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A No. 373 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-03-2025

CORAM

THE HONOURABLE MR JUSTICE ABDUL QUDDHOSE

A No. 373 of 2025

in

Arb.O.P.(Com.Div.)Diary No.9019/2025

1. Mr.N P Agarwal
No. 60-61, Narasimha Dasari Lane,
Chennai - 600 001

2. Shiv Shai & Sons (I) Pvt.Ltd.,
No. 60-61, Narasimha Dasari Lane,
Chennai - 600 001

..Applicant(s)

Vs

MMTC Limited

rep.by its Additional General Manager,
Mr.E.Malarvanan

Having its registered Office At Core 1, Scope Complex
7, Lodhi Road, New Delhi

and having Regional Office No.6, Esplanade,
Chennai 600 108

Respondent(s)

For Applicant(s): Mr.Murali Kumaran,Senior Counsel
for M/s. Mcgan Law Firm

For Respondent(s): Mr.AR.L.Sundaresan,Senior Counsel
for Mr.Karthik Sundaram,



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ORDER

This application has been filed seeking to condone the delay of 27 days in filing an application seeking to set aside the Arbitral Award dated 06.08.2024 under section 34 of the Arbitration and Conciliation Act, 1996.

2. In this application, the following reasons have been given by the applicant for not filing the application within a period of 90 days under Section 34 of the Arbitration and Conciliation Act, 1996.

(a) The arbitration which culminated in the passing of the impugned arbitral award went on for more than 7 years.

(b) All the arbitral proceedings took place only through online. The entire data relating to the said proceedings was stored as 'Soft copy' by the applicant.

(c) According to the applicant, due to software error in the computer, the 2nd applicant's data crashed.

(d) According to the applicant, since the data pertains to 7 years, the same could not be retrieved on time as it was voluminous in nature.

By stating the aforementioned reasons, the applicant has filed this application seeking to condone the delay of 27 days in preferring the Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, seeking to

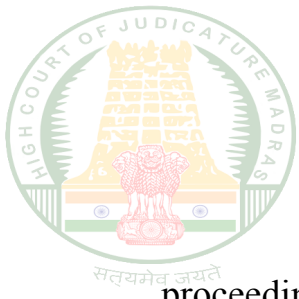


challenge the arbitral award.

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3. A counter and additional counter have been filed by the respondents. In the additional counter affidavit filed by the respondents, their objection was pertaining to the non-filing of the arbitral award before this Court by the applicant while filing the application under Section 34 of the Arbitration and Conciliation Act, 1996. However, the learned Senior Counsel appearing for the respondent, on instructions, would submit that he is not pressing the contentions of the respondent as pleaded in the additional counter affidavit as the arbitral award was found to be filed within time by the applicant in this application. In the main counter filed by the respondent, the respondent has categorically denied the reasons given by the applicant while seeking to condone the delay of 27 days in filing the application under section 34 of the Arbitration and Conciliation Act, 1996. They have stated that sufficient cause has not been shown by the applicant for condoning the delay of 27 days in filing the application under section 34 of the Arbitration and Conciliation Act, 1996, while seeking to challenge the impugned arbitral award.

4. The learned Senior counsel for the applicant would once again reiterate the reasons given in the affidavit filed in support of this application seeking to condone the delay of 27 days in filing the application under section 34 of the Arbitration and Conciliation Act, 1996, by stating that since the arbitration



proceedings were held online and it went for almost 7 years, there was some delay on the part of the applicant to retrieve the documents filed before the arbitrator. He would submit that only due to a software error that had crept in the computer, they were unable to retrieve the documents on time to enable them to file an application within the period of 90 days as prescribed under section 34(3) of the Arbitration and Conciliation Act, 1996. According to him, the delay has been properly explained by the applicant and it is neither wilful nor wanton but only due to the reasons stated in the affidavit filed in support of this application.

5. The learned Senior Counsel appearing for the respondent placed reliance on the judgment of the Full Bench of the Delhi High Court dated 07.02.2025 in ***Pragati Construction Consultants vs. Union of India & anr.*** reported in **2025 SCC Online Delhi 636**. Relying upon the said decision, the learned Senior counsel for the respondent would submit that the presence of more than one defect while filing an application under section 34 of the Arbitration and Conciliation Act, may in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, it is liable to be declined as non-est. He would submit that in the instant case, since at the time of filing of the application, all the documents were not filed along with the impugned arbitral award and the same was filed only thereafter which consists



of 12 volumes, this Court should not condone the delay, since sufficient cause has not been shown by the applicant. He would also submit the reasons given in the affidavit filed in support of this application are not supported by any documentary evidence and are baseless reasons which does not deserve any merit.

6. Learned senior counsel appearing for the respondent also drew the attention of this Court to a decision of the Hon'le Supreme Court in the case of ***Basawaraj and another vs. Special Land Acquisition officer*** reported in **(2013) 14 SCC Cases 81** and would submit that the expression 'sufficient cause', though should be given a liberal interpretation to ensure that substantial justice is done only so long as negligence, inaction or lack of bonafide cannot be imputed to the party concerned, whether or not sufficient cause has been furnished can be decided on the facts of the particular case and no straitjacket formula is possible. According to the learned Senior Counsel for the respondent, since sufficient cause has not been shown and the reasons given by the applicant lacks bonafides and amounts to negligence on the part of the applicant, the question of condoning the delay does not arise.

