

ORDERS ON APPLICATION FILED UNDER SECTION 5 OF
LIMITATION ACT

This application is filed by the petitioners i.e., NHAI and Spl.LAO U/Sec.5 of Limitation Act for condonation of delay in filing the appeal.

2. The petitioners have also filed an Affidavit along with the affidavit of Petitioner No.2 stating that they have challenged the award of the Respondent No.2 dated 24.08.2022 which was communicated to their office on 11.10.2022. According to the petitioners, after receiving the award copies passed by the respondent No.2, the same were sent for obtaining legal opinion and after receipt of the opinion, it is observed that impugned award had been passed was erroneous. Hence, same was sent to Regional office NHAI for approval. Due to the fact that impugned order requires to be challenged within the statutory period of limitation, after obtaining legal opinion, it was decided to challenge the impugned order. Hence on account of the said procedure involved in finalizing the papers and processing the same, there was a bit delay in filing the above petition. Hence prays for allowing the application by condoning the delay in filing the application.

3. The Respondent No.1 and 2 even though appeared through their respective counsels, they did not file objections to the above said application.

4. Heard.

5. The points that arise for my consideration are :-

1. Whether the Petitioners have made out any ground to condone the delay in filing the present arbitration petition ?

2. What order ?

6. My findings to the above said points are as under:-

Point No.1 : In the Negative

Point No.2 : As per the final order for the following :

REASONS

7. **Point No.1** : - This petition is filed U/Sec. 34 of Arbitration and Conciliation Act on 19.06.2023 praying for setting aside the order of the Respondent No.2 dated 24.08.2022, which was communicated to the petitioners on 11.10.2022.

As per the Judgment of **Hon'ble Supreme Court of India in Civil appeal No. 2928/2010 in the case of State Maharashtra V/s Hindustan Construction Co. Ltd**, the Hon'ble Supreme court has clearly held that the application for setting aside an arbitral award U/s. 34 of 1996 has to be made within the time prescribed under Sub-Section (3) ie., within 3 months and a further period of 30 days on sufficient cause being shown and not thereafter. That means it is clear that as per Sec.34 sub-section (3) of Arbitration and Conciliation Act within 3 months from the date of award, the appeal has to be filed before this court. If there is a sufficient cause, the court has got power to extend the limitation period for another period of 30 days. Beyond that this court has no power to extend the limitation period.

8. In another Judgment of **Supreme Court in the case of Bhimashankar Sahakari Sakkare Karkhane Niyamita V/s Walchandnagar Industries Ltd (WIL) in Civil appeal No. 6810/2022 dated 10.04.2023**, the Hon'ble Supreme court has considered the same aspect and has held that within 3 months from the date of arbitration award the appeal has to be filed. The court has got power to extend the limitation for a period of 30 days if there is a sufficient cause. That means total period of 120 days is available for the petitioners to file the appeal under Arbitration Act.

9. In another Judgment of **Hon'ble Supreme Court in the case of Miscellaneous application No. 21/2022 in Miscellaneous application No.665/2021 and Suo Motu writ petition No. (C) No. 3/2020 dated 10.01.2022**, the Supreme Court has extended the period of limitation and held that in the period of corona when the limitation would have expired during the period between 15.03.2020 till 28.02.2022 notwithstanding the actual balance period of limitation remaining, **all persons shall have a limitation period of 90 days from 01.03.2022**. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days that longer period shall apply. In the said Judgment at page 4, the Hon'ble Supreme Court held that:-

“ It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Section 23(4) and Sec. 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the commercial Courts Act, 2015 and proviso (b) and (c) of Section 138 of Negotiable Instruments Act, 1881 and any other laws which

prescribed periods of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

Therefore, it is clear that even in cases of arbitration and conciliation act also the same limitation has to be taken into consideration, even for the Corona period.

10. However in this case as admitted by the petitioners, the award of the 2nd Respondent dated 24.08.2022 was communicated to the petitioners on 11.10.2022. However this petition is filed by the petitioners on 19.06.2023 on the ground that since they have to obtain opinion for filing of the appeal /petition they could not able to file the petition in time. That means, it is clear that petition is filed beyond the period of limitation which extends to 120 days as discussed above. As per the above said Judgments of Hon’ble Supreme Court also this case will not cover the period of limitation mentioned by Hon’ble Supreme Court in Suo-Motu case. Therefore, I feel that this petition is not maintainable as it is filed beyond the period of limitation. Even though the application is filed U/Sec.5 of Limitation Act and not U/s. 34(3) of Arbitration and Conciliation Act, for the above said discussion, I feel that this court has no power to extend the period of limitation beyond the period of 120 days and hence I feel that this petition is not maintainable as it is filed beyond the period of limitation. Hence I answered point No.1 in the Negative.

11. **POINT No.2:** In view of the answering point No.1 in the Negative, I pass the following:

ORDER

IA U/Sec.5 of Limitation Act filed by the petitioners is **REJECTED**.

The Petition filed by the petitioners U/Sec.34 of the Arbitration and Conciliation Act is rejected as not maintainable since it is filed beyond the period of limitation.

Send back the LCR.

(Dictated to the Grade-1 Stenographer on computer, corrected by me and then pronounced in the Open Court on this the 04.06.2026)

[Prabhavathi.G]

Prl. District & Sessions Judge,
Chamarajanagar