

IN THE COMMERCIAL COURT AT ALIPORE

Present: Smt. Suparna Ray (JO Code:WB00711)

Misc Abr (Com) 106 of 2024
CNR No. WBSP18-000089-2024

Union of India Chief Administrative Officer Construction South
Eastern Railway.

.....Petitioner

vs.

M/s. Roop Construction Company.

.....Respondent

Order No. 10

Date: 12.12.2025

Today is fixed for passing order of the application being I.A. No. 01
of 2024.

Both sides file their respective haziras.

Now, the instant record is taken up for passing necessary order in
respect of I.A. No. 01 of 2024.

I.A. No. 01 of 2024

The instant application has been necessitated to file by the
petitioner for condonation of delay of filing the *per se* application filed
under Section 34 of the Arbitration and Conciliation Act, 1996. for
setting aside the award dated 06.02.2024.

Before delving into the instant application, it is to be enumerated
the Section 34(3) of the 1996 Act which states as follows:

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

Section 34 of the Arbitration and Conciliation Act, 1996 has provisions on application for setting aside an arbitral award. Sub-section 3 stipulates a 3-month limitation period for an application under Section 34. If the court is satisfied that the applicant was prevented by sufficient cause from making the application within those three months, it may entertain the application within a further period of thirty days, but not thereafter.

In the instant case, the petitioner has admitted that the petitioner has received the impugned award on 11.03.2024 and filed the instant case on 10.07.2024.

Therefore, for the above facts, it is no doubt to state that the application filed under Section 34 of the 1996 for setting aside the impugned award has not filed within the stipulated time as enumerated in the Section 34(4) of the 1996 Act.

However, the contention of the petitioner is that the petitioner admittedly has not filed the instant Section 34 application within the three months from the receipt of the award impugned, but has filed the same within the outer limit of thirty days as stipulated in the proviso of Section 34(3) of the 1996 Act.

The petitioner's further contention is that the petitioner has send the award to the higher departmental official for instruction to take proper steps and the petitioner upon receiving the information from the officials has approached Government Council Advocate Durga Ghosh on 23.05.2024 and thereafter, the said Council make the draft ready and send the draft of the application for approval on 08.07.2024 and the petitioner filed the application on 10.07.2024. So, the petitioner has made a delay of one (01) days for filing the said Section 34 application.

Although in the opposition filed by the respondent to the instant application, the respondent has controverted all the contention of the petitioner, however, during the course of hearing , learned Advocate appearing for the respondent has also submitted that there is a delay of one day (01) of filing the Section 34 application before this Court.

On perusal of the instant application, it appears that the petitioner has sought for relief under Section 5 of the Limitation Act, 1963 without praying for relief in view of Section 34(3) of the 1996 Act.

Now, issue herein is that is Section 5 of the Limitation Act applicable to applications under Section 34 of the A&C Act?

The issue was categorically dealt with by the Supreme Court in the case of *Union of India v. Popular Construction*, wherein Hon'ble Apex Court has been pleased to held that Section 5 of the Limitation Act could not be applied to an application under Section 34 of the A&C Act. The Apex Court, in *BPDP/REO v. Scoot Wilson Kirpatrick* , also has been pleased to held that : "There can be no quarrel with the proposition that Section 5 of the Limitation Act providing for condonation of delay is excluded by Section 34(3) of the A&C Act".

More over, the Section 29 of the Limitation Act, 1963 contemplates solutions for a situation where any special law or local law provides for a period of limitation different from what is provided in the Act. In such a scenario, the provisions of the said Act (sections 4 to 24) will apply to the extent to which they are not expressly excluded by such special or local law. Use of the word 'but not thereafter' in Section 34(3) of the 1996 Act has been interpreted as an express exclusion within the meanings of Section 29(2) of the Limitation Act, 1963.

Therefore, it is fact that the relief as sought for under Section 5 of the Limitation Act, 1963 may not be granted by this Court while condoning delay of filing the Section 34 application. But if we consider the prayer of the petitioner under the purview of section 34(3) of the Arbitration and Conciliation Act, the petitioner, on sufficient cause, entitled to get further period of further 30 days for filing such application under section 34.

Now, from the record it appears that the petitioner has received the impugned award on 11.03.2024 and then, filed the instant case before this court on 10.07.2024 i.e. exactly on 30th day of the outer limit of thirty (30) days.

It is reiterated that the petitioner filed the instant misc case within the outer limit as stipulated in the proviso of Section 34(3) of the 1996 Act. And, the cause as shown in the instant application for delay to file the Section 34 application is explained as the petitioner being a Governmental body could not make to file the instant case before this due to procedural tightness.

Although the reason, as stated by the petitioner is not at all satisfactory , but the same may accepted as the explanation of the

petitioner for delay in filing the instant case. Beside this, as the petitioner set forth grounds of Section 34 of the 1996 for setting aside the award impugned, therefore, for the ends of justice, this Court seems to give an opportunity to the petitioner to contest the instant misc case.

Therefore, in view of above, the instant application being I.A. No. 01 of 2024 is allowed on contest and accordingly, **disposed off**.

Fix the matter on **13.01.2026 at 10:45 a.m.** for fixing dates of hearing of the *per se* instant misc case.

Parties to act on the basis of the downloaded copy of this Order.

Dictated and corrected by me.

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Medinipur,
Paschim Medinipur&Jhargram

Sd/-

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