6IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1109 OF 2025

PETITIONER :- Hitachi Rail STS India Private Limited, Having its registered office at Maruthi Infotech Center, 1st Floor, A Block, 100 Feet Road, Amarjyoti Layout Domlur, Bengaluru – 560071, Karnataka, India through Authorized Representative Mr. Nillohit Dey.

..**VERSUS**..

RESPONDENT :- Union of India, through South East Central Railway, having its registered office at 1st Floor, Construction Building DRM/ SECR Complex, Nagpur – 440001, Maharashtra, India, through its Chief Signal and Telecom Engineer (CON).

AND

Ministry of Railways having office at 256-A, Raisina Road, Rajpath Area, Central Secretariat, New Delhi, 110001.

Mr. D.V. Chauhan, Senior Advocate a/b Mr. C.J. Dhruv, Adv. for Petitioner.
Ms Mugdha Chandurkar, Advocate for the Respondents.

CORAM : **ANIL S. KILOR AND VRUSHALI V. JOSHI, JJ.**

DATE : **29/07/2025**

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.

2. **Rule**. The Rule is made returnable forthwith. Heard finally by consent of learned counsel for the respective parties.

3. The communication issued by the respondent dated 25.02.2025, informing the petitioner that, in view of the failure of the petitioner to submit the requisite performance guarantee, the tender awarded to the petitioner stands terminated, is under challenge in this writ petition.

4. The respondent floated a tender for trenching, supply and laying of cables, foundation/erection/wiring of location boxes, signal post, erection and wiring of relay racks, installation, wiring and testing of IPS, LC gate, supply, installation, wiring and testing of MSDAC/SSDAC and supply/installation/testing/commissioning of new distributed Electronic Interlocking at Wadsa station (Centre EI building and one end Goomty) and Centralised Electronic Interlocking (Works) at Armori, Kondhala and Gadchiroli station of Nagpur Division of SEC Railway.

5. The petitioner participated in the said tender process and he was declared as a successful bidder. On 20.12.2024, the respondent issued a Letter of Acceptance (LOA) to the petitioner accepting the petitioner's bid. There was a condition to submit performance guarantee amount of Rs. 1,68,64,016.35/- within 21 days from the date of issuance of LOA.

6. It is the case of the petitioner that on 04.01.2025, Bank Guarantee for the said amount was executed by Hongkong and Shanghai Banking Corporation Ltd. (HSBC) for the performance guarantee required as per the LOA and the same was dispatched by post through M/s. DTDC Courier and Cargo Ltd. It is further case of the petitioner that, the said courier was subsequently misplaced and therefore, the petitioner requested the HSBC Bank to issue fresh bank guarantee and on receiving Bank Guarantee from HSBC on 17.02.2025, the same was submitted on 18.02.2025.

7. In light of the above referred admitted facts, the only question involved in the present matter is whether the cancellation of tender of the petitioner for the reason that the petitioner failed to submit requisite Bank Guarantee within 60 days from the date of issuance of LOA, is just and proper and sustainable in the eyes of law ?

8. In short it has to be decided whether the stipulated period of 60 days for submission of the requisite Bank Guarantee would laps on 17.02.2025 or 18.02.2025.

9. According to the petitioner, the 60 days period will end on 18.02.2025, whereas, according to the respondent, it was ended on 17.02.2025.

10. The petitioner to substantiate that the first day of issuance of LOA shall be excluded and in that case, the last date would be 18.02.2025, has placed reliance on a statement of the High Court of Delhi in the case of *Jaidurga Enterprises ..vs.. Union of India*, reported in **2021 SCC OnLine Del 2446**.

11. On the other hand, while opposing the present petition, Ms. Chandurkar, learned counsel for the respondent vehemently argued that repeated chances were given to the petitioner to submit the various documents including Bank Guarantee and even he was asked to remain present for the meeting on 21.01.2025, but he failed to submit the documents and also to attend the meeting. She posed a question that, if the Bank Guarantee was in the hands of the petitioner on 13.01.2025, he could have attended the meeting on 21.01.2025 and submitted the same personally instead of sending the same through post by M/s DTDC. She therefore, submits that, it creates doubt about the intention of the petitioner and accordingly, she submits that, the first day of issuance of the LOA cannot be excluded and as such, the period of 60 days in this case would over on 17.02.2025.

