Misc DJ 530-25 GAC LOGISTIC PVT. LTD. Vs. EXPORT AND ALLIED SERVICES INDIA PVT LTD

21.05.2026

ORDER

1. This order shall decide the application under Section 5 of the Limitation Act seeking condonation of delay as well as the application under Order 9 Rule 13 of Code of Civil Procedure seeking setting aside of the ex parte decree dated 09.01.2020.

2. The facts essential for the disposal of the present case are that the GAC Logistics Pvt. Ltd. filed a suit seeking recovery of sum of Rs. 32,23,431.24/- on 21.04.2015 against the applicant herein i.e. Export and Allied Services India Pvt. Ltd. For the sake of convenience the parties herein after shall be referred by their status as in the original suit i.e., plaintiff and defendant.

3. After the suit was instituted, the defendant was duly served with the summons. The defendant entered appearance through Sh. Manish Bhasin, Advocate and filed the written statement on 27.08.2015. Subsequently, the defendnat stopped appearing in the matter and the suit was decreed in favour of the plaintiff vide ex parte decree dated 09.01.2020.

4. The defendant has filed the application under Order 9 Rule 13 of Code of Civil Procedure on 01.04.2025 seeking

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:29:51 +0530

setting aside of afore-mentioned ex parte decree. As the application was filed beyond the prescribed limitation period the defendant also filed another application under Section 5 of the Limitation Act seeking condonation of delay.

5. The grounds and the contentions in both the applications are similar and the findings on both the applications shall also be overlapping, hence, both these applications are decided together.

6. The defendant has contended that it received the notice of the suit on 21.04.2015 and thereafter, entered appearance through Sh. Manish Bhasin, Advocate. The defendant filed its written statement on or about 27.08.2015. It is contended that at the relevant time Sh. Pradeep Malik and his wife, Ms. Vijaya Malik were the directors of the defendant company. However, only Sh. Pradeep Malik was handling the day to day affairs and the legal affairs of the company. It is contended that Ms. Vijaya Malik had lent her name as director to the company only at the request of her husband i.e. Sh. Pradeep Malik, and she was not looking after the company affairs.

7. It is further stated that the suit was prosecuted on behalf of the defendant company by Sh. Pradeep Malik till 26.02.2019. Somewhere in January-Februay, 2019, the counsel representing the defendant in the suit suffered a paralytic attack and was unable to attend the court. It is

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Date: 2026.05.21 16:29:59 +0530

submitted that the counsel informed this fact to the counsel who was representing the plaintiff at that time and duly intimated the court also. It is stated that on 20.06.2019, considering the submissions regarding the ill health of the defendant's counsel, the court adjourned the matter to 16.07.2019. However, as none appeared on behalf of the defendant on 16.07.2019, matter was proceeded ex parte.

8. It is further stated that the counsel for the defendant who suffered paralytic attack did not attend the further court hearings and expired on 26.07.2020. It is also contended that in month of June, 2019, Sh. Pradeep Malik had travelled to Canada where he a suffered heart attack and was admitted in a hospital on 17.06.2019. After receiving treatment Sh. Pradeep Malik came back to Delhi on 25.06.2019. However, during his travel he again suffered a strock and the flight was landed in Iceland in an emergent medical situation where he was hospitalised from 25.06.2019 to 03.07.2019. Finally, Sh. Pradeep Malik returned to India but he was not keeping well and died on 23.07.2019.

9. The defendant has contended that Sh. Pradeep Malik had not informed his wife Ms. Vijaya Malik or children including his son Sh. Gauraang Malik regarding the present case. It is stated that after the death of Sh. Pradeep Malik his son Sh. Gauraang Malik became the director in the defendant company in the year 2020. Since both, Ms.

