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

**Date of Decision : 25.07.2025**

+ **O.M.P. (COMM) 278/2025**, I.A. 17603/2025, I.A. 17604/2025, I.A. 17605/2025, I.A. 17606/2025

UNION OF INDIA

.....Petitioner

Through: Mr. Ruchir Mishra, Mr. Mukesh  
Kumar Tiwari and Mr. Reba Mishra,  
Advs.

versus

M/S GARG BUILDERS

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

: **JASMEET SINGH, J (ORAL)**

**I.A. 17607/2025 & I.A. 17608/2025**

Exemption allowed, subject to all just exceptions.

The application is disposed of.

**O.M.P. (COMM) 278/2025**

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act") challenging the Arbitral Award dated 01.09.2022 and modified award dated 20.09.2022 passed by the learned arbitrator in Arbitration Case being ARB/OPB/CPWD/72.
2. At the outset, learned counsel for the petitioner has been asked to address the issue as to how the petition is filed within the limitation



period.

3. In the present case, there is no dispute that the petitioner was served with the arbitral award dated 01.09.2022 and modified award dated 20.09.2022 on the said dates.
4. On 03.01.2023, the petitioner challenged the award before the Karnal District Court. Hence, on 03.01.2023, the petitioner had consumed 104 days.
5. However, on 20.07.2024, the Karnal District Court returned the petition to the petitioner with liberty to file before the appropriate territorial jurisdictional court and also observed that the petitioner would be entitled to the benefit of Section 14 of the Limitation Act, 1963 (“the limitation act”).
6. Thereafter, on 21.08.2024, the petitioner filed the petition under Section 34 of the Act before the Rohini District Court, thereby consuming another period of 30 days from 20.07.2024.
7. On 19.10.2024, the Rohini District Court issued notice and stayed the effect and operation of the impugned award.
8. Thereafter, *vide* the Order dated 03.04.2025 passed by the Rohini District Court, the petition was returned to the petitioner under Order VII Rule 10 of the Code of Civil Procedure, 1908, for presenting the same before the court of competent jurisdiction within a period of 1 month from 03.04.2025.
9. On 29.05.2025, the petitioner filed the present petition before this Court, i.e., after a period of 55 days from 03.04.2025.
10. Hence, the petitioner has filed an application bearing I.A. 17604/2025 seeking condonation of delay of 25 days in filing the petition.



11. I have heard learned counsel for the petitioner and perused the material on record.
12. Under Section 34(3) of the Act, a delay beyond 120 days (90 days plus another 30 days in case of sufficient cause) cannot be condoned. It is a settled law as held by the Hon'ble Supreme Court in the judgment of *Simplex Infrastructure Ltd. v. Union of India (2019) 2 SCC 455* and followed by this Court in *National Research Development Corporation & Anr. v. Chromous Biotech Pvt. Ltd., O.M.P. (COMM) 238/2023, dated 08.01.2024*. The relevant paragraph of *National Research Development Corporation (supra)* reads as under:

*“11. Further, in Simplex Infrastructure Ltd. v. Union of India (2019) 2 SCC 455, the Supreme Court held that the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 allows the said period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. It observed that the intent of the legislature is evinced by the use of the words "but not thereafter" in the proviso. According to the Supreme Court, these words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of upto thirty days (and no more) subject to the satisfaction of the Court that sufficient reasons are provided for the delay. The relevant portion of the said decision is as follows:*



*“13. 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.”*

13. As regards exclusion of time for the period the petitioner was prosecuting his remedies before the other courts is concerned, I rely on the Division Bench decision of this Court in ***M/s Singhal Credit Management LLP v. M/s Religare Securities Ltd. & Anr., FAO (COMM) 34/2022, dated 24.03.2022***, particularly paragraphs 2, 3.4 to 3.7, which read as under:-

*“2. However, before we proceed further, some important parameters need to be set forth, as enunciated in law, to decide the issue at hand :*

- (i) Once limitation commences, it does not get*



*interrupted.*

*(ii) The Limitation Act, 1963 (in short “the 1963 Act”) is applicable to arbitration proceedings by virtue of Section 43 of the 1996 Act.*

*(iii) The limitation period prescribed for filing a petition under Section 34 of the 1996 Act, is three [3] months.*

