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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 185/2023 and CM Nos.47859/2023 & 59604/2023**

M/S DELHI MSW SOLUTIONS LIMITED Appellant
Through: Mr Matrugupta Mishra, Ms Sonakshi
and Ms Akanksha V. Ingole,
Advocates.

versus

AMITY SOFTWARE SYSTEMS LIMITED
(FORMELY AKS SOFTWARE LIMITED AKS) Respondent
Through: Mr Saurabh Bhargavan and Ms
Ibansara Syiemlieh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **06.02.2024**

CM No. 47858/2023

1. The appellant has filed the present application seeking condonation of 191 days delay in filing the present appeal against a judgment dated 13.12.2022 (hereafter '**the impugned judgment**') passed by the learned Commercial Court in OMP(COMM) 56/2019 captioned *Delhi MSW Solutions Ltd. (Ramky) v. Amity Software Systems Ltd.*

2. The appellant had filed the above-captioned application, OMP(COMM) 56/2019 under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning an arbitral award dated 20.02.2019 (hereafter '**the impugned award**') rendered by the Sole Arbitrator. The learned Commercial Court had rejected the said application and had declined to interfere with the impugned award. The learned



Commercial Court found that the impugned award did not fall foul of the public policy of India and did not suffer from any patent illegality vitiating the said award.

3. The appellant filed the present appeal on 21.08.2023. Clearly, the delay in filing the present appeal is significant. The explanation provided by the appellant for the delay in filing the appeal reads as under:

- “9. It is submitted that the delay has been caused due to the change in the person-in-charge and the information asymmetry created from his vacuum. The person-in-charge of the project dealing with the Respondent Company having knowledge of all the necessary documentation and facts of the case was transferred from the Appellant Company. This ultimately lead to gaps in collating and delay on account of requisition of documents required for the filing the captioned matter.
10. That the delay has further been caused due to yearly audit compliances that took place at the end of FY 2022-23. The regulatory and legal team of the Applicant/Appellant were completely engaged in the audit of the Appellant Company, leading to resource constraint at the end of the Appellant to manage necessary information and properly and effectively instruct the counsel representing the Appellant.
11. That the person-in-charge responsible for giving approval on the facts which was necessary for the filling o the captioned Appeal was in personal difficulty and therefore the file could not move further without managements approval.”

4. As is apparent from the above, the explanation provided is sketchy and does not corelate any event to specific dates or time period. It does not disclose the identity of the person incharge of the project who was changed



and also does not provide any reason as to why the said person was not accessible to the appellant. We are also unable to appreciate as to how audit compliances would be a ground for condoning the delay in filing the present appeal. Further, want of Management's approval cannot be countenanced as a ground for such an inordinate delay in filing the appeal.

5. In *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. M/s Borse Brothers Engineers and Contractors Pvt. Ltd.: (2021) 6 SCC 460*, the Supreme Court had explained as under:

“53.The question still arises as to the application of Section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in *N.V. International v. State of Assam: (2020) 2 SCC 109*, which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.

* * *

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(1A) 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....”



6. One of the objects of the Commercial Courts Act, 2015 is to provide for an expeditious adjudication of commercial disputes. This, essentially, requires the parties to a commercial dispute to adhere to the timelines as provided. The time available for filing the appeal under Section 37 of the A&C Act is sixty days. The delay in the present case exceeds thrice the said period. The explanation provided for the said delay cannot by any stretch be considered as a 'sufficient cause' preventing the appellant from preferring the present appeal.

7. The application is, accordingly, dismissed. Consequently, the appeal is dismissed as well.

8. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 06, 2024
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