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:30:16 +0530

Vijaya Malik and Sh. Gauraang Malik were unaware about the present suit they did not take any step for getting the ex parte decree set aside. It is submitted that the directors of the defendant company became aware about the present proceedings only when the execution petition bearing no. 25/2025 was filed and the defendant company was served with notice of the petition on 17.02.2025. It is stated that on 17.02.2025, the clerk of the defendant company received the notice but did not hand over the same to Sh. Gauraang Malik. The said notice reached to Sh. Gauraang Malik only on 03.03.2025 upon which he immediately tried to trace legal papers in the office and the residence but was unable to find the same. It is contended that Sh. Gauraang Malik immediately approached a law firm which is now representing the defendant company, the counsel inspected the suit file, entered appearance in the execution petition and after inspecting all the records moved the present application.

10. It is further stated that Ms. Vijaya Malik herself has been diagonised with cancer since November, 2024. Sh. Gauraang Malik being the son has also been busy in taking care of his ailing mother. It is further stated that among the other issues the defendant has also taken an objection regarding the suit being barred by limitation. It is contended that even if the defendant was proceeded ex parte, the court was duty bound to consider if the suit was within limitation or not before decreeing the same in

SUGANDHA AGGARWAL

favour of the plaintiff. It is further contended that the judgment dated 09.01.2020 clearly shows that the court has not returned any finding on the aspect of limitation which it was duty bound to decide. In this regard, defendant has placed reliance upon **V.M. Salgaocar and Bros. v. Board of Trustees of Port of Mormugao and Another, (2005) 4 SCC 613.**

11. It is prayed that in view of the above circumstances the delay in filing the application under Order 9 Rule 13 of Code of Civil Procedure be condoned and the judgment and decree dated 09.01.2020 be set aside.

12. Plaintiff has filed reply to both the applications. Plaintiff has denied each and every averment made by the defendant in the applications. It is further stated that the application under Order 9 Rule 13 of Code of Civil Procedure has been filed after inordinate delay of over five years solely with an intention to obstruct the lawful execution of the decree passed in favour of the plaintiff. It is submitted that the application under Order 9 Rule 13 of Code of Civil Procedure is barred by limitation. As per Article 123 of the Limitation Act, 1963, the time period for filing any such application is 30 days from the date of decree or in a case where summons or notice were not duly served than from the date when the applicant had knowledge of the decree.

SUGANDHA AGGARWAL

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13. It is submitted that in the present case admittedly, the defendant received the summons and also joined the proceedings, therefore, the limitatation in the present case will be goverend by the first part of Article 123 of the Limitation Act, 1963, which is 30 days from the date of the decree. It is further submitted that even if it is presumed that the relevant date for the limitation period would be the date of knowledge then also admittedly, the notice of the execution petition was served on 17.02.2025 and the present application has been moved beyond the period of 30 days from the said date also.

14. It is further submitted that the averment that the clerk did not hand over the summons to the present directors cannot be considered because as per the settled law internal impediments in an organisation cannot revive an otherwise time barred claim.

15. It is further submitted that the contentions of the defendant that the deceased director was the whole and sole of the defendant company and the company had no knowledge or record of the proceedings in question is contrary to the basic principle of law relating to companies. A company is treated as a separate legal entity maintaining a separate legal department. Therefore, demise of one director could not create a deemed ground for absolving the company from defending itself in the suit. It is further stated that the contentions that none in the company except Sh. Pradeep

SUGANDHA AGGARWAL

Malik was aware of the proceedings is legally untenable because defendant being a distinct juristic entity is presumed to have knowledge of the legal proceedings when the summons are duly served at its registered office. It is submitted that any mis-management, oversight or negligence on the part of the company's board of directors in managing its affairs cannot be considered as a justified ground to condone the delay or to set aside the ex parte decree. It is stated that applicant has not furnished any other cogent reason.

