

Court No. 6
(265719)

CO 1006 of 2025

28.03.2025
(AD 3)
(S. Banerjee)

Durgapur Freight Terminal Private Limited
Vs.
Titagarh Logistics Infrastructure Private Limited & Ors.

Mr. Sakya Sen, Sr. Advocate
Mr. Rishad Medora
Mr. Ramendu Agarwal

...for the petitioner

Mr. Sabyasachi Choudhury, Sr. Advocate
Mr. Sayantan Bose
Ms. Priyanka Gope

...for the opposite party no. 1

Mr. Ayan Dutta
Mr. Abhishek Jain

...for the opposite party no. 2

This application under Article 227 of the Constitution of India is at the instance of the first respondent in a miscellaneous case under Section 34 of the Arbitration and Conciliation Act, 1996 and is directed against an order being no. 15 dated November 27, 2024 passed by the learned Judge, Commercial Court at Alipore in Misc. Arb. (Com) No. 67 of 2023.

The undisputed fact of this case is that the opposite party no. 1 received the signed copy of the Award on November 23, 2022. The time limit of three months as prescribed under Section 34(3) of the 1996 Act for setting aside the arbitral Award expired on

February 23, 2023. The further period of 30 days as per the proviso to Section 34(3) of the Act expired on March 25, 2023. March 25, 2023 was a Saturday and the following day was a Sunday. The opposite party no. 1 herein filed the application under Section 34(3) of the 1996 Act for setting aside the arbitral Award dated November 17, 2023 on March 27, 2023.

Since the 30 day period as per the proviso expired on March 25, 2023 and the application for setting aside the arbitral Award was filed on March 27, 2023, the petitioner filed an application for condonation of delay. The ground taken in the application for condonation of delay is that the opposite party no. 1 herein filed the application for setting aside the arbitral Award on the first working day after expiry of the 30 day period as per the proviso to Section 34(3) of the Act. The opposite party sought to take the benefit of the General Clauses Act in this regard as March 25, 2023 and March 26, 2023 were holidays.

Mr. Sen, learned Senior Advocate for the petitioner submits that the impugned order is contrary to the interpretation made by the Hon'ble Supreme Court in the decision of *Bhimashankar Sahakari Sakkare Karkhane Nitamita (supra)*.

Mr. Choudhury, learned Senior Advocate for the opposite party no. 1 disputes such contention of Mr. Sen. He submits that since the opposite parties herein filed the application under Section 34(3) of the 1996 Act immediately on the first working day, the period is condonable in terms of the provisions of the General Clauses Act.

The question whether when the last date of the condonable period of 30 days under Section 34(3) of the Act falls on a holiday or during Court vacation, would the benefit of Section 10 of the General Clauses Act be available, fell for consideration before the Hon'ble Supreme Court in the case of *Bhimashankar Sahakari Sakkare Karkhane Nitamita –Vs.- Walchandnagar Industries Limited (WIL)*, reported in (2023) 8 SCC 453.

In paragraph 46 of the said reports the Hon'ble Supreme Court framed the question which was answered in paragraph 58 of the said reports. It would be beneficial to take note of the observations made by the Hon'ble Supreme Court in paragraph 58 of the said reports for which the same is extracted hereinafter:

“Therefore, in light of the application of the Limitation Act, 1963 to the proceedings under the Arbitration Act and

when Section 10 of the General Clauses Act, 1897 specifically excludes the applicability of Section 10 to any act or proceeding to which Limitation Act, 1963 applies and in light of the definition of “period of limitation” as defined under Section 2(j) read with Section 4 of the Limitation Act and as observed and held by this Court in Assam Urban, benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside award is filed within “prescribed period of limitation” and shall not be available in respect of period extendable by Court in exercise of its discretion.”

The Hon’ble Supreme Court held that the benefit of exclusion of period during which the Court is closed shall be available when the application for setting aside of Award is filed within “prescribed period of limitation” and shall not be available in respect of the period extendable by Court in exercise of its discretion.

This Court finds that the learned trial Judge took note of the Hon’ble Supreme Court decision but failed to apply the proposition of law laid down by the Hon’ble Supreme Court in the said reported decision correctly.

It is not in dispute that the application for setting aside the arbitral Award was filed beyond the

“prescribed period of limitation” as provided under Section 34(3) of the 1996. Therefore, the benefit of Section 10 of the General Clauses Act, 1897 shall not come to the aid of the opposite party no. 1 herein in the case in hand.

For such reason, this Court is inclined to interfere with the order passed by the learned trial Judge condoning the delay in filing the application under Section 34(3) of the 1996 Act.

Accordingly, the order impugned dated November 27, 2024 stands set aside. Consequently, the Misc. Arb. (Com) No. 67 of 2023 stands dismissed as time barred.

CO 1006 of 2025 stands allowed.

(Hiranmay Bhattacharyya, J.)