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C.M.P.Nos.16703 & 16708 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28 / 08 / 2026

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN
and
THE HONOURABLE MRS. JUSTICE G.K.MUTHUKUMAAR

C.M.P.Nos.16703 & 16708 of 2026 in
O.S.A.(CAD)SR.No.90619 & 90204 of 2026

NLC India Limited,
A Government of India Enterprise,
through its Chief General Manager / Contracts,
Corporate Contract Division,
Corporate Office,
Neyveli – 607 801,
Tamil Nadu, India.

... Petitioner /
Appellant in
both Petitions

Vs.

CHINA DATANG TECHNOLOGIES &
ENGINEERING CO. LTD.,
A company incorporated under the
laws of People's Republic of China,
having its Registered Office at
4th and 6th Floor, No.120,
Zizhuyuan Road, Haidian District,
Beijing – 100097, PRC)

... Respondent /
Respondent in
both Petitions



C.M.P.Nos.16703 & 16708 of 2026

Prayer in both Petitions: These Petitions are filed to condone the delay of 87 days in filing the present Original Side Appeals.

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For Petitioner in
both Petitions : Mr.N.Venkataraman
Additional Solicitor General
For Mr.S.S.Arjun

For Respondent in
both Petitions : Mr.P.S.Raman
Senior Counsel
For Mr.Thriyambak J.Kannan

COMMON ORDER

P.VELMURUGAN, J.

These petitions have been filed seeking to condone the delay of 87 days in filing the respective Original Side Appeals against the common order dated 28.11.2025 passed by the learned Single Judge in Arb.O.P.(Com.Div.) Nos.141 and 333 of 2023.

2. The brief facts of the case are that the respondent had earlier filed O.A.No.493 of 2020 under Section 9 of the Arbitration and Conciliation Act, 1996 before this Court, seeking to restrain the petitioner/appellant from

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encashing the Performance Bank Guarantee. Though the arbitration clause in the contract provided for an Arbitral Tribunal consisting of three arbitrators, this Court, by order dated 27.10.2020, appointed Hon'ble Mrs. Justice R. Banumathi (Retd.), former Judge of the Supreme Court of India, as the Sole Arbitrator to adjudicate the disputes between the parties.

3. The learned Sole Arbitrator, after conducting the arbitral proceedings, passed a detailed award dated 09.11.2022. Under the said award, the termination of the contract by the petitioner/appellant was held to be legal and justified and the petitioner/appellant was held entitled to invoke the Performance Bank Guarantee for a sum of Rs.55,65,00,000/-. Claim Nos. IV and V of the respondent were allowed for a total sum of Rs.5,10,00,000/-. The remaining claims of the respondent and all the counter claims of the petitioner/appellant were rejected.

4. Aggrieved by the award, the petitioner/appellant filed Arb.O.P. (Com.Div.) No. 333 of 2023 under Section 34 of the Arbitration and Conciliation Act, 1996. The respondent also filed



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Arb.O.P.(Com.Div.)No.141 of 2023. By common order dated 28.11.2025, the learned Single Judge allowed both the petitions and set aside the arbitral award in its entirety, holding that this Court lacked jurisdiction to appoint the Sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, since the dispute was an international commercial arbitration. Aggrieved by the said order, the present Original Side Appeals have been filed.

5. Mr.N.Venkataraman, learned Additional Solicitor General appearing for the petitioner/appellant through Video Conferencing, submitted that the petitioner/appellant applied for the certified copy of the impugned order on 28.11.2025 itself and the certified copy was made ready on 05.01.2026. The appeal was required to be filed within 60 days from the said date, i.e., on or before 08.03.2026.

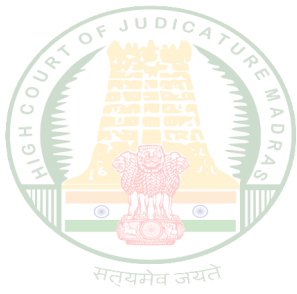
6. The learned Additional Solicitor General further submitted that the petitioner/appellant is a Public Sector Undertaking and, before taking a decision to prefer the appeal, it was necessary to obtain legal opinion from



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its Advocates. The said process took about four weeks from the date of receipt of the certified copy. Thereafter, considering the complexity of the matter and the substantial financial stakes involved, various internal approvals were required to be obtained, which took about eight weeks.