16. It is further stated that the present application is based on false and frivolous grounds filed only with a motive to deprive the plaintiff from enjoying the benefits of its decree. It is further stated in the reply to the application under Order 9 Rule 13 of Code of Civil Procedure that the Board Resolution authorising Sh. Pradeep Malik to proceed with the litigation has been signed by other directors also which means that the same would have been passed in a board meeting and company would have paid the litigation fees for engaging new counsel out of its funds. These acts show that the other directors or officials working in the company would have knowledge of the litigation. It is submitted that the judgment dated 09.01.2020 was passed by the court after giving due consideration to the pleadings and the materials placed before the court by the plaintiff and there is no ground made out to set aside the same.

17. I have heard the contentions raised on behalf of both the parties. Ld. counsels for the both the parties have reiterated the submissions made in their respective pleadings.

18. Ld. counsel for the defendant had filed the written submissions. As per the written submissions, the present director i.e. Sh. Gauraang Malik got the information of the present proceedings on 03.03.2025 and thereafter, immediately on 29.03.2025, the present applications were filed. Further, it is argued that no liability can be attached to the director who is inactive in looking after the company affairs. In support of this contention, Ld. counsel for the defendant has referred to the judgment of **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2007) 4 SCC 70**. Further, it is argued that the reliance placed by the Ld. counsel for the plaintiff on Section 134 (1) of the Companies Act, 2013 is entirely mis-placed while the said provision requires financial statements to be approved and signed by the directors of the company, the mere act of signing statutory financial statements does not, by itself, establish knowledge of any specific litigation or alleged misconduct. Ld. counsel for the defendant has also placed reliance upon the following judgments:

a. G.P. Srivastava v. R.K. Raizada & Ors., (2000) 3 SCC 53.

b. Munjula Krippendorf Pathak v. Vijay Dixit & Ors., 2008 (100) DRJ 425 (DB).

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:30:50 +0530

c. Haribansh Tiwari v. Sonamati Kunwar, 2001 LawSuit(Pat) 998.

d. Dwarika Prasad (D), thr. LRs v. Prithvi Raj Singh, 2024 SCC OnLine 3828.

e. Sagayam Engineering Works v. M/s Srivatsa Tube Corporation, 1988 SCC OnLine Mad 372.

f. S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (2007) 4 SCC 70.

g. Associated Cement Co. Ltd. v. Keshvanand, (1998) 1 SCC 687.

19. Per contra, Ld. counsel for the plaintiff has argued that the defendant has not even pleaded that their case would fall in the second category of Article 123 of the Limitation Act i.e. to compute the limitation period from the date of knowledge. In absence of any such pleading the court cannot presume the same and the limitation has to be computed as contained in the first part of Article 123 of the Limitation Act. It is argued that as per the said provision in a case where summons are duly served upon the defendant, limitation has to be computed from the date of decree and there is a delay of around 1805 days in filing the present applications. It is further submitted that the defendant company is a duly registered company. As per the mandate of the law, there has to be at least two directors in the company. Therefore, if one director had passed away then the other director ought to have been appointed. It is further argued that company must be filing its audit returns regularly. The said audit return

mandatorily mentions the pending litigations. It is further submitted that Ms. Vijaya Malik has signed the Board Resolution authorising Sh. Pradeep Malik to represent the company and now cannot take the plea that she was an inactive director in the company.

20. I have considered the rival contentions and have perused the record.

21. In order to decide the present applications, I deem it fit to first trace the timeline of the present case, which is as follows:

i. The suit was instituted on 21.04.2015.

ii. The defendant company was served with the summons of the suit on 27.05.2015.

iii. The defendant company entered appearance through counsel before the court for the first time on 03.07.2015.

iv. The written statement was filed by the defendant on 27.08.2015.

v. On 02.07.2016, the file was transferred to the District Court and was taken up for the first time. On the said date, court notice was issued to the defendant.

vi. Sh. Pradeep Malik the then Director of the defendant company appeared before the court on 23.09.2016.

