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

% Date of decision: 17.11.2026

\# **CNR No. DLHC010277222023**

\+ FAO (COMM) 152/2023

M/S TELECOMMUNICATION CONSULTANTS INDIA LIMITED .....Appellant

Through: Mr. Nikhilesh Krishnan, Mr. Karan Mehra and Mr. Shail Saraf, Advs.

versus

M/S RAJPUT CONSTRUCTION .....Respondent

Through: Ms. Mercy Hussain and Ms. Nagendra Singh Parihar, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed assailing the judgment dated 13.04.2023 (hereinafter 'the impugned judgment') whereby the objections filed by the respondent under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') were allowed by the District Judge, Commercial Court, South-East, Saket Courts, Delhi (for short 'the Commercial Court').

2. The brief facts are that the appellant was a successful bidder in a tender invited by the Madhya Pradesh Rural Road Development Authority (for short 'the MPRRDA'). The parties to the *lis* entered into a Memorandum of Understanding (for short 'MOU') dated 18.10.2007 which provided that the work would be awarded to the respondent upon acceptance of bid by the MPRRDA. Pursuant to the MOU, on 07.12.2007 the work was awarded to the respondent on a back-to-back basis.

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2.1 The terms and conditions agreed between the parties provided for resolution of disputes through arbitration. The arbitration was invoked by the appellant on 07.04.2014 and a sole arbitrator was appointed. The proceedings culminated in an *ex-parte* award dated 15.05.2018 (hereinafter 'the award').

2.2 The respondent filed objections under Section 34 of the Act on 27.05.2019. The appellant raised a preliminary issue that the objections were barred by limitation. The respondent contended that it received a copy of the award for the first time on 01.03.2019 under the Right to Information (RTI) Act, 2005. The respondent challenged the unilateral appointment of the arbitrator.

2.3 The Commercial Court set aside the award having been rendered by a unilaterally appointed sole arbitrator and did not deal with the issue of limitation. Hence, the present appeal.

3. Learned counsel for the appellant contends that the objections were filed beyond the period of 120 days and the Commercial Court could not have entertained the objections without first deciding the issue of limitation.

4. *Per contra*, the appointment of the arbitrator was in violation of Section 12(5) of the Act. Reliance is placed upon the judgment of the Supreme Court in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India***, 2026 INSC 6. The contention is that the award was a nullity and rightly set aside.

5. Before proceeding further, it would be relevant to reproduce Section 34(3) of the Act: -

"**34. Application for setting aside arbitral award**

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> (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."

6. Section 34(3) of the Act provides that the limitation for filing the objections under Section 34 of the Act is three months from the date of receipt of the award. The proviso provides the power to condone delay of thirty days beyond the prescribed limitation period of three months. The language of Section 34(3) of the Act brings the limitation for filing objections under Section 34 of the Act within the ambit of Section 29(2) of the Limitation Act and the applicability of Section 5 of the Limitation Act is ousted. The Court has the power to condone the delay only for a period of thirty days beyond the prescribed limitation period.

7. The issue is no longer *res integra* in view of the settled position of law laid down by the Supreme Court in the following judgments:

7.1 In ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Others***, (2008) 7 SCC 169 held as under:

> "20. When any special statute prescribes certain period of limitation as well as provision for extension upto specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in

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enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act."

7.2 In ***Singh Enterprises vs. CCE***, (2008) 3 SCC 70 held as under:

"8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High

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Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

7.3 In ***Commissioner of Customs and Central Excise v. Hongo India (P) Ltd. and Anr.,*** (2009) 5 SCC 791 held as under:

> "32. As pointed out earlier, the language used in Sections35, 35- B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

7.4 In ***Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*** (2010) 5 SCC 23 held as under:

> "25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under the Limitation Act for filing suits, etc. The use of the expression 'within a further period of not exceeding 60 days' in the proviso to Section 125 makes it clear that the

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> outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."
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> (Emphasis supplied)

8. The Commercial Court failed to consider whether the objections were filed within the period prescribed under Section 34(3) of the Act. The issue of unilateral appointment of the sole arbitrator in violation of Section 12(5) of the Act could have been dealt with only if the objections were found to be within limitation. The Commercial Court erred in not deciding the issue of limitation at the first instance.

9. The impugned judgment is set aside and the matter is remitted to the Commercial Court for fresh consideration of the objections in accordance with law.

10. Considering that the award is of the year 2018 and in order to avoid any further delay, let the parties or their authorized representatives appear before the Commercial Court on 14th December, 2026. The Commercial Court shall make a sincere endeavour to decide the objections as expeditiously as possible.

11. The appeal is allowed.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 17, 2026

kp/ha

Reportable: **Yes**

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