



2025:CHC-AS:1697

D/L- 12
16/04/2025
Ct. No.-6
Aritra

C.O. 1090 of 2025

**M/s. Deecon India Pvt. Ltd.
Vs.
Union of India**

Mr. Priyankar Saha
Ms. Srijani Mujkherjee
Mr. Satrajeet Sen
Mr. Lalratan Mondal

...for the petitioner

Ms. Sumita Sarkar

.... For the CPWD

This application under Article 227 of the Constitution of India is directed against an order dated December 4, 2024 passed by the learned Judge, Commercial Court, Rajarhat, North 24-Parganas in Misc. Case (Com) No.7 of 2024 and Misc. Case No. 29 of 2023 (CC).

By the order impugned the application under Section 5 of the Limitation Act praying for condonation of delay in filing the application for restoration of a misc. case under Section 34 of the Arbitration and Conciliation Act, 1996 stood rejected.

The petitioner herein filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 being Misc. Case No.171 of 2014 before the learned District Judge at Barasat. Subsequently, after coming into force of the Commercial Court's Act, the said misc. case under Section 34 of the Arbitration and



Conciliation Act, 1996 was transferred to the Court of the learned Judge, Commercial Court at Rajarhat, North 24-Parganas and the same was renumbered as Misc. Case No.2/2019 (CC).

The order of transfer of the misc. case was passed on July 4, 2019. The said misc. case however stood dismissed for default by an order dated September 2, 2019. The petitioner filed the restoration application on March 23, 2023 being Misc. Case (Com) 7 of 2024. Since there was a delay in filing the restoration application, an application under Section 5 of the Limitation Act was also filed for condonation of delay of 1219 days in filing application for restoration.

By the order impugned, the prayer for condonation of delay stood rejected. Pursuant to the earlier order dated March 28, 2025, the petitioner has filed a supplementary affidavit which is taken on record. Copy of such supplementary affidavit has already been served upon the learned advocates for the opposite party.

However, an accommodation has been prayed for on the ground of Mr. Trivedi, learned Deputy Solicitor General of India representing the opposite party/Union of India.

The learned advocate appearing for the petitioner submits that in the meantime the opposite party has put the award into execution giving rise to Misc. Execution



(COM)-14/2024. The learned advocate appearing for the petitioner prays for an interim order.

After going through the impugned order, this Court finds that it has been recorded by the learned Judge, Commercial Court in the order impugned that the case was transferred vide order dated June 28, 2019 and the case record was received by the Commercial Court on August 9, 2019. The learned Judge recorded a specific finding of fact that no notice of transfer was served upon either side.

The question that falls for consideration is whether non service of notice of transfer can be a sufficient cause for condonation of delay in filing the restoration application.

In view thereof, this Court is of the *prima facie* view that the petitioner is entitled to an interim order.

There shall be an order of stay of all further proceedings in Misc. Execution (COM)-14/2024 till May 8, 2025 or until further orders, whichever is earlier.

List this matter on April 23, 2025 under the heading 'Motion'.

(Hiranmay Bhattacharyya, J.)