SUGANDHA
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vii. On 16.07.2019, as none appeared for the defendant, the matter was proceeded ex parte against the defendant.

viii. Thereafter, the matter was taken up on 28.09.2019, 29.11.2019, 21.12.2019 and was finally decided on 09.01.2020.

22. As per the record, when the defendant was proceeded ex parte, the matter was at the stage of plaintiff's evidence. The aforesaid proceedings cleary show that the defendant had been participating in the proceedings and was well aware of the progress of the case. Hence, this is not a case where the summons of the suit were not served upon the defendant or where the defendant had no knowledge of the proceedings.

23. It has been contended that the defendant could not appear before the court as the counsel representing the defendant as well as the then Director authrosied to represent the defendant company had fallen ill. However, as per the case of the defendant itself, the counsel represeting the defendant company had suffered a paralytic attack sometime in January-February, 2019 and thereafter, stopped appearing before the court, whereas, Sh. Pradeep Malik, the then Director of the defendant company who was allegedly looking after the affairs of the company, suffered a heart attack only in June, 2019. This itself shows that prior to June, 2019, Sh. Pradeep Malik was in proper state of health and was attending to the affairs of

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Date: 2026.05.21 16:31:07 +0530

the company. In fact, the record shows that he has been participating in the court proceedings as well. However, despite the aforesaid circumstances, the defendant company did not take any steps to engage another counsel to pursue the matter.

24. Admittedly, at the time of the institution of the suit, there were two Directors in the defendant company, namely Sh. Pradeep Malik and Ms. Vijaya Malik. Ld. counsel for the defendant has argued that Ms. Vijaya Malik was an inactive director and, therefore, was not looking after the affairs of the company. It is, thus, submitted that no liability can be attributed to Ms. Vijaya Malik. In support of the said contention, Ld. counsel for the defendant has relied upon the judgment of **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (Supra)**.

25. However, the judgment of **S.M.S Pharmaceuticals Ltd. v. Neeta Bhalla & Anr., (Supra)**, pertains to the offence relating to dishonour of cheques by a company under Section 138 of the Negotiable Instrument Act. Ld. counsel for the defendant has specifically relied upon paragraph 20 of the said judgment, wherein it was held that the liability of a Director has to be determined on the date on which the offence was committed. However, the present proceedings are civil proceedings, and not a criminal complaint under Section 138 of the Negotiable Instrument

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:31:13 +0530

Act. Therefore, the ratio of this judgment is not applicable to the facts of the present case.

26. The defendant has further relied upon several judgments to contend that while dealing with an application under Order IX Rule 13 of Code of Civil Procedure, the court is required to adopt a liberal approach. However, none of the judgments cited on behalf of the defendant are applicable to the facts of the present case, as in all the cited cases the parties involved were individuals, whereas the defendant herein is a registered company which is a separate legal entity distinct from its Directors.

27. In fact, in the case of **G.P. Srivastava v. R.K. Raizada & Ors., (Supra)**, application under Order IX Rule 13 of Code of Civil Procedure was filed within the staturoty time period of limitation, which was one of the reasons why the Hon'ble Apex Court had taken a liberal view while setting aside the ex parte decree.

28. Similarly, in **Munjula Krippendorf Pathak v. Vijay Dixit & Ors., (Supra)**, the defendant/applicant was an elderly lady residing outside India. It was in those peculiar circumstances that the Hon'ble High Court held that she was unable to keep track of the litigation through her counsel.

SUGANDHA AGGARWAL

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29. In the present case, however, the defendant is a juristic entity and neither of its Directors was residing outside India.

30. Ld. counsel for the defendant has argued that the facts of the case of **Haribansh Tiwari v. Sonamati Kunwar, (Supra)**, are similar to the facts of the present case. However, this court is unable to agree with the said contention. In the said case, it was found that an application had been moved by the defendant/applicant between the relevant dates for seeking time, and without considering the said application, the ex parte decree was passed.

