

**IN THE COURT OF JUDGE, COMMERCIAL COURT
(DISTRICT JUDGE CADRE), COIMBATORE**

Present: **Thiru. K.Hariharan, M.L.,**
Judge,
Commercial Court (District Judge Cadre),
Coimbatore.

Wednesday, the 7th day of January, 2026

I.A. No.2 of 2025
in
Arbo.O.P. No.21 of 2025
[CNR No.TNCB22-000009-2025]

1. M/s. ARS Green Power Infra (P) Ltd.,
Kariyanchettipalayam, Pollachi
2. M/s. ARS Green Power Infra (P) Ltd.,
Rep. by Authorized Signatory Mrs. Sunitha ... Petitioners / Appellants

// Vs //

1. M/s. Shriram Finance Ltd.,
Rep's by its Power of Attorney, Mr.P.Senthilkumar
2. Vengadasalam Palanipoyan ... Respondents / Respondents

The petition came up for final hearing before me on 01.12.2025 in the presence of Ms. K.Kirthana, Advocate for the petitioners / appellants and Thriu. R.Senthil Kumar, Advocate for the 1st respondent / 1st petitioner and upon perusing the records and having stood over for consideration till this date, this court doth passed the following:-

ORDER

The petition has been filed by the petitioners / appellants seeking to condone the delay of 26 days in filing the Arbitration Original Petition (Arbo.O.P.). under Section 34(3) of Arbitration and Conciliation Act.

2. The petition averments which are found essential for the disposal of the petition is that:-

This petition has been filed by one Tmt.Sunitha on behalf of the petitioner company as Authorized Signatory of M/s. ARS Green Power Infra (P) Ltd., and it is submitted by the representative of the petitioner company that the petitioner is the authorized signatory of the M/s. ARS Green Power Infra (P) Ltd., / appellant herein. It is submitted that the petition challenging the Award of Sole Arbitrator dated 16.02.2024 in A.P. No.327 of 2023 have been filed by the petitioner. It is the submission of the petitioner that the Award has been passed Exparte by the Arbitrator and submit that the petitioner had no knowledge about the award passed by the Sole Arbitrator and also state that the petitioner has not obtained any notice from the respondent. It is also the contention of the petitioner that the Sole Arbitrator has sent a notice dated 23.02.2024 and only after the same they have come to know about the Exparte Award passed against the petitioner. It is the submission of the petitioner that the mother of the petitioner has been admitted in the Hospital in Tirussur and she was attending

her needs in the hospital, since there was no other person to look after her. Hence, the delay of 26 days was occurred and submit that the said 26 days has to be condoned. To condone the said delay of 26 days the present petition have been filed by the petitioner and sought for to allow the petition.

3. **By denying the petition averments the respondent have filed the counter. The sum and substance of the counter statement averments which are found essential for the disposal of the petition is that:-**

a) It is the contention of the respondent that the petition is time barred. It is submitted that on 16.02.2024 the Award has been passed by the Arbitral Tribunal and the same has been received by the petitioner on 23.02.2024 and submit that the petition ought to have been filed within 90 days i.e. on or before 23.05.2024 and submit that this appeal has been filed on 02.12.2024 with the delay of 191 days and it is not permitted under the Arbitration and Conciliation Act and submit that the petitioner have prayed for condone the delay of only 99 days. Further it is the contention of the respondent that the petitioner have not filed the documents in support of their contention regarding the alleged ill-health of mother of the authorized person / petitioner. It is also the submission of the respondent that there were other directors and employees who were working in the petitioner company and state that none of the directors of the petitioner company had filed this petition within the statutory period and submit that no

authorization letter also have been given by the board of directors to any employee of the petitioner company. It is also the submission of the respondent that one Tmt. Sunitha is only the purchaser of the company and not the employee of the petitioner company. Further the respondent submit that the petitioner company had borrowed loan with this respondent on 20.04.2019 and submit that the Award has been passed on 16.02.2024.

b) It is also the contention of the respondent that the petitioner have not come up with any reason for non appearance before the Arbitral Tribunal, even have received the notice from the Arbitrator. Further it is mentioned that the medical reason mentioned by the petitioner is unbelievable. The respondent contend that the Authorization Letter has given on 25.04.2024 and submit that the petitioner has no bar to appear before the Arbitrator in the Arbitral proceedings and submit that no reason has been stated for non appearance before the Arbitral Tribunal. Further, it is the contention of the respondent that the petitioner have to prove the alleged authorization and alleged sale of assets and liabilities. Hence the respondent has come up with the challenge that on what authority this petition has been filed and submit that this itself would show that the petitioner has not approached this Court with clean hands and submitted that there is a suppression of material facts in filing the petition and has denied the submission of ill-health.

c) The respondent also has challenged this petition and questioned the maintainability of this main Arbitral Original Petition due to non compliance of provision under Section 34(3) of the Arbitration and Conciliation Act and for non issuance of prior notice. It is mentioned that the main appeal have not been filed by the petitioner on any of the grounds challenged under Section 34(2) of the Arbitration and Conciliation Act and submit that the main appeal itself is not maintainable. By referring to Section 25 of the Arbitration and Conciliation Act it is the submission of the respondent that the petitioner have defaulted to appear before the Arbitrator in-spite of receipt of the notice and the Arbitrator had continued the proceedings and submit that the Arbitrator has passed the Award after giving the sufficient opportunity to the petitioner and the 2nd respondent and submit that the averments of the petitioner are not acceptable. It is also the submission of the respondent that the petitioner ought to have filed the petition under Section 34(3) of the Arbitration and Conciliation Act, but instead the petitioner is mentioned to have filed the petition under Section 148 of C.P.C. and submit that the provision under the Civil Procedure Code and the provision of Evidence Act would not be applicable to the Arbitration and Conciliation Act and sought for to dismiss the petition.

