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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 31st July, 2025*

+ O.M.P. (COMM) 293/2025

M/S TAMTA CONSTRUCTION CO. PVT LTDPetitioner
Through: Mr. Vinod Zutshi and Mr. R.P.
Tamta, Advocates.

versus

M/S ALLIED ENERGY SYSTEM PVT. LTD.Respondent
Through: None

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

I.A. 18215/2025 (u/S 5 of Limitation Act, 1963)

1. This application is filed on behalf of the Petitioner seeking condonation of delay of 325 days in filing the accompanying petition under Section 34 of Arbitration and Conciliation Act, 1996 ('1996 Act') challenging the impugned arbitral award dated 13.02.2024 passed by the learned Sole Arbitrator in Case No. DIAC/2434/04-19 titled *Allied Energy System Pvt. Ltd. v. Tamta Construction Co. Pvt. Ltd.*

2. It is averred in the application that the arbitral award was received on 25.05.2024, however, due to the bank account of the Petitioner company being frozen in respect of certain other matters, Petitioner was under a financial crunch and could not file the petition within the prescribed period of limitation. With a lot of efforts, Petitioner arranged some finances and decided to challenge the award. Delay is also attributed to the fact that the



case file and certain documents were missing in the office of the Petitioner.

Relevant paragraphs of the application are as follows:-

“3. That the Applicant has filed an application for getting certified copies before the copy agency and the same was received on 25.05.2024.

4. That due to financial problems with the petitioner company the bank account of Tamta Construction Co. Pvt. Ltd. maintained by petitioner company were freeze in other matters, due to which the petitioner company could not be able to withdraw any amount from their banks. The delay in filing the accompanying petition was due to financial problem.

5. The applicant after a lot of efforts was able to arrange some finances from other source and able to file the application for setting aside the Impugned Award dated 13.02.2024.

6. That the case file and certain documents were missing in the office of the petitioner company. Hence the counsel did not file the petition within the time. Hence the applicant filed this petition before this Hon'ble Court.”

3. Based on the averments in the application, learned counsel for the Petitioner submits that the delay is neither intentional nor *mala fide* and for reasons beyond the control of the Petitioner and thus the delay be condoned in the interest of justice. Emphasis is laid on the financial condition of the Petitioner company as also the fact that some documents went missing in the office of the Petitioner.

4. The impugned award was pronounced by the learned Sole Arbitrator on 13.02.2024 and going by Petitioner's averment in the application, the award was received on 25.05.2024. This petition is filed on 03.04.2025, which is evident from the filing log sheet and thus there is a delay of 325 days in filing the petition. Section 34(3) of 1996 Act provides a limitation period of three months for filing objections against an arbitral award and Proviso thereto provides a period of thirty days within which the Court can in its discretion condone the delay, if sufficient cause is shown by the objector, which prevented the objector in filing the objections within the



prescribed period of limitation. However, post 120 days period, Court has no power to condone the delay, which is palpably clear from reading of the Proviso to Section 34(3) where the Legislature has used the phrase ‘*but not thereafter*’.

5. The Supreme Court in the cases of ***Union of India v. Popular Construction Co., (2001) 8 SCC 470*** and ***Simplex Infrastructure Limited v. Union of India, (2019) 2 SCC 455***, held that the use of the words ‘but not thereafter’ in Proviso to Section 34(3) makes it clear that no extension can be given beyond the period of 30 days and an objection petition filed thereafter cannot be entertained. Relevant passage from the judgment in ***Simplex Infrastructure (supra)*** is as follows:-

“18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.”

6. Following the aforesaid judgments, this Court in ***SKS Power Generation (Chhattisgarh) Ltd. v. ISC Projects Private Limited, 2019 SCC OnLine Del 8006; Akash Gupta v. Praveen Kumar Gupta and Others, 2020 SCC OnLine Del 229; Govt. of NCT of Delhi v. RKMT Buildcon Pvt. Ltd., 2024 SCC OnLine Del 8330; and Container Corporation of India Limited v. Shivhare Road Lines, 2024 SCC OnLine Del 5490***, to refer a few, has dismissed petitions filed under Section 34 after a period of 120



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days. In this context, I may also allude to a recent judgment of the Supreme Court in *State of West Bengal Represented Through the Secretary and Others v. Rajpath Contractors and Engineers Limited, (2024) 7 SCC 257*, wherein it was held that a petition filed even one day after the expiry of 30 days condonable period cannot be entertained. In the said case, Arbitral Tribunal passed the award on 30.06.2022, which was served on the Appellants on the same day but the petition under Section 34 of 1996 Act was filed on 31.10.2022. Submission of the Appellants was that period of limitation ended on 01.10.2022, when calculated from 01.07.2022, since the Pooja vacation ended on 01.10.2022. Respondent, on the other hand, contended that benefit of Section 4 of the Limitation Act was available only if the proceedings are filed within the prescribed period of limitation, which under Section 34(3) is three months and reliance was placed on the judgment of the Supreme Court in *Popular Construction (supra)*. The Supreme Court held that period of limitation will have to be reckoned from 30.06.2022 when the Appellants received the award and excluding the said day in view of Section 12(1) of the Limitation Act, the period of limitation will start running on 01.07.2022 and three months would thus expire on 30.09.2022. Since the three months expired a day before commencement of the Pooja vacation on 01.10.2022, Appellants were not entitled to the benefit of Section 4 of the Limitation Act and the maximum period of 30 days having expired on 30.10.2022, petition filed under Section 34 on 31.10.2022 was rightly dismissed by the High Court on the ground of bar of limitation.

7. Coming to the instant case, the petition is filed beyond three months prescribed period of limitation as also beyond the 30 days period within



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which the Court has the discretion to condone the delay, on sufficient cause being shown. In fact, the delay is 325 days. In light of the judgments aforementioned, this Court does not have the discretion to condone the delay after 120 days and therefore, the reasoning given by the Petitioner that the delay was on account of financial crunch or missing documents has no relevance.

8. Application is dismissed, being devoid of merit.

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9. In view of the dismissal of the application seeking condonation of delay in filing the objections, the present petition cannot be entertained being barred by limitation and the same is accordingly dismissed.

10. Pending applications also stand dismissed.

JYOTI SINGH, J

JULY 31, 2025
S.Sharma