31. No doubt, while dealing with an application seeking setting aside of ex parte decree under Order IX Rule 13 of the Code of Civil Procedure, or an application seeking condonation of delay in filing such application, the Court is required to adopt a liberal approach. However, at the same time, it is also to be examined whether the defendant has been able to establish that the disruption in pursuing the suit proceedings was not a result of gross negligence on its part.

32. In the present case, the defendant is a duly registered company, which is a separate juristic entity. In the ordinary course of business, registered company continues function independenty and maintain its record in a systematic manner through separate departments. As per the mandate of law, regular Board meetings are required to be held

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:31:24 +0530

wherein the liabilities, expenses and litigations of the company are to be considered and dealt with accordingly. A Director cannot escape responsibility of looking after the affairs of the company merely by claiming to be an inactive Director. Once a person continues to hold the office of Director, such person remains under a fiduciary duty to keep track of functioning and litigations of the company.

33. Therefore, it cannot be accepted that after the death of Sh. Pradeep Malik, there remained no record of the present litigation in the defendant company or that Ms. Vijaya Malik and the subsequent Directors had no means to find out about the pendency of the present case.

34. For the sake of arguments, even if it is assumed that Ms. Vijaya Malik was an inactive Director and was not looking after the affairs of the company, even then, as per the submissions of the defendant itself, Sh. Gauraang Malik had started looking after the affairs of the company as a Director in the year 2020. Once a new Director takes charge of the affairs of the company, it becomes incumbent upon him to take stock of all pending litigations by or against the company. The Director is expected to obtain details from the legal department of the company regarding such pending matters.

35. It is difficult to believe that Sh. Gauraang Malik had been managing the affairs of the defendant company as its

SUGANDHA AGGARWAL

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Date: 2026.05.21 16:31:30 +0530

Director from the year 2020 till 2025 i.e., for almost five years, without having knowledge regarding the litigations pending by or against the defendant company. Even if said contention is accepted the same would amount to sheer negligence on the part of the defendant company. These are not circumstances beyond the control of the Directors of the defendant company nor can it be said that despite exercising due diligence, they could not ascertain the pendency of the present litigation.

36. Even if it is assumed that none of the Directors of the defendant company had knowledge of the present litigation, it is an admitted fact that notice of the execution petition was served at the office of the defendant company on 17.02.2025. The present application was not filed within 30 days even from the afore-said date. It has again been contended that the clerk of the defendant company accepted the notice and failed to hand over the same to Director Sh. Gauraang Malik till 03.03.2025. However, completely vague submissions have been made in this regard. Neither name of the said clerk nor any explanation has been furnished as to why he did not hand over the notice to the Director.

37. In the ordinary course of business, every communication received by an employee of the company is expected to be promptly placed before the concerned Director or competent authority. It is not even the case of the

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Date: 2026.05.21 16:31:35 +0530

defendant that the said clerk had left the services of the company, had proceeded on leave after receiving the notice, or was otherwise unavailable in the company for any reason whatsoever. There is absolutelyno explanation justifying the delay in filing the present application beyond 30 days from 17.02.2025.

38. In view of the aforesaid discussion, this Court is of the considered view that the defendant has failed to show any sufficient cause either for its non-appearance after the matter was proceeded ex parte or for the delay in filing the present application. The material placed on record clearly reflects gross negligence and lack of due diligence on the part of the defendant company in pursuing the matter. The explanations furnished are vague, unsupported by any cogent material and do not inspire confidence. Accordingly, no ground is made out either for condonation of delay under Section 5 of the Limitation Act or for setting aside of the ex parte judgment and decree under Order IX Rule 13 CPC.

39. Consequently, **both the applications, i.e., the application under Section 5 of the Limitation Act and the application under Order IX Rule 13 of the Code of Civil Procedure, stand dismissed.**

SUGANDHA AGGARWAL

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(Dr.Sugandha Aggarwal)
District Judge-04
PHC-New Delhi-21.05.2026