion for condoning the delay is confined to a limited period of fifteen days, the aforesaid explanation, in our view, would present a special circumstance for condoning the delay in filing the WS.

28. In view of the above, the present petition is allowed. The impugned order rejecting the petitioner’s application for condonation of delay and the recall order rejecting the petitioner’s application for recall of the impugned orders are set aside.

29. The learned DRT is directed to take the WS filed by the petitioner on record.

30. The appeal (Misc Appeal No.179/2024) preferred by the petitioner before the learned Tribunal does not survive in view of the aforesaid order.



The same stands disposed of.

31. The petition is disposed of in the aforesaid terms. Pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

FEBRUARY 25, 2025

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Click here to check corrigendum, if any