7. It was further submitted that, in the meantime, proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996, were pending before the Hon'ble Supreme Court in Arbitration Application No.69 of 2024, in relation to the subsequent arbitration proceedings between the parties. The said proceedings were disposed of on 11.05.2026, and liberty was granted to the petitioner/appellant to avail the remedy under Section 37 of the Arbitration and Conciliation Act, 1996, if aggrieved by the order passed by the learned Single Judge in respect of the earlier arbitration proceedings. It was further submitted that, on account of the intervening summer vacation of this Court for a period of 31 days, i.e., from 01.05.2026 to 31.05.2026, the present appeals could not be filed earlier. However, the same are being filed immediately upon the reopening of the Court.



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8. The learned Additional Solicitor General submitted that the delay was neither wilful nor wanton and occurred due to bona fide reasons, including obtaining legal opinion, internal approvals and the pendency of the proceedings before the Hon'ble Supreme Court. He further submitted that no prejudice would be caused to the respondent if the delay is condoned, whereas the petitioner/appellant would suffer serious prejudice if the appeal is not entertained. Hence, he prayed for condonation of the delay.

9. Per contra, Mr.P.S.Raman, learned Senior Counsel appearing for the respondent, opposed the petitions and submitted that the petitioner/appellant cannot claim any special privilege merely because it is a Public Sector Undertaking. He submitted that all parties are equally bound by the law of limitation. The learned Senior Counsel further submitted that internal communications, obtaining legal opinion, and the process of obtaining administrative approvals cannot constitute sufficient cause for condoning the delay. He also submitted that the petitioner/appellant was aware of the order and could have acted upon the web copy of the order without waiting for the



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certified copy. Hence, according to him, the delay has not been satisfactorily explained and the petitions are liable to be dismissed. In support of his contentions, the learned Senior Counsel relied upon the judgments in ***Project Director, National Highways v. A.Padmini and another*** [2024 SCC OnLine Mad 11798], ***Project Director, National Highways v. A.Rajeswari and others*** [2024 SCC OnLine Mad 5175] and ***Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited*** [(2021) 6 SCC 460]. Hence, the learned Senior Counsel prayed for dismissal of the petitions seeking condonation of delay.

10. We have heard the learned Additional Solicitor General appearing for the petitioner/appellant and the learned Senior Counsel appearing for the respondent and perused the materials available on record.

11. It is a settled proposition of law that the length of delay is not by itself material and what is required to be considered is whether the delay has been properly and satisfactorily explained. The Court, while considering an

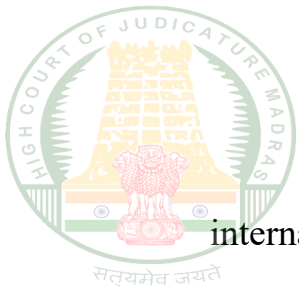


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application for condonation of delay, has to examine whether the reasons assigned are bona fide and sufficient to exercise the discretionary jurisdiction in favour of the applicant.

12. In the present case, the petitioner/appellant obtained the certified copy of the impugned order on 05.01.2026 and the appeal was required to be filed within 60 days, i.e., on or before 08.03.2026. In paragraph Nos.12(b) and 12(c) of the affidavit, the petitioner/appellant has stated that, being a Public Sector Undertaking, it took steps to obtain legal opinion from its Advocates before filing the appeal and the said process took about four weeks. Thereafter, considering the complexity of the matter and the stakes involved, the petitioner/appellant was required to obtain various internal approvals, which took about eight weeks.

13. It is to be noted that the issue involved in these appeals is not a simple issue. The impugned order proceeds on the question as to whether this Court had jurisdiction to appoint the Sole Arbitrator under Section 11(6) of the Arbitration and Conciliation Act, 1996, when the dispute is an

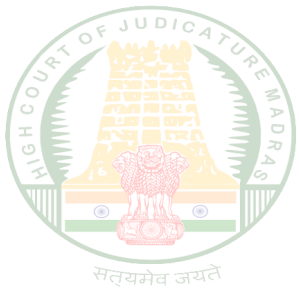


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international commercial arbitration. Therefore, the petitioner/appellant cannot be said to have acted without any diligence in seeking legal opinion before taking a decision to prefer the appeal.

