

Form No. J(2)

In the High Court at Calcutta
Civil Appellate Jurisdiction
Commercial Division
Appellate Side

Present: The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Uday Kumar

FMA 244 of 2025
IA No: CAN 1 of 2025

M/s. Deecon India Pvt. Limited
Vs.
Union of India, CPWD

For the appellant	:	Mr. Priyankar Saha, Ms. Srijani Mukherjee, Mr. Satrajeet Sen, Mr. L.R. Mondal
For the UOI	:	Mr. Dhiraj Kumar Trivedi, Ld. DSG, Ms. Sumita Sarkar
Heard on	:	13.03.2025
Judgment on	:	13.03.2025

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against the rejection of an application under Section 5 of the Limitation Act filed in connection with a restoration application. The restoration application was filed in connection with an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the 1996 Act").

2. However, Section 37(1)(c) categorically provides that only an order setting aside or refusing to set aside an arbitral award under Section 34 is appealable under the said provision.
3. Since the refusal to set aside the arbitral award happened with the dismissal of the Section 34 application for default, the present rejection of the condonation of delay application in connection with restoration application is not appealable under any of the provisions within the four corners of the 1996 Act. Since Section 5 of the said Act categorically provides that there cannot be any judicial intervention except as provided under the provisions of the said Act, we are of the opinion that the appeal is not maintainable, since the impugned order is not appealable under the 1996 Act.
4. Accordingly, FMA 244 of 2025 along with IA No: CAN 1 of 2025 are dismissed as not maintainable.
5. It is made clear that nothing in this order shall prevent the appellant from preferring an appropriate and properly constituted challenge against the impugned order and/or the principal order whereby the Section 34 application was dismissed for default before the appropriate forum.
6. Leave is granted to the learned Advocate-on-record for the appellant to take back the certified copy of the impugned order upon furnishing a photocopy of the same for the records.

7. There will be no order as to costs.
8. Urgent Photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Uday Kumar, J.)

AD-03
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