



2026:DHC:8837



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

% Reserved on : 17.07.2026
Pronounced on : 05.10.2026
Uploaded on : 07.10.2026

+ **FAO 195/2008**

EAST INDIA PAPER PRODUCTS NOW KNOWN AS
CHOWDHURY PACKERS P.LTD.Appellant
Through: Mr. Anuj P. Agarwala and Ms.
U. Srivastava, Advocates

versus

UOIRespondent
Through: None

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal has been instituted under Section 39 of the Arbitration Act, 1940 (hereinafter the “Act”) by the appellant/objector to challenge the judgment and decree dated 19.12.2007 passed by the learned Additional District Judge, Fast Track Court, *Tis Hazari* Courts, in Suit No. 238/06/92.

Vide the impugned judgment, the learned ADJ dismissed the objections filed by the appellant under Sections 16, 30, and 33 of the Act and made the impugned arbitral award dated 24.08.1992 a ‘Rule of the Court’ in favour of the respondent/Union of India for a sum of Rs.4,64,552/- with costs.



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2. The respondent was duly served in the present appeal and represented by counsel on several occasions earlier. However, none has appeared on its behalf despite repeated opportunities. *Vide* order dated 08.01.2026, this Court directed issuance of Court notice to the learned ASG, who was requested to ensure representation on behalf of the respondent on the next date of hearing. On 25.02.2026, this Court noted that, as per the office report, the respondent stood served. However, none has appeared on behalf of the respondent even thereafter. Accordingly, this Court deems it appropriate to proceed with the matter.

3. Briefly stated, the respondent's case, as set out in its statement of claim, was that on 18.09.1984, it placed an order with the appellant for the supply of 48,310 ECAD boxes, with 23,110 boxes to be supplied by 15.11.1984 and the remaining 25,200 boxes by 30.04.1985. According to the respondent, the appellant failed to supply the first instalment within the stipulated time, whereupon the respondent cancelled that portion of the contract on 14.12.1984 and initiated risk purchase proceedings. The respondent consequently claimed the loss allegedly suffered on account of the risk purchase, giving rise to disputes between the parties which were thereafter referred to arbitration.

4. The concerned statement of claim was filed before the learned sole arbitrator, *Sh. Shiv Prakash*, on 10.12.1990. The time for making the award had thereafter been enlarged by mutual consent up to 31.05.1991. On 04.07.1991, the learned sole arbitrator noted that the



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time for making the award had expired and that the time could not be enlarged further by mutual consent in the absence of the parties. He accordingly adjourned the proceedings *sine die*, with liberty to the respondent to get the time enlarged by an order of the Court of competent jurisdiction.

5. Instead of approaching the competent Court for enlargement of time under Section 28 of the Act, the respondent, on 13.12.1991, appointed a fresh arbitrator, *Sh. K. D. Singh*. The learned succeeding arbitrator entered upon the reference and eventually published the impugned award dated 24.08.1992.

6. The appellant raised a specific objection before the succeeding arbitrator that, upon expiry of the time available to the first arbitrator for making the award, the first arbitrator had become *functus officio* and the succeeding arbitrator could not continue with the reference without an extension of time granted by the Court of competent jurisdiction. The learned succeeding arbitrator dealt with the said objection *vide* order dated 10.07.1992 and rejected the same.

7. The said objection was thereafter raised before the learned ADJ as objection no. 4 and, *vide* the impugned judgment, the learned ADJ held that if the appellant was aggrieved by the learned arbitrator's order dated 10.07.1992 dealing with the said objection, it ought to have availed of the appropriate legal remedy. The learned ADJ further noted that the appellant had failed to establish any specific instance of misconduct on the part of the succeeding arbitrator and, accordingly, decided objection no. 4 against the appellant.



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8. Before this Court, learned counsel for the appellant has assailed the impugned judgment primarily on the ground that the learned ADJ erred by failing to appreciate the effect of the expiry of the time available to the first arbitrator for making the award. It is contended that once the first arbitrator had become *functus officio* and had adjourned the proceedings *sine die* with liberty to the respondent to obtain an order of the competent Court enlarging the time for making an award, the respondent could not, in the absence of such an order, revive the reference merely by appointing a succeeding arbitrator. It is submitted that the succeeding arbitrator had no jurisdiction to proceed with the reference or make the impugned award dated 24.08.1992, and that the proceedings before him, and consequently the award itself, stand vitiated.

9. Since the aforesaid primary contention raised by learned counsel for the appellant goes to the root of the matter, this Court considers it appropriate to examine the same first.

10. The framework governing the time-limit for making an award under the Act is set out in Rule 3 of the First Schedule and Section 28 of the Act. Rule 3 contemplates, *inter alia*, a period of 4 months from the date on which the arbitrator(s) enter upon the reference or, where a party has called upon the arbitrator(s) to act by notice in writing, from the date of such notice. A 4-Judge Bench of the Supreme Court, in *Hari Shanker Lal Vs. Shambhu Nath*¹, in its majority judgment, examined the scope of these provisions and held as under:

¹ AIR 1962 SC 78



“8. ... The legal position may be formulated thus : (a) A notice to act may be given before or after the arbitrators entered upon the reference, (b) If notice to act is given before they entered upon the reference, the four months would be computed from the date they entered upon the reference, (c) If a party gives notice to act within 4 months after the arbitrators entered upon the reference, the arbitrators can make an award within 4 months from the date of such notice. And (d) in that event, after the expiry of the said 4 months the arbitrators become functus officio, unless the period is extended by court under Section 28 of the Act; such period may also be extended by the court, though the award has been factually made.

