



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.11527 OF 2025
IN ARBITRATION APPEAL (ST)/31267/2025**

Jalgaon Municipal Corporation, Jalgaon District Jalgaon
Through It's Commissioner

VERSUS

Atlanta Infrastructure Limited

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Advocate for Applicant : Mr. Mukul Kulkarni h/f Mr. N. R. Dayama
Advocate for Respondent : Mr. M. M. Vashi, Senior Advocate I / b
Mr. G. R. Syed

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WITH CA/11528/2025 IN ARBITRATION APPEAL (ST)/31267/2025

CORAM : ARUN R. PEDNEKER, J.
DATE : 28th NOVEMBER, 2025

ORDER :

1. Heard.

2. By the present application, the applicant seeks condonation of delay of 267 days caused in filing the Arbitration Appeal under Section 37 of the Arbitration and Conciliation Act, 1996. In the said Arbitration Appeal, the applicant challenges the order dated 16/10/2024 passed under Section 34 of the Act by the learned District Judge, Jalgaon, in Civil Miscellaneous Applications No. 02 of 2007 and 03 of 2007, whereby the applications came to be rejected and the Judgment and Award dated 30/09/2006 passed by the learned Arbitrator was confirmed.

3. The learned Counsel for the applicant has relied upon the following relevant dates and has prayed for condonation of delay in view of the following facts and circumstances :

The date of the Award under Section 34 of the Arbitration and Conciliation Act, 1996 is 16/10/2024. It is the case of the applicant that he was not informed by his Advocate about the said Award. The applicant came to know about the Award only on 27/03/2025 when the notice of execution was served upon him. It is stated that, on receipt of the notice, the applicant addressed a letter to his Advocate on 13/05/2025 inquiring about the Award. The applicant's Advocate applied for a certified copy on 15/05/2025.

4. It is further stated that on 20/05/2025 the applicant sent a letter to his ex-employee, who was dealing with the matter before the learned Arbitrator and before the District Court. On 19/06/2025 the applicant received a reply from the said ex-employee indicating that he is ready to assist whenever necessary in the matter relating to the expansion project of Jalgaon Airport.

5. The applicant thereafter realised that a criminal case was pending, and that certain record relating to the tender had been handed over to the Investigating Officer in 2015. Accordingly, the Corporation, by a letter dated 18/07/2025, sought the said record from the police, who replied on

the same day stating that the record is in the Court.

6. On 24/07/2025 the Corporation applied to the Court for return of the record. On 30/08/2025 the applicant came to know that the documents were not in the Court. Consequently, on 30/09/2025 they once again approached the police. On 03/10/2025 the police supplied the documents. Thereafter, the appeal came to be filed on 09/10/2025.

7. The applicant/appellant submits that, in the above process, a delay of 267 days occurred in filing the appeal, and therefore the same deserves to be condoned.

8. The learned Counsel appearing for the respondents, in reply to the application for condonation of delay, submits that the Award was passed by the learned Arbitrator on 30/09/2006. Under Claim No.1, the respondents were granted an amount of ₹47,88,297/-, and under Claim No.2, they were granted ₹6,11,62,046.55. The counter-claim was also allowed, and an amount of ₹3,18,15,897/- was granted to the respondents from the claimants. On 26/12/2006, both the applicants and the respondents challenged the Award under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Judge, Jalgaon, and both applications came to be rejected by a common order dated 16/10/2024.

9. The respondents submit that the delay in filing the appeal is 299

days and not 267 days, and that no sufficient cause has been shown for condonation of delay. The reasons mentioned are irrelevant for the condonation of delay in filing appeal.

10. The law on the subject of condonation of delay in filing appeal under Section 37 of the Arbitration Act is discussed in the case of **Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited, (2021) 6 SCC 460**, the Hon'ble Supreme Court, at paras 61 has observed as under : -

"61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches. "

11. In the judgment of **Borse Brothers** (*supra*), the Hon'ble Supreme Court has concluded that the delay has to be condoned in cases, where the party was prevented by "sufficient cause" from prosecuting his case. The expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. The appeals filed

under section 37 of the Arbitration Act are governed by Articles 116 and 117 of the Limitation Act. The delay of 90 days or 30 days is to be condoned by way of an exception and not by way of a rule. In a fit case, where the party has acted bona fide and not in a negligent manner, a short delay beyond such prescribed period may, in the discretion of the Court, be condoned, always keeping in mind that the opposite party may have acquired, both in equity and in justice, rights which may now be lost due to the first party's inaction, negligence, or laches.

