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

\# **CNR No. DLHC010120822026**

\+ FAO (COMM) 87/2026, CM APPL. 19202/2026

UNION OF INDIA .....Appellant

Through: Mr. Sushil Kumar Pandey, SPC with Mr. Aman Kumar Pandey, Mr. Pradip Sharma and Ms. Aarti Rai, Advs.

versus

M S JAI PRAKASH AND SONS .....Respondents

Through: Mr. Saurav Yadav, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT (ORAL)

% **10.09.2026**

C. HARI SHANKAR, J.

1. This appeal assails order dated 22 December 2025 passed by the learned District Judge, Commercial Court-01, Patiala House Courts, New Delhi[1], whereby OMP (Comm) 132/2025, preferred by the Union of India under Section 34 of the Arbitration and Conciliation Act, 1996[2], challenging an arbitral award dated 24 February 2025, has been dismissed on the ground of delay.

[1] "learned Commercial Court", hereinafter
[2] "1996 Act", hereinafter

2. We have heard Mr. Sushil Kumar Pandey, learned Senior Panel Counsel for the appellant and Mr. Saurav Yadav, learned Counsel for the respondent at length.

3. Mr. Pandey submits that the learned Commercial Court has erred in law in applying the Section 34(3)[3] of the 1996 Act to delay in refiling, which is contrary to the judgment of the Supreme Court in ***Northern Railway v. Pioneer Publicity Corp. Pvt. Ltd.***[4]. As the judgement is short, we are reproducing the order in its entirety thus:

> "1. Leave granted. The appellant is aggrieved by the decision of the Delhi High Court dated 1.9.2015 in FAO (OS)NO.436 OF 2015 refusing to condone a period of 65 days in re-filing the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'Act'). The award was delivered on 29.10.2012. Admittedly, the objections under Section 34 were filed within the time stipulated under Section 34 of the Act. However, since there was objections, time was granted on 23.1.2013 by the Deputy Registrar of the High Court to remove the objections within a period of 7 days. This was not done.
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> 2. Eventually, the appellant re-filed the matter on 21.3.2013, the explanation given by the appellant is that the amount of court fees to the extent of Rs.8,94,000/- was to be arranged and that took some time. The appellant is the Northern Railway and while it is difficult to condone such inefficiency which seems to be a persistent reality with the organisation, such as the Northern Railway, that took time in arranging even the small things.
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> **3.** Mr. Amarjeet Singh Chandiok, learned senior counsel appearing for the respondent submitted that Section 34(3) of the Act bars re-filing beyond the period stipulated therein. The said suh-Section reads as follows:

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[3] (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.

[4] **(2017) 11 SCC 234**

> "34(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:
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> 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."

> **4.** *We find that said section has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act*. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.
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> **5.** We are not inclined to accept this contention particularly since the petitioner has offered an explanation for the delay for the period after the extensions.
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> **6.** Having regard to the overall circumstances of the case, we consider it appropriate in the interest of justice to set aside the impugned order.
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> **7.** Accordingly, the appeal is allowed and the impugned order of the High Court is set aside. We further direct that the objections of the appellant under Section 34 be taken on the file of the court and the matter be disposed of in accordance with law. The parties are directed to appear before the appropriate court on 28th November, 2016 after obtaining certified copy of this order."

8. In the present case, the statutory period of three months envisaged by Section 34(3) of the 1996 Act, within which the objections to the arbitral ward were required to be filed, reckoned from 24 February 2025, on which date the award was received by email by the appellant, expired on 24 May 2025. The Section 34 petition came to be filed on 20 June 2025, 27 days beyond the period of three months, but within the further period of 30 days envisaged in the proviso to Section 34(3).

9. The learned Commercial Court has not dismissed the appellant's Section 34 petition on the ground that there was unexplained delay of 27 days beyond the period of 90 days available under Section 34(3), but has faulted the appellant for having cured the defects in the Section 34 petition, as originally filed, only on 2 August 2025. We may reproduce paras 6 to 8 of the impugned order thus:

> "6. A detailed report was called from Filing Section, which shows that after 20.06.2025 with incomplete filing another attempt was taken to again e-file it on 02.08.2025. However, probably that also suffered with certain objections, therefore, finally it was again e-filed on 07.08.2025. Thus, it is also clear that after 20.06.2025, the next step to remove the objection or to file it completely, was taken much after lapse of 120 days from the date of receiving the Award, i.e. on 02.08.2025, which shows continuing lethargic approach on the part of petitioner.
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> 7. It is well apparent to me that the petitioner department had been lethargic to initiate the procedural formalities after lapse of two (2) and half months. It is no longer res integra that Government Department are also duty bound to act in accordance with the mandate of limitation laws. Reliance is placed upon the observations made by Hon'ble Supreme Court in the case *of* ***Office of the Chief Post Master and Ors. v. Living Media India Ltd. & Anr.***[5].
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> 8. I do not find any petitioner to be entitled for extra indulgence and at the same time it is settled law that the court cannot condone the delay after lapse of 120 days (Ref. ***SCG Contracts India Pvt. Ltd. v. K.S. Chamankar Infrastructure Pvt. Ltd. & Anr.***[6]). In view of the same this application has to be

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[5] **AIR 2012 SC 506**
[6] **AIR 2019 SC 2691**

dismissed."

10. Thus, it is clear that the learned Commercial Court has also included, in the period of limitation envisaged in Section 34(3) of the 1996 Act, the time taken in refiling the petition after curing defects.

11. This is directly contrary to the law declared by the Supreme Court in ***Pioneer Publicity Corpn.***

12. It is not the finding of the learned Commercial Court that, innocent of Section 34(3), the delay in refiling of the petition was not properly explained.

13. The sole ground on which the learned Commercial Court has dismissed the Section 34 petition filed by the appellant being unsustainable in law and contrary to the decision of the Supreme Court in ***Pioneer Publicity Corpn,*** we have no option but to set aside the decision of the learned Commercial Court.

14. Accordingly, the impugned order dated 22 December 2025 passed by the learned Commercial Court is quashed and set aside. The Section 34 petition of the appellant is restored for consideration on merits by the learned Commercial Court.

15. In order to expedite matters, both parties would appear before the learned Commercial Court on 28 September 2026. Neither side would be entitled to seek any adjournment on the said date.

16. The appeal is allowed in the above terms.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

SEPTEMBER 10, 2026/*aky*