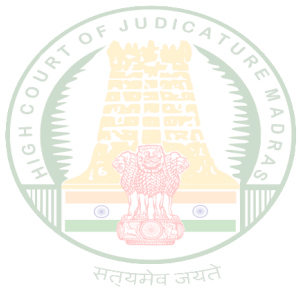
14. The learned Senior Counsel appearing for the respondent vehemently contended that the petitioner/appellant, being a Public Sector Undertaking, cannot be treated differently from any other litigant and that the internal administrative process cannot constitute sufficient cause. It was also contended that the order was available as a web copy on the very same day and, therefore, if the petitioner/appellant intended to obtain legal opinion, it could have done so without waiting for the certified copy.

15. There is considerable force in the submission that a Public Sector Undertaking cannot claim any special privilege in matters of limitation. The internal movement of files or administrative procedures cannot, as a general rule, be accepted as a sufficient explanation for every delay. However, the explanation has to be considered in the facts and circumstances of each case.



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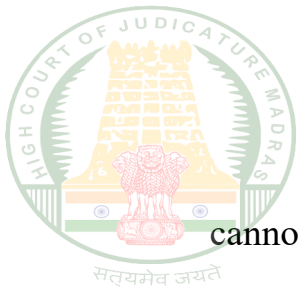
16. In the present case, the petitioner/appellant had applied for the certified copy on the very same day on which the impugned order was passed i.e., on 28.11.2025. Thereafter, it has explained the time taken for obtaining legal opinion and the necessary internal approvals. The matter involves a substantial commercial dispute, complicated questions relating to arbitration and considerable financial stakes. Therefore, the time taken for obtaining legal opinion and the necessary approvals cannot, in the facts of the present case, be said to be wholly unreasonable. It is also relevant to note that, during the relevant period, the petitioner/appellant was prosecuting proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996 before the Hon'ble Supreme Court in relation to the subsequent arbitration proceedings between the parties. The said proceedings were ultimately disposed of on 11.05.2026, and the Hon'ble Supreme Court granted liberty to the petitioner/appellant to seek the remedy under Section 37 of the Arbitration and Conciliation Act, 1996, if aggrieved by the order of the learned Single Judge in respect of the earlier arbitration proceedings.



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17. Though the pendency of the proceedings before the Hon'ble Supreme Court, by itself, would not extend the period of limitation, the same is certainly a relevant circumstance while considering the conduct and bonafides of the petitioner/appellant. The petitioner/appellant has stated that, having regard to the proceedings pending before the Hon'ble Supreme Court and the question involved therein, it awaited the outcome of the said proceedings before proceeding with the present appeal. It is further stated that there was an intervening summer vacation of this Court during the month of May 2026 for a period of 31 days, from 01.05.2026 to 31.05.2026. The petitioner/appellant has stated that the appeal was filed immediately after the reopening of the Court.

18. Thus, on an overall consideration of the reasons stated by the petitioner/appellant, we find that the delay occurred due to the time taken for obtaining legal opinion and internal approvals, the complexity of the matter, the substantial stakes involved, the proceedings pending before the Hon'ble Supreme Court, and the intervening Court vacation. The explanation offered



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cannot be said to be wholly unreasonable or to show any deliberate or wilful

inaction. At this juncture, it would be useful to refer the judgment of

Hon'ble Apex Court in the case of ***Commisisoner, Nagar Parishad***

Bhilwara Vs.Labour Cout, Bhilwara and another [2009 (3) SCC 525]:-

“5. While deciding an application for condonation of delay, it is well settled that the High Court ought not to have gone into the merits of the case and would have only seen whether sufficient cause had been shown by the appellant for condoning the delay in filing the appeal before it. We ourselves have also examined the application filed under Section 5 of the Limitation Act before the High Court and, in our opinion, the delay of 178 days has been properly explained by the appellant. That being the position, we set aside the impugned order of the High Court. Consequently, the appeal filed before the High Court is restored to its original file. The High Court is requested to decide the appeal on merit in accordance with law after giving hearing to the parties and after passing a reasoned order.”