12. The Hon'ble Supreme Court, in the case of **Borse Brothers** (supra), has also observed, relying upon the judgment of **Postmaster General v. Living Media (India) Ltd., (2012) 3 SCC 563**, that the Government department cannot be given any special benefit, and Government departments are equally under an obligation to act with due diligence and commitment. Condonation of delay is an exception and cannot be treated as an anticipated benefit for Government agencies. Unless supported by a reasonable and acceptable explanation showing bona fide effort, the usual plea of procedural delay or bureaucratic red tape cannot be accepted. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

13. The learned Counsel for the applicant has relied upon the judgment of the Division Bench of this Court in **State of Maharashtra v. Morya Infrastructure Pvt. Ltd., Beed** (Civil Application No. 651 of 2023 in

Commercial Arbitration Appeal (Stamp) No. 1440 of 2023), wherein a delay of 187 days was condoned. In that case, the Court observed that while considering an application for condonation of delay, the Court must bear in mind that a party should not lose its right to prefer an appeal merely on technicalities. In the peculiar facts of that case, the Court exercised its discretion to condone the delay, noting that the issue involved the very constitution of the arbitral tribunal, which went to the root of the legality of the Award, particularly when the matter related to public money. The delay was therefore condoned upon payment of costs of ₹10,000/-. The Special Leave Petition filed before the Hon'ble Supreme Court was dismissed, with the Supreme Court observing that condonation of delay is discretionary, and therefore no interference was warranted with the order passed by the High Court.

14. In the present case, however, the circumstances are entirely different. The order under Section 34 of the Arbitration and Conciliation Act, 1996 was passed on 16/10/2024, whereas the appeal has been filed only on 09/10/2025, almost after one year. The applicant has stated that he became aware of the order only on 27/03/2025. Thereafter, the applicant embarked upon a process of seeking documents from the police authorities and then from the Magistrate. This exercise is wholly unnecessary for filing an appeal under Section 37 of the Act. The documents relevant for the appeal were already part of the arbitral record and those considered in the proceedings under Section 34. Since the Award was passed in 2006 and

had already been challenged before the District Court, there was no need to obtain any documents from the police relating to a criminal investigation or documents forming part of a charge-sheet.

15. Importantly, the applicant has not explained how any of the documents sought from the police or the Magistrate were required for filing the present appeal. A reading of the appeal memo shows that the grounds raised in the appeal memo concerns non-application of mind, absence of reasoning, failure to frame points for determination, non-compliance with Sections 24, 28 and 31(3) of the Arbitration Act, improper appreciation of evidence, erroneous grant of monetary claims, and alleged conflict with public policy. None of these grounds depend upon any documents from criminal proceedings. The appeal could have been filed on the basis of the Award, the evidence before the Arbitrator, and the order passed under Section 34 of the Act.

16. Thus, the prolonged exercise of calling for documents from the police and the Magistrate was wholly irrelevant and cannot justify the delay. Even assuming that any additional documents were required, the applicant could have filed the appeal within the prescribed period of limitation and thereafter taken steps to bring such documents on record. The explanation offered, therefore, does not constitute sufficient cause for condoning the delay, particularly in view of the settled legal position that the strict limitation regime prescribed under Section 34 applies with equal rigour to

appeals under Section 37, and that delay can be condoned only in exceptional circumstances. No such exceptional circumstance is made out in the present case.

17. In view of the law laid down in **Borse Brothers** (supra), this is not a fit case for exercising discretion in favour of the applicant. The application for condonation of delay is, therefore, rejected and consequently the appeal also stands dismissed. Pending CA/11528/2025 stands disposed of.

(ARUN R. PEDNEKER, J.)

vj gawade/-.