*(iiia) Since the 1996 Act does not define the expression "month", the same will have the same meaning, as defined in Section 2(35) of the General Clauses Act, 1897. The said section provides that the expression "month" means a month reckoned according to the British calendar. Where the period prescribed is a calendar month running from an arbitrary date, it expires with the day in the succeeding month immediately preceding the day, corresponding to the date upon which the period starts, save and except where the period starts at the end of the calendar month which contains more days than the succeeding month, the period expires at the end of the latter month. [See Halsbury's Laws of England Volume 37 (third edition)]*

*(iiib) However, the Supreme Court in the judgment rendered in State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210, made the following observations with regard to how the terminal date of the three months timeframe should be ascertained : "18. Therefore when the period prescribed is three months (as contrasted from*



*90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days."*

*(iiic) The period of limitation commences from the date of receipt of the award, or if a request under Section 33 of the 1996 Act is made, the date on which the request is disposed of. Section 5 of the 1963 Act is not applicable to proceedings instituted under 34 of the 1996 Act. [See *Union of India v. Popular Construction Co.*, (2001) 8 SCC 470.]*

*(iv) Section 14 of the 1963 Act is applicable to Section 34 proceedings, preferred under the 1996 Act, provided the petitioner meets the requisite criteria i.e., the proceedings are prosecuted with due diligence, the matter in issue is the same, and was being taken forward in good faith in a court which could not have entertained it on account of a defect in the jurisdiction, or any other cause of like nature. [See *Consolidated Engg. Enterprises v. Irrigation Deptt.*, (2008) 7 SCC 1692 .]*

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*3.4. In the instant case, the prescribed period of limitation [i.e., three months], commenced from 30.10.2012, and, therefore, even if the maximum leeway is given, the limitation would expire on 30.01.2013.*



3.5. *The petitioner, concededly, filed the Section 34 petition under the 1996 Act in the first instance, as noticed in the order dated 04.03.2022, only on 28.01.2013. This petition was instituted in the Court of District and Sessions Judge, Jaipur Metropolitan, in the State of Rajasthan [hereafter referred to as "Jaipur Court"].*

3.6. *The Jaipur Court, however, returned the petition on 02.06.2018, while granting liberty to the petitioner to approach the Court of competent jurisdiction.*

3.7. *The petitioner, thereafter, approached the District Judge (Commercial Court)-02, Patiala House Court at New Delhi [hereafter referred to as "Delhi Court"] and instituted a petition under Section 34 of the 1996 Act, only on 29.09.2018.*

4. *Therefore, even if we were to exclude the time between, when the Section 34 petition was filed for the first time in the Jaipur Court i.e., 28.01.2013 and the date when the petition was returned by the said court i.e., 02.06.2018, it would not help the cause of the petitioner.*

4.1. *The limitation period in the petitioner's case expired, on 04.06.2018."*

14. On perusal, under Section 9 of the Limitation Act, once the limitation period begins to run, no subsequent disability or inability to institute a suit or make an application stops it and under Section 14 of the Limitation Act, only the period spent *bonafidely* in pursuing litigation before a wrong forum is excluded.
15. Hence, in the present case, the limitation period began from



20.09.2022 and the present petition was filed on 29.05.2025.

16. As per Section 14 of the Limitation Act, the period from 03.01.2023 to 20.07.2024 and 21.08.2024 to 03.04.2025 is to be excluded. Even after excluding the said period, the petitioner has consumed more than 185 days in filing the petition before this Court.
17. Even if the period of 30 days as granted by the Rohini District Court is excluded, the petitioner has still consumed more than 155 days in filing the petition before this Court.
18. Hence, the petition is barred by limitation.
19. However, it is the case of the petitioner that the arbitration proceedings are void *ab initio* as it is a case of unilateral appointment of arbitrator, which is impermissible in the light of the Hon'ble Supreme Court judgements in *Perkins Eastman Architects DPC vs. HSCC (India) Limited, (2020) 20 SCC 760* and *TRF Ltd. vs. Energo Engineering Projects Ltd., (2016) SCC OnLine SC 1928*.
20. The petitioner is at liberty to take these objections at the stage of execution of the arbitral award.
21. For the said reasons, the petition is dismissed granting liberty as aforesaid.

**JASMEET SINGH, J**

**JULY 25, 2025/DM**

*(Corrected and released on 30.07.2025)*