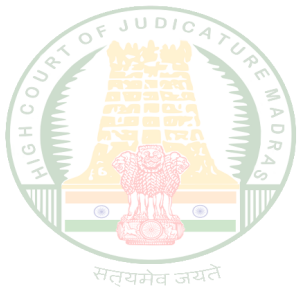
19. The learned Senior Counsel appearing for the respondent relied upon the judgments in ***Project Director, National Highways v. A. Padmini and another [supra]*** and ***Project Director, National Highways v. A. Rajeswari and others [supra]***. One of the members of the present Bench was also a member of the Bench which decided both the said cases. In the said cases, the delay of 95 days and 108 days, respectively, was not



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condoned, as the petitioners therein had failed to give a proper and satisfactory explanation for the delay. The reasons stated in those cases were found to be insufficient and vague. Whereas, in the present case, the delay has been specifically explained and the petitioner/appellant has acted bona fide. Therefore, the facts of the said cases are clearly distinguishable from the facts of the present case.

20. The learned Senior Counsel appearing for the respondent also relied upon the judgment of the Hon'ble Supreme Court in ***Government of Maharashtra (Water Resources Department) v. Borse Brothers Engineers & Contractors Pvt. Ltd. [(2021) 6 SCC 460]***. In the said case, the Hon'ble Supreme Court considered the question of condonation of delay in appeals arising under the Arbitration Act and the Commercial Courts Act. There is no quarrel with the proposition laid down by the Hon'ble Supreme Court that, in arbitration and commercial matters, delay is to be condoned by way of exception and not as a rule. However, in the very same paragraph No.63, the Hon'ble Supreme Court has also recognised that, in a fit case where the party has acted bona fide and not in a negligent manner, a delay can be condoned. At this juncture, it would be useful to refer to the relevant portion of paragraph No.63 of the said judgment, which reads as follows:



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“63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or 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 has otherwise acted bona fide and not in a negligent manner, a short delay beyond such 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.”

In the present case, the petitioner/appellant has acted bona fide and there is no wilful or negligent inaction. The certified copy was applied for on the very day of the order and the subsequent delay has been specifically explained. The reasons stated for the delay are also supported by the circumstances of the case.

21. In the facts and circumstances of the present case, we are satisfied that the petitioner/appellant has given a reasonable and satisfactory explanation for the delay. If the delay is not condoned, the



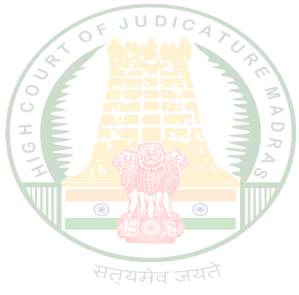
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petitioner/appellant would lose the opportunity to pursue its statutory remedy against the order setting aside the arbitral award. On the other hand, if the delay is condoned, no serious prejudice would be caused to the respondent, who would have an opportunity to contest the appeals on merits.

22. It is well settled that substantial justice should not be defeated on mere technicalities, especially when the applicant has shown sufficient cause and there is no deliberate or wilful delay. In the present case, considering the nature of the agreement and dispute, the complexity of the matter, the substantial stakes involved, the proceedings before the Hon'ble Supreme Court, the order dated 11.05.2026 granting liberty to pursue the remedy under Section 37, and the intervening Court vacation, we are satisfied with the explanation given by the petitioner/appellant.

23. Accordingly, without expressing any opinion on the merits of the Original Side Appeals, we are inclined to exercise our discretion in favour of the petitioner/appellant and condone the delay in the interest of substantial justice.



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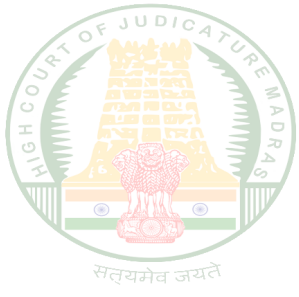
24. In the result, C.M.P.Nos.16073 and 16708 of 2026 are allowed and the respective delay of 87 days in filing the Original Side Appeals is condoned. No costs.

[P.V.J.] [G.K.M.J.]
28 / 08 / 2026

Neutral Citation:Yes

Note: The Registry is directed to number the respective appeals,
if they are otherwise in order.

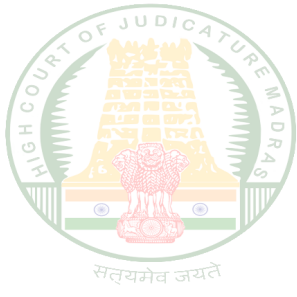
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The Sub Assistant Registrar,
(Original Side)
Madras High Court,
Chennai.



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P.VELMURUGAN. J.
and
G.K.MUTHUKUMAAR, J.

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Order in
C.M.P.Nos.16703 & 16708 of 2026 in
O.S.A.(CAD)SR.No.90619 & 90204 of 2026

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