12. In the light of rival submissions, we have perused the record, from which, it is evident that, the LOA was issued on 20.12.2024 at 16:17 hours and there was a condition to furnish performance guarantee within 21 days which was extendable upto 60 days. There is also a clause which stipulates that if the performance guarantee is not submitted within 60 days, the tender shall be cancelled.

13. Taking the recourse to the said provision, in this case, the tender issued to the petitioner was cancelled on the ground that within 60 days, the petitioner failed to submit the requisite performance guarantee for LOA.

14. A Single Bench of the Delhi High Court in the case of *Jai Durga Enterprises* (Supra) has observed thus :-

> *"15. Section 9 of the General Clauses Act, 1897 reads as under:-*
> *"9. Commencement and termination of time.--*
> *(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from' , and, for the purpose of including the last in a series of days or any other period of time, to use the word 'to'.*
> *(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."*
>
> *16. In terms of Section 9 of the General Clauses Act, if the expression "from" has been used then for the purposes of computing time, the first in series of days has to be excluded.*
>
> *17. The Supreme Court in Tarun Prasad Chatterjee v. Dinanath Sharma, (2000) 8 SCC 649 has held as under:-*
> *"10. Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time prescribed, the rule observed is to exclude the first and include the last day.*
>
> *11. In Halsbury's Laws of England, 37th edn., Vol. 3, p. 92, it is stated as follows:*
> *'Days included or excluded - When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is*

room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as "from such a day" or "until such a day" are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day.'

12. Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word 'from', and, for the purpose of including the last in a series of days or any period of time, to use the word 'to'. The principle is that when a period is delimited by statute or rule, which has both a beginning and an end and the word 'from' is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word 'to' is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation.

13. It was argued that the language used in Section 81(1) that 'within forty-five days from, but not earlier than the date of election of the returned candidate' expresses a different intention and Section 9 of the General Clauses Act has no application. We do not find any force in this contention. In order to apply Section 9, the first condition to be fulfilled is whether a prescribed period is fixed 'from' a particular point. When the period is marked by terminus a quo and terminus ad quem, the canon of interpretation envisaged in Section 9 of the General Clauses Act, 1897 require to exclude the first day. The words 'from' and 'within'used in Section 81(1) of the RP Act, 1951 do not express any contrary intention."

(underlining supplied)

18. The judgment in Tarun Prasad Chatterjee (supra) was relied upon by the Supreme Court in M/s. Econ Antri Ltd.

v. Rom Industries Ltd. (2014) 11 SCC 769, wherein the Supreme Court held as under:-

"34. As the Limitation Act is held to be not applicable to the NI Act, drawing parallel from Tarun Prasad Chatterjee v. Dinanath Sharma (supra), where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words 'from' and 'of' in Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words.

41. We may, at this stage, note that the learned counsel for the appellant relied on State of H.P. v. Himachal Techno Engineers (2010) 12 SCC 210, where, while considering the question of computation of three months' limitation period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the Arbitration Act, this Court held that having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, day from which such period is to be reckoned is to be excluded for calculating limitation. ...However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded, it is not necessary to discuss whether State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 is applicable to this case or not because Section 12(1) of the Limitation Act is relied upon therein."

(underlining supplied)

19. A learned single judge of this court in Frank Anthony Public School v. Amar Kaur (1984) 6 DRJ 47 while examining the question of filing of leave to defend within 15 days from service of summons held as under:

"26. The expression 'day' has been understood in different ways by different nations in different times. Lord Coke said:

'The Jewes, the Chaldeans, and Babylonians, begin the day at the rising of the sua; the Athenians at the all; the Umbri in Italy beginne at midday: the Egyptians and

Romanes from midnight; and so doth the law of England in many cases. The English day begins as soon as the clock begins to strike twelve p.m. of the preceding day. Williams v. Nash, 28 L J. Ch. 886'.

In Halsbury's Laws of England, third edition, Vol. 37, P 84 it is said:
'The term "day" is, like the terms "year" and "month", used in more senses than one. A day is strictly the period of time which begins with one midnight and ends with the next. It may also denote any period of twenty-four hours, and again it may denote the period of time between sunrise and sunset.'

