

OCD-20

ORDER SHEET

APOT/75/2024

IA NO: GA-COM/1/2024, GA-COM/2/2024

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION

HINDUSTAN AERONAUTICS LTD.
VS
CIVCON CONSTRUCTION PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date: 21st August, 2024.

Appearance:

Ms. Nilanjana Adhya, Adv.

Mr. Dipankar Das, Adv.

...for the appellant

Mr. Debraj Sahu, Adv.

...for the respondent

The Court: The present application, being GA-COM/1/2024, has been filed for condonation of delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

In the various paragraphs of the petition which are placed by learned counsel for the petitioner, the primary ground taken for the delay is differences of opinion between learned advocates advising the petitioner and somewhat procedural wrangles in the matter of moving for administrative approvals between intra-departmental authorities.

Learned counsel for the respondent opposes the prayer for condonation and submits that, counting the limitation to be 60 days as in commercial matters, there is a delay of about 71 days in preferring the present challenge.

Learned counsel for the respondent places strong reliance on the judgment of *Government of Maharashtra (Water Resources Department) Represented by Executive Engineer vs. Borse Brothers Engineers and Contractors Private Limited* reported at (2021)6 SCC 460 in support of the contention that in commercial disputes, the limitation period is 60 days.

Learned counsel further places reliance on the said judgment in support of the proposition that to read Section 5 of the Limitation Act consistently with the object of the Arbitration and Conciliation Act, 1996 and the Commercial Courts Act, it is necessary to discover as to what the expression “sufficient cause” means in the context of condoning delays in filing appeals under Section 37 of the said Act. The Supreme Court observed that given the object of speedy disposal sought to be achieved by both the said statutes, for appeals filed under Section 37 of the 1996 Act that are governed by Articles 116 and 117 of the Limitation Act or under Section 13(1-A) 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. In a fit case in which a party had otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, according to the Supreme Court, in the discretion of the Court, be condoned, always bearing in mind that the other side of the picture

is that the opposite party may have acquired both equity and justice, which may now be lost by the first party's inaction, negligence or laches.

The Supreme Court further observed that the expression "sufficient cause" contained in Section 5 of the Limitation Act is elastic enough to yield different results depending upon the object and context of a statute. Given the object sought to be achieved by the 1996 Act and the Commercial Courts Act, that is, speedy resolution of disputes, the said expression is not elastic enough to cover long delays beyond the period provided by the provision itself.

The Supreme Court further observed that merely because the government is involved, a different yardstick for condonation of delay cannot be laid down.

Hence, it is argued that the present application ought to be dismissed.

The parameters of consideration of an application for condonation of delay in commercial matters involving government entities has been succinctly laid down in the *Borse Brothers* matter, cited by the respondent. The reasons/causes given in the present application are to be looked into through such lens. The present appellant/petitioner has stated that it was required to obtain necessary administrative approvals from various authorities which led to unavoidable delay in processing of approval of the proposal for appointing an alternative advocate. It has also been stated that the said change of advocates was necessitated due to varying legal opinion as to the requirement and plausibility of preferring the present appeal.

In the different paragraphs of the application, extensive details have been given as regards the dates when the papers were handed over by the erstwhile advocate to the current learned advocate for the petitioner i.e., on or about January 29, 2024, and when the present advocate decided to prefer an appeal against the impugned order dated October 13, 2023.

Upon a comprehensive perusal of the different paragraphs of the application, I am of the opinion that sufficient cause has been shown by the petitioner, by giving elaborate details of each step of the delay. Even without giving any additional edge to the petitioner in the capacity of a government entity, seen from an egalitarian perspective as well, the petitioner, as an ordinary litigant also, has explained the cause sufficiently for the purpose of condonation of delay. Just as governmental agencies are not favoured litigants, unnecessary bias ought not to operate against such entities as well.

As such, GA-COM/1/2024 is allowed, thereby condoning the delay in filing the appeal under Section 37 of the 1996 Act, bearing APOT/75/2024. Accordingly, the said appeal is taken on record.

Learned counsel for the respondent, at this juncture, seeks an adjournment regarding the hearing of the appeal under Section 37 with the connected stay application.

Accordingly, let the matter stand adjourned for the day.

(SABYASACHI BHATTACHARYYA, J.)