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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(COMM) 865/2023

M/S NCUBATE INDIA SERVICES PVT LTDPlaintiff

Through: Mr. Amulya Dhingra, Adv.

versus

**GLOBAL BRANDS ENTERPRISE SOLUTIONS PVT LTD &
ANR.Defendants**

Through: Mr. Surender Kumar, Adv. for D-
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CORAM:

DR. JAGMINDER SINGH (DHJS) JOINT REGISTRAR (JUDICIAL)

ORDER

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29.10.2025

**I.A. 35856/2024 (filed by D-2 /Indian Overseas Bank seeking
condonation of delay in filing written statement)**

1. Arguments heard.
2. It is submitted by learned counsel for defendant no. 2 that there is no any intentional delay in filing the written statement. The matter was initially listed on 06.12.2023 and plaintiff was directed to supply legible and clear copy of documents to the applicant before 08.02.2024. Till that date, documents were not supplied and on further direction on 08.02.2024, defendant no. 2 received e-mail from learned opposite counsel whereby more than 11000 pages were attached in single file and that could not be opened despite repeated efforts on behalf of applicant. This fact was also informed to the learned opposite counsel telephonically. But no action was taken on behalf of the plaintiff in



supplying the complete set of documents. Thereafter, on 21.05.2024, again applicant had sent e-mail to learned opposite counsel requesting to send again the documents and considering the request, the documents were again sent in parts of five files through e-mail on 22.05.2024 but Volume No. 2 & 3 could not be opened and applicant informed the learned opposite counsel regarding that and requested to provide hard copy of the same or in pen drive. However, learned counsel for plaintiff again served the Volume No. 2 & 3 of the documents through e-mail dated 28.05.2024. Perusal of documents further revealed that certain pages of the documents as mentioned in para no. 12 of the application were not legible and this fact was also informed to the learned opposite counsel vide e-mail dated 29.05.2024 but the applicant had not received any response till date. However, on the basis of legible documents, the applicant had filed the written statement on 06.06.2024. Therefore, actually there is no delay in filing the written statement after receiving complete set of documents, however, even if from the service, the delay in filing the written statement is not arbitrary or willingly and same may kindly be condoned.

3. Learned counsel for defendant no. 2 relied upon the judgment i.e. *ITD Cementation India Ltd. Vs. Indian Oil Corporation Ltd & Anr.* 2023 SCC OnLine Del 6263 of Hon'ble High Court of Delhi.

4. On the other hand, learned counsel for plaintiff opposed the application and submitted that as per Delhi High Court (Original Side) Rules, the written statement has to be filed within 30 days from service and with a delay of maximum period of 90 days thereafter. The



defendant no. 2 was served on 19.01.2024 through e-mail and through post on 20.01.2024 but the written statement was filed on 06.07.2024 i.e. beyond the maximum period of 120 days. Further the complete set of documents was served upon the counsel for defendant no. 2 on 08.02.2024. There was no conversation regarding any kind of defects or deficiency in documents on behalf of the applicant during the period of 08.02.2024 till 21.05.2024. The applicant is taking these excuses only to gain further time. There is no reasonable ground stated by the applicant for delay in filing the written statement. The grounds are baseless and without any merit. The application seeking condonation of delay is liable to be dismissed.

5. Learned counsel for plaintiff also referred the case laws in support of his arguments i.e. *Charu Aggarwal vs. Alok Kalia & Ors. 2023 SCC OnLine Del 1238*.

6. I have considered the submissions of both the parties. Perusal of the file reveals that the matter was listed first time on 06.12.2023 when the summons were ordered to be issued for next date i.e. 08.02.2024 and as per the service report, the summons were served to defendant no. 2 on 05.02.2024 according to which, notice and petition were served to the respondents' office staff. As per tracking report filed with the affidavit of service, the notices were served through post on 20.01.2024. As per order dated 08.02.2024, learned counsel for defendant no. 2 appeared and submitted that he had not received complete copy of the suit and plaintiff was directed to supply the complete set of documents. There was no objection to this effect recorded in the order dated 08.02.2024 on



behalf of the plaintiff. It is further admitted fact that on 08.02.2024, the set of documents and plaint were e-mailed to learned counsel for defendant no. 2 on behalf of plaintiff. and receiving of this e-mail containing plaint and documents not disputed on behalf of the applicant.

7. However, as per the applicant, the file of documents sent through e-mail dated 08.02.2024 could not be opened and he had e-mailed again this fact to the learned counsel for plaintiff on 21.05.2024. Admittedly, there was no communication on behalf of the applicant with the plaintiff during the period from 08.02.2024 till 21.05.2024. No any reason is mentioned in the application for keeping silent during this period. As per learned counsel for the applicant, it was the duty of plaintiff to supply the copy in complete, even if there was no communication from defendant no. 2.

8. I have considered the submissions. On 08.02.2024, applicant informed that he had not received the complete paper book and thereafter plaintiff was directed to supply complete paper book again and he had supplied so. Thereafter, there is no mechanism as to how the plaintiff would know that the file sent through e-mail is not opening, without informing by the applicant to the plaintiff. As per learned counsel for applicant, he had informed through telephonic conversation on 08.02.2024 but this fact is denied on behalf of plaintiff. There is no document on record to show this information in writing. Therefore, it cannot be presumed that applicant had informed about the technical difficulty of not opening the file to the learned opposite counsel on 08.02.2024.



9. This fact was informed through e-mail only on 21.05.2024 which reveals that there is a delay on the part of defendant no. 2. In view of the contents of the ordersheet dated 08.02.2024 and the e-mail sent by plaintiff to applicant on 08.02.2024, the proper service is presumed on 08.02.2024. The written statement was initially filed on 06.06.2024, which reflects in case history. Therefore, it is clear that the written statement was not filed within the statutory period of 30 days from the date of service but was filed after about 88 days thereafter. As per Delhi High Court (Original Side) Rules, the maximum extendable time to file written statement from service is 30+90 i.e. 120 days. In this matter, although the written statement is beyond the statutory period of 30 days but was filed within the maximum extendable period of 120 days.

10. Keeping in view the entire facts and circumstances, relevant case laws and statutory provisions, the delay in filing the written statement on behalf of defendant no. 2 stands condoned, subject to cost of Rs. 15,000/- to be given to opposite party.

11. The captioned I.A. stands allowed and **disposed of**.

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12. Suit qua defendant no. 1 stayed vide order dated 01.07.2024, written statement with affidavit of admission/denial filed on behalf of defendant no. 2 be taken on record accordingly.

13. Put up for completion of pleadings in accordance with law and thereafter for completion of process of filing of Joint Document



Schedule in terms of **Rule 7A of Chapter VII of The Delhi High Court (Original Side) Rules, 2018** physically by plaintiff after getting it signed from defendants, admission / denial of documents and marking of Exhibits in accordance with law on 04.02.2026.

14. Documents, if e-filed be filed physically by parties so as to mark the Exhibits.

DR. JAGMINDER SINGH (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 29, 2025/tp