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

+ **FAO(OS) (COMM) 126/2023 & C.M.Nos.31939-31941/2023**

**CHIEF ENGINEER/TSP/NR ACTING THROUGH DEPUTY
CHIEF ENGINEER/TS NORTHERN RAILWAY, NEW DELHI**

..... Appellant

Through: Mr.Mukul Singh, CGSC with Ms.Ira
Singh, Advocate.

versus

M/S VISHAL NIRMITI PVT LTD

..... Respondent

Through: Mr.Vinay Navare, Sr.Advocate with
Mr.Keshav Ranjan and Mr.Natraj
Ladda, Advocates.

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Date of Decision: 18th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present appeal has been filed challenging the judgement and order dated 22nd September, 2022 passed in *O.M.P. (Comm.) 404/2022* by the learned Single Judge of this Court.

2. Learned counsel for the appellant states that the learned Single Judge has erred in dismissing appellant-petitioner's petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('the Act') solely on the ground of delay.

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3. He states that the present case is a matter of public policy as it involves a service rendered to the public at large by the Railways-a public service entity. He further states that the award is beyond the contract as the claimant is entitled only to reimbursement of VAT/GST/Sales Tax paid by him on furnishing of evidence or *challan* of the payment.

4. It is settled law that Section 5 of the Limitation Act is excluded by Section 34(3) of the Arbitration Act, 1996 and that no condonation of delay can take place beyond the period of 120 days. (See: *Union of India vs. Popular Construction Co. (2001) 8 SCC 470*; *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors. (2008) 7 SCC 169* and *Chintels India Limited vs. Bhayana Builders Private Limited (2021) 4 SCC 602*)

5. Admittedly, in the present instance, objections to the award had been filed beyond the period of 120 days.

6. Though the present appeal under Section 37(1)(c) of the Act is maintainable against an order refusing to condone the delay in filing an application under Section 34 of the Act, yet this Court finds no error in the impugned order. Consequently, this Court is of the view that it cannot entertain the challenge to the award on merits.

7. Accordingly, the present appeal along with pending applications is dismissed. No order as to costs.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 18, 2023
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