4. Point for consideration:-

- 1) Whether the petition could be allowed?

Point:-

5. This Court has considered the submission and rival submission on both sides. The respondent has filed the detailed counter. In the counter it is the submission of the respondent / claimant in the Arbitral proceedings that this petition is barred by limitation and submit that the petition under Section 34 (3) of the Arbitration and Conciliation Act have not been filed within 120 days from the date of receipt of the Arbitral Award. It is admitted fact that the Arbitral Award has been received by the petitioner on 23.02.2024. Subsequently on 18.06.2024 the petition challenging the Arbitral Award along with the petition under Section 34(3) of the Arbitration and Conciliation Act have been filed by the petitioner / respondent in the Arbitral proceedings before the Hon'ble Principal District Court, Coimbatore. The Hon'ble Principal District Court, Coimbatore have returned the said application as the same has to be filed before the Commercial Court Coimbatore, since the Hon'ble Principal District Court had no jurisdiction after the formation of this Commercial Court.

6) The petition has been filed by the petitioner challenging the award under Section 34 of the Arbitration and Conciliation Act along with the petition under Section 34(3) of the Arbitration and Conciliation Act to condone the delay of 26 days before the Hon'ble Principal District Court, Coimbatore, was returned on 21.06.2024 granting one month time for the petitioner to represent the same before the Jurisdiction Court. Accordingly on 09.07.2024 the petition under

Section 34 of Arbitration and Conciliation Act along with the petition to condone the delay of 26 days have been filed before this Court. Subsequently this Court has returned the petition for queries and again the return was represented and there was also delay in the representation and the delay for representation was condoned and the petition under Section 34(3) of the Arbitration and Conciliation Act was earlier filed before the 120 days. Hence the petition under Section 34(3) of the Arbitration and Conciliation Act prima facie has been presented by the petitioner within the limitation period.

7) Now, in this petition the petitioner has come up with the relief seeking for condone the delay of 26 days for the reason that the mother of the representative of the petitioner company was hospitalized and was unable to present the petition in time. The respondent has placed the contention that in support of the stand of the petitioner the petitioner has not filed any medical records before this Court and their reason for condoning the delay cannot be acceptable.

8) Admittedly this Court also finds that the company was party to the Arbitral proceedings and it is also the contention of the respondent in the counter that the company was served with the summons. Originally from the respondent loan has been borrowed by the previous Director of the petitioner company. Now the respondent has disputed the authority of the present

representative of the petitioner company to file this petition before this Court. It is settled proposition of law that a company can sue and also a company can be sued. In that case the company is a party to the Arbitral proceedings and further the company is the party to this petition.

9) Only the management of the company have been changed and the present management has taken over the company from the previous management. Hence the liability of the company will remain in-spite of change in management of the company. So with this note, this Court would consider appropriate that though the petitioner has cited the medical reason for condoning the delay, but this Court finds that the management of the company itself have been changed. The claimant / respondent have initiated the proceedings against the previous management and now the award have been challenged by the subsequent management of the petitioner and hence the authority of the subsequent management of the petitioner all are being challenged by the respondent in the counter. Since the management have been changed and the subsequent management have challenged the Award passed by the Arbitrator, this Court would consider that the delay of 26 days could be condoned for arriving at just decision in the main proceedings.

10) Apart from the above contention regarding the reason for delay the respondent has taken several other stand regarding the authority of the present

representative of the petitioner company to file this petition and the respondent also have challenged the main petition on the ground of Section 34(5) of the Arbitration and Conciliation Act. Further the respondent has referred to Section 25 of the Arbitration and Conciliation Act and placed the contention that the representative of the petitioner company have willfully failed to appear before the Arbitral proceedings in-spite of receipt of the notice. Apart from the above contention the respondent also have taken the stand that the grounds stated under Section 34(2) of the Arbitration and Conciliation Act have not been raised by the petitioner in main petition and sought for to dismiss this petition.

11) When this Court has considered the limited scope of petition under Section 34(3) of Arbitration and Conciliation Act that this is the petition that has been admitted only for the reason to decide the point regarding the delayed filing of the petition and this petition has only the limited scope to consider the point of condoning the delay of 26 days. As discussed in the previous passage this Court is of considered stand that this petition could be allowed, since the nature of proceedings shows that the delay could be condoned. Hence, this Court would consider that this petition could be allowed and thereby this Court also imposes the cost on the petitioner of Rs.2,000/- to be paid by the petitioner to the respondent on or before 21.01.2026 and upon failure to pay the cost the petition shall stand automatically dismissed.

12. In the result the petition is allowed on Cost and the petitioner is directed to pay the cost of Rs.2,000/- to the respondent herein on or before 21.01.2026 and upon failure to pay the cost by the petitioner on or before 21.01.2026 this petition shall stand dismissed. Call on 21.01.2026.

Dictated to the Steno-Typist, computerized by him directly, Corrected and Pronounced by me, on the 7th day of January 2026.

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore

List of Witnesses and Documents:- Nil

Judge,
Commercial Court,
(District Judge Cadre)
Coimbatore