

Intra-Departmental Analysis And Discussions: Not A Sufficient Cause For Delay In Filing Appeal Under Section 37 Of Arbitration Act, Rules Delhi High Court

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Introduction

In a recent decision in ***Telecommunication Consultants India Ltd. (TCIL) v. NGBPS Ltd.***¹, the High Court of Delhi held that a generic and vague explanation of "*intra-departmental analysis and discussions*" shall not suffice and constitute a credible explanation for seeking condonation of delay in filing an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). In this article, we briefly navigate through the facts, and findings of the High Court in the aforesaid decision.

Brief Facts

The appellant filed an application along with an appeal under Section 37 of the Arbitration Act ("**Arbitration Act**") seeking the condonation of the delay of 118 days in filing an appeal under Section 37 of the Arbitration Act. As per the appellant, there was no specific limitation period prescribed for filing an appeal under Section 37 of the Arbitration Act. Nonetheless, the application seeking condonation of delay was being filed as a matter of "*abundant caution*".

The only reason provided by the appellant in the application seeking condonation of delay was that the exercise of intra-departmental analysis and discussions for challenging the impugned judgment upholding an arbitral award took some time. Moreover, the appellant contended that since the appellant was a Public Sector Undertaking (PSU), it ought to be treated differently.

Decision of the High Court

The High Court observed that the appellant's delay condonation application was bereft of any particulars. As such, it was well settled that an application seeking condonation of delay in filing the proceedings must explain the reasons for every day of the delay with full particulars. Regarding the appellant's argument that, as a PSU, it should receive leniency in condonation of delay and be treated differently, the High Court found no merit in this argument.

The High Court then referred to the decision of the Supreme Court in ***N.V. International v. State of Assam***² wherein the Supreme Court, taking cue from the *proviso* to Section 34(3) of the Arbitration Act held that a Court shall not condone a delay exceeding a 30-day period in filing an appeal under Section 37 of the Arbitration Act. Subsequently, the Supreme Court in another decision of the Supreme Court in ***Government of Maharashtra (Water***

1 *Telecommunication Consultants India Ltd. (TCIL) v. NGBPS Ltd.*, 2024:DHC:4630-DB decision dated 28 May 2024.

2 *N.V. International v. State of Assam and Ors.*, (2020) 2 SCC 109.

Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.³, overruled the decision in **N.V. International**⁴.

While setting aside the decision in **N.V. International**⁵, the Supreme Court in **Borse Brothers**⁶ held, *inter alia*, the following:

- (i) Upon examining the interplay between the Arbitration Act and the Commercial Courts Act, 2015, ("**Commercial Courts Act**") the Supreme Court held that Articles 116 and 117 of the Limitation Act, 1963 ("**Limitation Act**") shall apply to appeals filed under Section 37 of the Arbitration Act. Additionally, the Supreme Court held that Section 5 of the Limitation Act applies to appeals under Section 37 of the Arbitration Act due to Sections 43 of the Arbitration Act and 29(2) of the Limitation Act. However, the Supreme Court emphasised that the application of Section 5 should be considered in the context of the objective of "*speedy resolution of disputes*".
- (ii) Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "*sufficient cause*" under Section 5 of the Limitation Act was held to not be elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "*sufficient cause*" is not itself a loose panacea for the ill of pressing negligent and stale claims.
- (iii) Merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned.
- (iv) Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down.
- (v) In a fit case in which a party has otherwise acted *bona fide* and not in a negligent manner, a short delay beyond the prescribed limitation period can, 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 in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

As such, the High Court reiterated that in terms of the decision rendered by the Supreme Court in **Borse Brothers**⁷, a delay may be condoned only by way of an exception and not by way of a rule.

Upon discussing the law laid in **Borse Brothers**⁸, the High Court reiterated that the appellant had not provided any credible explanation as to why it was prevented from filing the appeal

3 *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.*, (2021) 6 SCC 460.

4 *N.V. International v. State of Assam and Ors.*, (2020) 2 SCC 109.

5 *N.V. International v. State of Assam and Ors.*, (2020) 2 SCC 109.

6 *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.*, (2021) 6 SCC 460.

7 *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.*, (2021) 6 SCC 460.

8 *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.*, (2021) 6 SCC 460.

within time. A broad general explanation that the intra-departmental analysis and discussions took time and that the formulation of the decision for further steps required a proposal to be moved through the entire administrative hierarchy clearly could not be accepted as a "*sufficient cause*".

As such, the delay in filing the appeal was almost twice the period available for preferring an appeal under Section 37 of the Arbitration Act. In absence of any particulars, the High Court opined that it was unable to accept that the delay in filing the appeal ought to be condoned.

Accordingly, the application seeking condonation of delay and the appeal under Section 37 of the Arbitration Act was dismissed. Since the appeal was dismissed, the award amount deposited by the appellant before the High Court was directed to be released to the respondent.

Comment

By rejecting a vague explanation of "*intra-departmental analysis and discussions*" for seeking condonation of a 118-day delay, the High Court has reinforced the stringent standards required to allow delay condonation applications. The judgment aligns with the Supreme Court's directives in ***Borse Brothers***⁹, emphasising that extensions under Section 5 of the Limitation Act must be sparingly granted and are not meant to accommodate negligent or stale claims.

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⁹ *Government of Maharashtra (Water Resources Department) represented by Executive Engineer v. Borse Brothers Engineer and Contractors Pvt. Ltd.*, (2021) 6 SCC 460.