27. Counsel for the landlady argues that time ought to be counted from 12-5-1982 and the period of fifteen days expired on 26-5-1982. In any event he says the leave application made on 27-5-1982 was barred by time. I have no hesitation in rejecting this argument. The question is what is meant by the phrase 'within fifteen days from the service hereof'. In my opinion, on a proper reading of the third schedule, the word 'day' should be read as meaning a 'calendar day'. I propose to found my decision R. v. Turner, (1910) 1 K.B. 346 (CCA) and Chambers v. Smith, (1843) 152 E.R. 1085 and to decide that the phrase means fifteen clear days exclusive of the day of service. The words 'within fifteen days of the service hereof' in the form of summons prescribed in third schedule must be construed as meaning fifteen consecutive periods of twenty-four hours after the service of the summons.

28. It is well known maxim that the law disregards fractions. By the Calendar the day commenced at midnight, and most nations reckon in the same manner. The English do it in this manner. We too have adopted the same. In the space of a day all the twenty-four hours are usually reckoned, the law generally rejecting all fractions of a day, in order to avoid disputes. If anything is to be done within a certain time of, from, or after the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation. Williams v. Burgess, (1840) 113 E.R. 955) unless the contrary appears from the context. (Hare v. Gocher. (1962) 2 Q.B. 641). The ordinary rule is that where a certain number of days are specified they are to be reckoned exclusive of one of the days and inclusive of the other. (R. v. Turner, supra p. 359).

29. Fraction of a day has not to be counted. So I would disregard 12-5-1982, the day on which the ordinary summons were delivered to the Principal. Fifteen days will *commence from 13-5-1982. Counting in this way the application was made on the last day, i.e. 27-5-1982. The application for leave to appear and contest is within time. I therefore hold that the tenant was entitled to count fifteen days from the receipt of the second summons on 12-5-1982."*

(underlining supplied)

20. The legal position that emerges is that law disregards fractions. While calculating number of days, fraction of a day has not to be counted. If anything is to be done within a certain time of, from, or after the doing or occurrence of something else, the day on which the first act or occurrence takes place is to be excluded from the computation.

21. As per Section 9 of the General Clauses Act, day from which such period is to be reckoned is to be excluded for calculating limitation. Where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded,

22. When a period is delimited by statute or rule, which has both a beginning and an end and the word "from" is used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word "to" is to be used. Therefore when the period is marked by terminus a quo and terminus ad quem, the canon of interpretation, envisaged in Section 9 of the General Clauses Act, 1897, require exclusion of the first day.

23. Applying the above legal position, it is clear that the date on which the Letter of Acceptance has been issued has to be excluded while calculating 60 days. Accordingly, the date of issuance of Letter of Acceptance has to be taken as day "zero" and not day "one". The starting point of limitation for furnishing performance guarantee would thus be 04.01.2020. Calculated from 04.01.2020, the performance guarantee furnished on 03.03.2020, has to be taken as having been furnished on the 60th day and not the 61st day."

15. After going through the above referred observations made by the Single Bench of the Delhi High Court, we are of the opinion that, in view of Section 9 of the General Clauses Act, 1897 and the authorities relied upon, the view taken by the Delhi High Court is just and proper and we are agreeable with the same.

16. There is no dispute that the LOA was issued in the name of the petitioner on 20.12.2024 at 16:17 hours and therefore, on 20.12.2024, the needs to be considered as day ‘zero’ and not as day ‘one’ and therefore, the period of 60 days will have to consider from 21.12.2024 and in that eventuality, the last day would be 18.02.2025.

17. The petition was also opposed on the ground that there is an arbitration clause. No doubt, there is an arbitration clause. However, since a small legal issue is involved in the present petition and considering the nature of work which is in public interest and as highly sensitive, we are of the opinion that, the petition shall not be thrown away on the ground that there is a clause of arbitration. Accordingly, we pass the following order:-

i) The writ petition is **allowed**.

ii) The impugned order of termination of LOA No. S&T/Con/NGP/SECR/734/2025/74, dated 25.02.2025, is hereby quashed and set aside.

Rule is made absolute in above terms. No costs.

(VRUSHALI V. JOSHI, J.) (ANIL S. KILOR, J.)

C.L. Dhakate