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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 31st October, 2025

\+ FAO (COMM) 306/2025 & CM APPL. 67986-88/2025

KIRAN INFRA ENGINEERS LTD. .....Appellant

Through: Mr. Dorab Sabharwal, Mr. Devanshu Chauhan and Mr. Diharth Basnal, Advocates.

versus

NORTHERN RAILWAYS .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

ORDER (ORAL)

***Per* DINESH MEHTA, J.**

1. By way of the present appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996, the appellant has challenged the order dated 09.07.2025, passed by the District Judge (Commercial Division)-II, Central, THC, Delhi, (hereinafter referred to as the 'Court') in OMP (Comm.) No.87/2024), whereby the appellant's application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996'), was rejected on the ground of delay.

2. Learned counsel for the appellant argued that the Court has erred in rejecting his application under Section 34 of the Act, 1996, solely on the ground of delay, without adjudicating the same on merit.

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3. Learned counsel further argued that Section 5 of the Limitation Act, 1963 (hereinafter referred to as 'the Act of 1963') does not contemplate filing of an application, and if an appellant/applicant is able to satisfy the court about the reason or the cause of delay, the court is supposed to consider the same and condone the delay. In support of his contention aforesaid, learned counsel relied upon the judgment of Hon'ble Supreme Court in the case of ***Sesh Nath Singh and Anr. Vs. Baidyabati Sheoraphuli Co-Operative Bank Limited and Another*** reported in **(2021) 7 SCC 313**.

4. During the course of submissions, learned counsel for the Appellant at the outset pointed out rather contended that the office of the Court did not raise any objection about the delay of 18 days and resultantly, no opportunity was granted to him to explain the delay. Learned counsel contended that before dismissing the appeal, the Court ought to have granted him an opportunity to file an application for condonation, if it was of the view that a formal application under Section 5 of the Limitation Act was required.

5. Heard learned counsel for the appellant and perused the impugned order.

6. On perusal of the order under challenge, we find that in response to the application under Section 34 of the Act, 1996, filed by the appellant, the respondent-Northern Railways had filed a reply raising a specific objection that the application for setting aside the arbitral award was barred by limitation.

7. Regardless of the fact that said reply was filed on 07.03.2025, the appellant neither cared to file any counter to such objection nor did it choose

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to file any application or affidavit/counter seeking condonation of delay, whether under Section 5 of the Act of 1963 or otherwise.

8. It is interesting that the extant appeal under Section 37 of the Act of 1996 too has been filed after a delay of 29 days, but curiously enough, an application under Section 151 of Code of Civil Procedure praying for condonation of delay has been filed.

9. The appellant's stand is thus, contradictory and the argument self defeating; it cannot blow hot and cold together.

10. According to us, if the plea taken and the argument advanced by the appellant is accepted, it will lead to disastrous results and would strike at the very rule of law. Maybe, Section 5 of the Limitation Act does not speak of a formal application, but it talks of explanation about the delay caused in filing application or appeal to be furnished, which necessarily means assertion of requisite facts.

11. Needless to mention that the explanation to be put forth would require mentioning of the fact(s), with or without a formal application or affidavit. Without such assertion the Court cannot give any cognizance or credence to those facts, which are in the personal knowledge of the appellant or the applicant. An oral assertion that too of the counsel cannot be taken as a gospel truth and the opposite party cannot be taken by surprise. The opposite party is entitled to give reply/or controvert the veracity or truthfulness of such assertion. If such stand is allowed, the opposite party would not be able to controvert the facts pleaded for the delay.

12. It is a different aspect that in the case at hands, there is no substantial delay. But there may be cases, where the delay may be huge. The Court in a

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particular case may like to condone the delay, but a satisfactory reason has to be brought to the notice of the Court.

13. Going by the provisions of the Act of 1996, it is evident that Section 34 of the Act provides that an application for setting aside an arbitral award is required to be filed within a period of three months from the date of the receipt of the award; the said period is subject to a window of 30 days, provided the Court is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period of three months

14. It would not be out of place to reproduce the relevant provisions, viz., sub-Section (3) of Section 34 of the Act of 1996.

> *"(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."*

15. If the aforesaid plea, which too is claimed to have been made orally by the learned counsel for the appellant before the Court below that the delay of 18 days in filing the application for setting aside the award was caused because the appellant had received the copy of the award belatedly, is to be considered by the Court, the same is required to be pleaded and the facts are required to be brought on record.

16. Admittedly, neither in the memo of application under Section 34 of the Act, 1996 nor by way of any supplementary pleadings, let alone a formal application under Section 5 of the Limitation Act, had the appellant brought

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to the notice of the Court the reasons for the delay. In absence of any pleadings, the court cannot search for the reasons of the delay on the basis of oral assertion made by the appellant's counsel.

17. According to us, the veracity of the reasons, which the Court is required to assess, or their sufficiency, cannot be determined in a vacuum – there has to be a pleading to this effect, either in the memo of application or otherwise. Since the appellant, while filing the application under Section 34 of the Act of 1996 did not aver even a single word about the time lapsed, the Court was not supposed to undertake the rowing inquiry to search for the reasons for delay.

18. The judgment in the case of ***Sesh Nath Singh and Anr. (Supra)***, is not applicable in the present case. Having gone through the judgment carefully, we are of the view that the facts involved therein are different inasmuch as in the said case, the National Company Law Tribunal had considered and entertained the application despite the same being barred by limitation, qua which no objection was raised.

19. Para 16 and 18 of the aforesaid judgment (which encapsulate the relevant facts) clearly show that the appellant therein had taken a ground for the first time before the National Company Law Appellate Tribunal.

20. That apart, para 19 of the judgment in ***Sesh Nath Singh*** (supra) clearly shows that the respondent had submitted a separate list of dates, setting out the date-wise events that had taken place and it was in that context, that Hon'ble the Supreme Court observed that no formal application was required under the provisions of Insolvency and Bankruptcy Code.

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More so, neither by the Registry of the National Company Law Tribunal nor by the opposite parties, the objection qua the limitation was raised.

21. More so, in the present case, since the facts leading to filing of the application under Section 34 and the delay caused therein had not been set out, by the appellant-applicant, the court cannot be expected to assume the facts on its own.

22. No other argument was advanced.

23. We hardly find any substance in the appeal. The same is therefore, dismissed.

DINESH MEHTA, J

VIMAL KUMAR YADAV, J

OCTOBER 31, 2025/ms

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