7. Admittedly, the arbitration went along for almost 7 years which culminated in the passing of the arbitral award in favour of the respondent. Several witnesses were examined on both sides, they were also cross examined by the



other side. Further, the documents placed on record before the Arbitrator were also voluminous in nature. The said fact has also not been disputed by the respondent as seen from the counter filed before this Court in this application. The reasons given by the applicant for not filing Section 34 application on time are as follows:

a) The document placed before the Arbitral Tribunal was voluminous in nature.

b) The computer of the applicant got crashed and they needed further time for retrieving the data and for filing of the same along with Section 34 application.

c) The arbitral award which is the subject matter of challenge under Section 34 of the Arbitration and Conciliation Act, 1996 was filed on time. The same is also not disputed by the respondents since the respondent is not pressing the additional counter affidavit filed before this Court wherein they had raised such an objection that the impugned arbitral award was not filed by the applicant along with the section 34 application on time.

8. The learned Senior Counsel appearing for the respondent had placed reliance on the aforementioned two authorities to substantiate the respondent's contentions that the delay cannot be excused by this Court as sufficient cause has not been shown by the applicant for condoning the delay. He had pointed out that there were various discrepancies in the application filed by the applicant under



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Section 34 of the Arbitration and Conciliation Act, 1996, while filing the same at the first instance. He had submitted that on account of the negligence and on account of lack of bonafides, the application filed by the applicant to condone the delay of 27 days, does not deserve any merit since sufficient cause has not been shown.

9. When the arbitration has taken 7 long years for its completion which had culminated in the passing of the impugned arbitral award and that too, when voluminous records were placed by both the parties to the dispute before the arbitrator, this Court is inclined to allow this application, since sufficient cause has been shown for the delay. Further, the application filed under section 34(3) of the Arbitration and Conciliation Act, 1996, seeking to condone the delay cannot be treated to be on par with an application filed under section 5 of the Limitation Act, 1963. Section 34(3) of the Arbitration and Conciliation Act limits the time for filing an application under Section 34 of Arbitration and Conciliation Act seeking to challenge the impugned arbitral award. Under Section 34(3) of the Arbitration and Conciliation Act, the time limit fixed for challenging the impugned arbitral award is 90 days from the date of receipt of the arbitral award and further 30 days time is granted for the applicant provided sufficient cause is shown for the delay. In total, 3 months + 30 days time alone is granted to the applicant to challenge the



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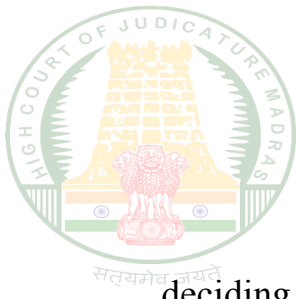
arbitral award. Since admittedly, the arbitration went on for almost 7 years and admittedly, the documents placed on record by both the parties to the dispute were voluminous in nature and several witnesses were also examined on both sides necessarily, it would have consumed time for the applicant to prepare and file an application under section 34 of the Arbitration and Conciliation Act, for the purpose of collating all the records/documents for the purpose of filing an application under section 34 of the Arbitration and Conciliation Act. The applicant has also stated that due to a software error, there was difficulty in retrieving the documents which were part of the arbitral proceedings.

10. Admittedly, the major part of the arbitration took place only through online. Therefore, the reasons given by the applicant for the delay of 27 days in filing the application under section 34 of the Arbitration and Conciliation Act is a just reason. Admittedly, arbitral award was also filed on time i.e., on 03.12.2024, i.e., within the maximum period of 3 months + 30 days prescribed under Section 34 (3) of the Arbitration and Conciliation Act for challenging the arbitral award. Since sufficient cause has been shown by the applicant and since the arbitral award was filed within the maximum period of 3 months + 30 days, this Court, after giving due consideration to the fact that the application seeking for condonation of delay as per the provisions of section 34(3) of the Arbitration and



Conciliation Act, 1996 cannot be treated on par with the application under Section 5 of the Limitation Act, is inclined to allow this application.

11. The decision relied upon by the learned Senior Counsel for the respondent namely Full Bench decision of the Delhi High Court referred to supra has no bearing for the facts and circumstances of this case. Infact, in the said decision, it has been made clear that in the given set of facts involved in the case, even though there were several discrepancies pointed out by the Registry with regard to the improper filing of application under section 34 of the Arbitration and Conciliation Act, 1996, this Court has got power to condone the delay. Since the applicant has shown sufficient cause for condoning the delay of 27 days based on the facts and circumstances of this case, the decision relied upon by the learned Senior Counsel for the respondent has no bearing on the facts of the instant case. Similarly, the other decision relied upon by the learned Senior Counsel appearing for the respondent, namely, the decision of the Hon'ble Supreme Court reported in **2013 (14) SCC 81** has no bearing on the facts of the instant case since the said application was filed under section 5 of the Limitation Act and was not an application filed under section 34(3) of the Arbitration and Conciliation Act, which is a special enactment which restricts the time period for filing an application under Section 34 of the Arbitration and Conciliation Act, 1996. While



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deciding the application seeking for condonation of delay in filing an application under section 34 of the Arbitration and Conciliation Act, liberal interpretation should be given by this Court, since the time limit for challenging the arbitral award is restricted to a maximum period of 3 months + 30 days only and not any more, whereas under section 5 of the Limitation Act which is not applicable to a challenge made to an arbitral award, any number of days can be condoned provided sufficient cause is shown.

12. For the foregoing reasons, this Application is allowed as prayed for.

13. Registry is directed to number the petition filed under section 34 of the Arbitration and Conciliation Act, 1996, if the same is otherwise in order.

vsi

03-03-2025

To

1. The Managing Director,
MMTC Limited
With its Regd. Office At Core 1, Scope Complex
7, Lodhi Road, New A Delhi
and A Regional Office No.6, Esplanade, Chennai 600 108



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ABDUL QUDDHOSE,J.

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