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

+ O.M.P. (COMM) 494/2016

M/S GEO MILLER & CO PVT LTDPetitioner

Through: Mr. S.D. Singh, Ms. Kamla Prasad, Ms. Meenu Singh and Mr. Siddharth Singh, Advs.

versus

INDIAN OIL CORPORATION LIMITEDRespondent

Through: Ms. Alkanshree Dahar, Ms. Sanskriti and Mr. V. Bhaskar, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

% **31.07.2024**

I.A. 2975/2015

1. By this application, the petitioner seeks condonation of delay of 120 days in re-filing of OMP (COMM) 494/2016.

2. There is no dispute about the fact that the impugned award was received by the petitioner on 30 November 2011 and that the present challenge under Section 34 of the Arbitration and Conciliation Act 1996 was first filed before this Court on 28 February 2012.

3. Ms. Dahar, learned Counsel for the respondent, submits that what was filed on 28 February 2012 was merely an urgent application and a memo of parties but she is unable to substantiate this submission.



4. It is difficult for this Court to believe that the Registry of this Court would merely accept an urgent application and a memo of parties filed by any advocate in a case.

5. This Court had, for this purpose, called for a report from the Registry as to the exact papers which were filed on 28 February 2012. The Registry has reported that, as the petition was filed manually, the exact details of the objections which were raised are not forthcoming. However, the registry has confirmed that a petition with certain documents was indeed filed by the petitioner on 28 February 2012.

6. In that view of the matter, I am of the opinion that the petitioner is entitled to the benefit of doubt and this Court would treat the petition as having been originally filed within time.

7. Ms. Dahar, thereafter submits that, even if the petition is to be treated as filed within time, the petitioner is not entitled to condonation of delay in re-filing.

8. She submits that the present application does not set out any cogent ground which can be treated as sufficient cause for condoning the delay in re-filing.

9. For this purpose, paras 2 to 13 of the present application may be reproduced thus:

“2. That the Petitioner has filed the present petition against the award dated 30.11.2011 passed by Shri B.S. Girdhar Ld. Sole Arbitrator within stipulated time on 28.2.2012. However registry pointed out the following defects :-



i) Plaint be filed in accordance with the new format.

ii). Rest of objections will be raised later on/ according to correct classification nomenclature of the case.

3. That the Petition was taken back by the advocate for the Petitioner and after removal of defects again petition had been filed in the registry on 21.3.2012.

4. That on refilling of the petition the registry again raised as many as four defects viz., (i) Master index be filed and list of documents also be filed paginated and no alpha numeric pagination is allowed (ii) caveat report be obtained and at the time of each subsequent filing / refilling and proof of service be filed (iii) Fresh notice of motion upon counsel for concerned Respondent be filed if 3 days have elapsed since the date of last service. Any amendment done in the petition should also be served to the opposite/concerned party, (iv) affidavit be filed in support of petition/appeal/application and attested/ identified.

5. That the advocate for Petitioner again took back the petition and removed all the defects and refiled the petition on 31.3.2012. However after scrutiny registry again pointed out certain defects in the matter and matter was again returned to the advocate for the Petitioner for removal of the defects, which have been pointed out after 31.3.2012.

6. The defects as pointed out by registry had been removed and again matter was filed on 18.4.2012.

7. That again different defects were raised and matter was returned for doing the needful to the Advocate for the Petitioner. It would be relevant to point out that after removal of defects the matter was again filed in the Registry on 1.6.2012, after removal of the defects as pointed out by the Registry after 18.4.2012

8. That on 1.6.2012 Petition was filed and it was last working days before the summer vacation as the summer vacation commenced since 2.6.2012. It is submitted that during the summer vacation there was no occasion for the Petitioner to take any step in the matter. It is pertinent to mention herein that after summer vacation status of matter was inquired by advocate for Petitioner and got information that matter still remained under objection.

9. That for removal of objection original file in the office of the Advocate was required. It is submitted that Mr. Manoj Jha the clerk of the advocate for the Petitioner went to his native place



Bihar during summer vacation, who was handling the works in the office of the Advocate for the Petitioner and not reported back in the office of Advocate after summer vacation. It is submitted that when original file was not traceable the advocate for the Petitioner reconstituted the file of the matter. In such process delay occurred in refilling of the petition in July, 2012 and the matter was refilled only on 11.7.2012.

10. That on 13.7.2012 when inquiry was made about the status of matter, matter was found in defect and the following objections were raised:-

- i) Please insert a para of pecuniary and territorial jurisdiction in the petition/ plaint
- ii) Caveat report be obtained
- iii) Pagination is not in order in index part I
- iv) Petition/ application/ annexure/ order/ power of attorney should bear court fee stamp and head figure of court fees should be punched.
- v) Annexure be made true copy and signed annexure number should be marked properly in the index as well as on the top of annexure filed with plaint.
- vi) Application for condonation of delay in filing/ refilling be filed alongwith plaint
- vii) Vakalatnama be filed dated and signed
- viii) Board of resolution be filed.

11. That again matter was taken back for removal of the above mentioned objections raised by registry. It is necessary to mention herein that registry raised new defects every time and removal of those objection took some time. However advocate for the Petitioner removed all the defects and again filed matter for scrutiny on 17.7.2012.

12. That on 17.7.2012 case has been cleared for hearing on 20.7.2012. However in removal of above mentioned defects 120 days delay occurred which cannot be said to be deliberate or intentional but due to the reasons as stated above and same needs to be condoned by this Hon'ble Court by taking a liberal view in the matter.

13. That delay in refilling of the petition cannot be equated



with delay in initial filing as held by this Hon'ble Court in judgment of Radheyshyam Gutpa Vs. Kamal Oil Industries. The same view may kindly be taken in the present matter and delay of 120 days may kindly be condoned.”

10. The application, therefore, states on oath that the petition was repeatedly returned by the Registry pointing out defects each time. This Court is acutely conscious of the difficulty which a litigant faces when the Registry does not point out all the defects at one stage and returns the petition time after time pointing out defects on each occasion.

11. The litigant can hardly be blamed for the delay that has been occasioned on account of the omission of the Registry to point out all defects at one stage.

12. That apart, the court has always been liberal in condoning delay in re-filing. I am of the considered opinion that, in the interests of justice, and so as not to prejudice the petitioner from ventilating his rights conferred by Section 34 of the 1996 Act, the delay in re-filing deserves to be condoned.

13. Accordingly, the delay in re-filing is condoned.

14. IA 2975/2015 is allowed accordingly.

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15. List for disposal at the end of the Board on 18 October 2024.



16. Both sides are directed to place on record short notes of their respective submissions not exceeding eight pages each after exchanging copies with each other, at least a week in advance of the next date of hearing.

C. HARI SHANKAR, J.

JULY 31, 2024

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Click here to check corrigendum, if any