9. In the present case, the notice was given long after the expiry of four months from the date when the arbitrators entered on the reference and, therefore, they could no longer act pursuant to the notice calling upon them to act. The proper course should have been to apply to the court for extension of time under Section 28 of the Act. ...”

(emphasis supplied)

11. The aforesaid position regarding the power of the Court to enlarge the time for making an award was further clarified by the Supreme Court in Hari Krishna Wattal Vs. Vaikunth Nath Pandya², wherein it was held:

“10. The question depends upon the true construction of Section 28. There is no doubt that the Arbitrator is expected to make his award within four months of his entering on the reference or on his being called upon to act or within such extended time as the Court may allow. Reading clause 3 of the Schedule along with Section 28 one finds that the power to enlarge the time is vested in the Court and not in the Arbitrator. Clause 3 and Section 28(1) exclude by necessary implication the power of the Arbitrator to enlarge the time. This is emphasised by Section 28(2) which provides that even when such a provision giving the Arbitrator power to enlarge the time is contained in the agreement, that provision shall be void and of no effect. The headnote of Section 28 brings out the force of this position in law by providing that the power is of the Court only to enlarge time for making the award.

² (1973) 2 SCC 510



11. Sub-section (2) of Section 28, however, indicates one exception to the above rule that the Arbitrator cannot enlarge the time, and that is when the parties agree to such an enlargement. ...”

(emphasis supplied)

12. The consequence of an arbitrator adjourning the proceedings *sine die* upon expiry of the time for making the award, and the subsequent appointment of a succeeding arbitrator without obtaining an extension of time from the Court, came up for consideration before the Coordinate Bench of this Court in Union of India Vs. Woodspot³. In the said case, the earlier arbitrator had adjourned the proceedings *sine die* upon expiry of the extended period for making the award, leaving it open to the parties to obtain a further extension either by mutual consent or from the Court. However, without obtaining any such extension, the Union of India appointed a succeeding arbitrator nearly 13 years later. While setting aside the award passed by the succeeding arbitrator, this Court held:

“4. ... Mr. Misra's order of adjourning the matter *sine die* had not been set aside by any Court neither any extension of time for passing award was granted by this Court. It is clear that Mr. R.N. Misra had become functus officio in this case as no extension of time was granted by the High Court nor both the parties had agreed for granting extension for passing the award. Mr. S.B. Sharan could not have acted as Arbitrator in place of an Arbitrator, who himself had become functus officio, and passed an award. ...”

(emphasis supplied)

13. A similar issue arose before this Court in Union of India Vs. Peeco Hydraulic (P) Ltd.⁴, wherein the earlier arbitrator had adjourned

³ 2009 SCC OnLine Del 3059

⁴ 2012 SCC OnLine Del 2495



the proceedings *sine die* upon expiry of the prescribed period, leaving it to the parties to obtain an extension of time either by mutual consent or from the Civil Court. In the absence of any such consent or an order of the Court extending the time, a succeeding arbitrator was appointed, who proceeded to make the award. Setting aside the award, the Coordinate Bench of this Court held:

“19. The time fixed under Clause 3 of the Schedule to the Arbitration Act 1940 can be extended only by the Court and not by parties. The arbitrator had no jurisdiction to make an Award after the expiry of the time for making the Award unless the parties sought extension by applying to the Court under Section 28. [See H.K. Wattal v. V.N. Pandya; (1973) 2 SCC 510 and State of Punjab v. Hardy; (1985) 2 SCC 629]. With there being no consent of the parties for the extension of time, and no order of the Court extending the time for making the Award, the entire arbitration proceedings before the succeeding arbitrator, Mr Achuthan, stood vitiated in law. The specific objection to this effect raised by PHPL before the learned arbitrator by two letters, as noted above, were not dealt with by him. On this short ground, the impugned Award dated 18-1-1991 is set aside.”

14. Adverting to the facts of the present case, the first arbitrator expressly noted that the time for making the award had expired and adjourned the matter *sine die* with liberty to the respondent to obtain an extension from the Court of competent jurisdiction. The respondent did not secure any such extension under Section 28 of the Act and instead chose to appoint a fresh arbitrator. There was no agreement between the parties extending the time in accordance with law. The learned ADJ erred in holding that the appellant was precluded from raising this objection merely because it had not separately challenged the succeeding arbitrator's order dated 10.07.1992, whereby the objection as to his jurisdiction to proceed with the reference had been



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rejected. Notably, the impugned award also was passed just over a month later, on 24.08.1992, and objections were filed against the same by the appellant under Sections 16, 30, and 33 of the Act.

15. Once it is held that the succeeding arbitrator lacked jurisdiction to continue the reference and publish the award in the absence of a mandatory Court extension under Section 28 of the Act, the award stands vitiated as a nullity. Consequently, it is not necessary to examine any other contentions touching upon the merits of the matter.

16. In view of the above, the present appeal is allowed. The impugned judgment and decree dated 19.12.2007 as well as the impugned award dated 24.08.1992 are set aside.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 05, 2026
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