



\$~70

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO (COMM) 35/2024; CAV 80/2024; CM APPL. 10423/2024;**
CM APPL. 10424/2024 & CM APPL. 10425/2024

UNION OF INDIA Appellant

Through: Mr. K.D. Sharma, SPC.

versus

M/S GITWAKO FARMS PRIVATE LIMITED

& ANR

..... Respondents

Through: Mr. Sameer Rohatgi, Adv. with Mr.
Akshit Pradha, Mr. Kartikey Singh,
and Mr. Prateek Charan, Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

%

20.02.2024

CAV 80/2024

1. In view of the appearance entered on behalf of the respondents, the Caveat stands discharged.

CM APPL. 10423/2024

2. Exemption is allowed, subject to just exceptions.

3. The application is disposed of.

FAO (COMM) 35/2024 and CM APPL. 10425/2024 [delay]

4. The appellant has filed the above-captioned appeal impugning the judgment dated 19.08.2023 (hereafter *the impugned judgment*) passed by the learned Commercial Court in OMP (COMM) 9/2021 captioned *Union of India Vs. M/s Gitwako Farms India Pvt. Ltd. and Another*. The appellant had preferred the said application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*) impugning an Arbitral Award dated 15.06.2020 (hereafter *the impugned award*).



5. The Arbitral Tribunal had awarded an amount of ₹16,67,136/- as the Arbitral Tribunal found that the rejection of “4979.200 MT/KGs/GMs” of goods supplied by the respondent could not have been rejected. The Arbitral Tribunal also found that the said rejection was without following the norms.

6. Aggrieved by the impugned award, the appellant had preferred the aforesaid application – OMP (COMM) 9/2021 – for setting aside the impugned award before the learned Commercial Court, which was rejected by the impugned judgment. There is an inordinate delay in filing the present appeal as the impugned judgment was delivered on 19.08.2023, however, the present appeal has been filed on 15.01.2024.

7. The appellant has filed the present application (CM APPL. 10425/2024) seeking condition of delay of 90 days in filing the above-captioned appeal. The only explanation provided by the appellant for the said delay, as set out in the application, is reproduced below:

“4. It is respectfully submitted that the Appellant could not file the Appeal within the limitation period and the same is duly regretted. The delay is humbly explained as under:

- a. That the judgment in OMP(COMM) 9/2021 was passed by the Learned single judge on 19.08.2023 and the Appellant had received a copy of the same from its counsel on 29.08.2023. The Appellant from 01.09.2023 till 11.10.2023 was obtaining an opinion from the government counsel in respect of fitness of case to be appealed under Section 37 of the Arbitration and Conciliation Act, 1996. The Appellant had received the opinion on fitness of case on 11.10.2023. Thereafter, it took some time for the case to be marked to the counsel for filing the present Appeal. The case was marked to the counsel for drafting the Appeal on 20.10.2023.



- b. That thereafter it took time to supply the necessary documents to the counsel for drafting the appeal. The delay in collating the documents, necessary for drafting the appeal, had occurred because the documents were pertaining to the calendar year 2013. Finally, the documents were provided to the counsel on 04.12.2023. The draft appeal for vetting and signatures of the concerned officials was received from the counsel on 22.12.2023. The drafts were approved by the office of the Appellant on 04.01.2024.”

8. We are unable to accept that the above reasons present a sufficient cause, which prevented the appellant from filing the above-captioned appeal within the stipulated period of 60 days.

9. According to the appellant, it has obtained the opinion from the government counsel to the effect that this was a fit case for filing the appeal, on 11.10.2023. Thereafter, it was also marked to the counsel for drafting the appeal on 20.10.2023. However, it is stated that the documents necessary for filing the appeal were not provided to the counsel for almost two months. The same were provided to the counsel on 04.12.2023. The draft appeal for vetting and signatures was received from the counsel on 22.12.2023 and the draft of the present appeal was approved on 04.01.2024.

10. The above-captioned appeal was filed 11 days thereafter.

11. It is difficult to accept that the appellant had obtained the opinion of the counsel without necessary documents. Thus, the documents were obviously available with the appellant at the material time. It is also not possible for this Court to accept that it took two months’ time for the relevant documents to be collated, considering that all relevant documents would have necessarily been filed along with the application under Section



34 of the A&C Act. The explanation that it took almost two months' time for the documents to be provided is not persuasive.

12. In the case of *Postmaster General and Ors. v. Living Media India Ltd. and Anr.*: (2012) 3 SCC 563, the Supreme Court has observed as under:

“27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
* * *

29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.”

13. The Supreme Court has also held that the Court's approach in condoning the delay in matters involving commercial disputes cannot be liberal. One of the objectives of the Commercial Courts Act, 2015 is to ensure expeditious disposal of commercial disputes. This objective cannot be permitted to be frustrated by countenancing delays, without credible



justification. The timelines as stipulated are required to be followed.

14. In *N.V. International v. State of Assam & Ors: (2020) 2 SCC 109*, the Supreme Court, taking a cue from Section 34(3) of the A&C Act held that a court would not have the power to condone the delay beyond a period of thirty days in filing the appeal under Section 37(1)(c) of the A&C Act. This decision was overruled by the Supreme Court in *Government of Maharashtra (Water Resources Department) represented by the Executive Engineer v. Borse Brothers Engineers and Contractors Private Limited.: (2021) 6 SCC 460*, it was held that the power of the court to condone delay was not confined to a period of thirty days as stipulated under the proviso to Section 34(3) of the A&C Act. However, the Supreme Court also held 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* 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....”

15. In the present case, as noted above, we are unable to accept that the reasons provided by the appellant present a sufficient cause that prevented the appellant from filing the appeal within the stipulated period.

16. In view of the above, the application for condonation of delay, which is one and a half times the original period of filing the appeal, cannot be condoned.

17. The application is, accordingly, dismissed.

18. Consequently, the above captioned appeal and all pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

FEBRUARY 20, 2024

SA/M

Click here to check corrigendum, if any