# IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE ELEVENTH DAY OF AUGUST TWO THOUSAND AND TWENTY TWO

:PRESENT:
THE HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
THE HON'BLE DR. JUSTICE G.RADHA RANI

IA No. 2 OF 2018 IN COM.C.A. NO: 56 OF 2018

#### Between:

DLF Universal Ltd, (Formerly known as DLF Retail Developers Ltd.), Having its Registered Office at 3<sup>rd</sup> Floor, Shopping Mall, DLF City Phase-I, Arjun Marg, Gurgaon, Haryana, Rep. by its authorized signatory A. Suresh Krishna S/o. Subbarayudu, R/o. Plot No. 88/5, Mothinagar, Hyderabad.

...Appellant/Petitioner (Appellant in COMCA. No. 56 of 2018 on the file of High Court)

### AND

- M/s. SBPL Infrastructure Limited, rep. by its Managing Director Mr. Gowri Shankar Gupta, S/o. Late Hanuman Das Gupta, Having its Registered Office at 8-2-672, Plot No. 4, 5<sup>th</sup> Floor, G.S.Plaza, Road No. 1, Banjara Hills, Hyderabad-500034
- Shri Gowri Shankar Gupta, S/o. Late Hanuman Das Gupta, Managing Director, M/s. SBPL Infrastructure Ltd., R/o. 8-2-672, Plot No. 4, 5<sup>th</sup> Floor, G.S.Plaza, Road No. 1, Banjara Hills, Hyderabad-500034.
- 3. Mrs. Anita Agarwal, W/o. Akhil Agarwal, through her POA holder, GS Gupta, S/o. Late Hanuman Das Gupta, R/o. 8-2-672, Plot No. 4, 5<sup>th</sup> Floor, G.S.Plaza, Road No. 1, Banjara Hills, Hyderabad-500034
- 4. Gopal Gupta, S/o. Late Hanuman Das Gupta, R/o. 8-2-672, Plot No. 4, 5<sup>th</sup> Floor, G.S.Plaza, Road No. 1, Banjara Hills, Hyderabad-500034.

...Respondents (Respondents in-do-)

Counsel for the Petitioner : SRI M.JAYAKUMAR, FOR SRI P.SRI RAM

Counsel for the Respondents : SRI VENKAT PRASAD UKKALAM

Petition under Section 5 of Limitation Act, praying that in the circumstances stated in the accompanying affidavit, the High Court may be pleased to condone the delay of 77 days in filing the present Appeal against the order dated 03.04.2018 in COP No. 95 of 2016, pending disposal of COM.C.A. No. 56 of 2018, on the file of the High Court, presented

against the order of the Court of the Commercial Court Judge-cum XXIV Additional Chief Judge, City Civil Court, Hyderabad, passed in COP. No. 95 of 2016, dated 03-04-2018;

The Court made the following; **ORDER:** 

"AOP No. 1840 of 2011 (Renumbered as COP 95 of 2016 on its transfer to Commercial Court) filed under Section 9 of the Arbitration and Conciliation Act, 1996 in the Court of the XXIV Additional Chief Judge, City Civil Court, Hyderabad was dismissed on 3.4.2018. Challenging the said order this COMCA is filed on 24.8.2018. There is a delay of 85 days in preferring the appeal. Praying to condone the delay of 85 days this application is filed. In the affidavit filed in support of the application, it is averred that the Counsel on record was given an impression that there are several cases reserved for pronouncement and it may take long time for pronouncing orders in this case and most likely only after summer vacation. However, after the case was reserved for orders on 8.1.2018, Sri M.Jayakumar, one of the counsel on record for the appellant has been continuously monitoring to know the date of pronouncement. Commercial Court has no website and intimation of date of pronouncement is only put up on the notice board. Sri Jayakumar by over sight missed the notice put up on the notice board regarding date of pronouncement as 3.4.2018. He was under the impression that it was not pronounced. The office of learned counsel came to know of the order only on 14.8.2018 on a routine enquiry from the section. On the same day, copy application was filed. Certified copy was furnished on 23.8.2018 and this appeal was filed on 27.8.2018. Sri M Jayakumar, learned Advocate filed memo enclosing affidavit deposed by him explaining all the above events and reasons for delay.

Learned senior counsel contends that the delay in filing COP is not deliberate and willful and is caused in the peculiar facts and circumstances stated in the affidavit. He would submit that due to lapses of the counsel, the party should not suffer.

Per contra, learned counsel for respondent would submit that the order was pronounced with prior notice and in the presence of counsel for the appellant and therefore what is contended is not true. There is inordinate delay in filing the appeal and no case is made out to condone the huge delay.

Section 13 (1A) of the Commercial Courts Act, 2015 prescribes 60 days period from the date of the order to avail the remedy of appeal to the Commercial Appellate division of the High court. The order was pronounced on 3.4.2018. Sixty days period expired on

2.6.2018, whereas the appeal was preferred on 27.8.2018. There is a delay of 85 days in filing the appeal.

On consideration of respective submissions, we are satisfied that the applicant has shown sufficient cause for the delay. In the interest of justice, we are inclined to condone the delay. However, the respondent is entitled to costs for the delay in filing the appeal.

The I.A. 2 of 2018 is allowed subject to the appellant paying of ₹.5000/- (Rupees five thousand only) as costs to the respondents to be handed over to learned counsel for respondents within three weeks from the date of receipt of copy of the order.

List on 25.08.2022."

Sd/- K.SRINIVASA RAO JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

- The Judge, Commercial Court cum XXIV Addl. Chief Judge, City Civil Court, Hyderabad.
- 2. One CC to Sri P. Sri Ram, Advocate (OPUC)
- 3. One CC to Sri Venkat Prasad Ukkalam, Advocate (OPUC)
- 4. Two Spare Copies

# HIGH COURT

PNR,J & DR.GRR,J

DATE: 11-08-2022

## ORDER

I.A. NO. 2 OF 2018 IN COMCA. NO. 56 OF 2018

## DIRECTION

