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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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FAO-4907-2025 (O&M)
Date of Decision: 06.11.2025

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The Divisional Railway Manager, Northern Railway, Ambala
..... Appellant

Versus

M/s Shree Sai Facilities
..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ashish Chaudhary, Senior Panel Counsel,
for the appellant.

Mr. Chetan Mittal, Senior Advocate assisted by
Mr. Kunal Mulwani, Advocate,
Mr. Satyaveer Singh, Advocate &
Mr. Ritvik Garg, Advocate,
for the respondent.

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JASGURPREET SINGH PURI, J. (ORAL)

CM-21157-CII-2025

For the reasons mentioned in the application, the same is allowed and the affidavit of the Divisional Railway Manager, Northern Railway, Ambala is taken on record, subject to all just exceptions.

Main Case

1. The present appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Arbitration Act') assailing the order passed by the Additional District Judge, Ambala while deciding the application under Section 19 of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'MSMED Act') read with Section 34 of the Arbitration Act vide which the

objections were dismissed on the ground of delay.

2. Learned counsel appearing on behalf of the appellant submitted that the appellant, which is the Railway Department of Government of India had filed the objections before the learned Additional District Judge, Ambala under Section 19 of the MSMED Act and Section 34 of the Arbitration Act challenging the award dated 21.08.2024 which was passed against it. However, the learned Additional District Judge, Ambala has dismissed the objections on the ground of delay since the objections were not filed within the prescribed statutory period of 3 months+30 days.

3. While giving the dates which are relevant in the present case, he submitted that the award was passed on 21.08.2024 which was received by the appellant on 02.09.2024. The objections under Section 34 of the Arbitration Act were filed on 22.01.2025 which is a total period of 142 days and in this way there has been a delay of 52 days in total and if it is to be counted after adding the aforesaid 30 days beyond 3 months, then it comes out to be 22 days but in any case, the date on which the objections were filed exceeded 3 months+30 days because the total delay was of 142 days. He further submitted that as per the affidavit filed by the Divisional Railway Manager, Northern Railway, Ambala in compliance of the order passed by this Court on 28.08.2025, the reason for delay in filing the aforesaid objections has been stated. It has been so stated in the said affidavit that several departments and units are involved in taking the decision and evaluating the files and because of that along with festival rush duties and other than routine work, the delay has occurred which was unintentional and the same was only because of genuine, administrative and procedural requirements that the delay has occurred in filing of the objections.

Therefore, the objections could not have been dismissed only on the ground of delay because sufficient cause was shown.

4. He also submitted that the objections were filed not only under Section 34 of the Arbitration Act but also under Section 19 of the MSMED Act and therefore, the objections could not have been dismissed only on the ground of delay because it could have been considered only under Section 19 of the MSMED Act which does not provide for any limitation period.

5. On the other hand, Mr. Chetan Mittal, learned Senior Counsel for the respondent assisted by Mr. Kunal Mulwani, Advocate, Mr. Satyaveer Singh, Advocate & Mr. Ritvik Garg, Advocate, has submitted that the law with regard to the condonation of delay in filing the objections under Section 34 of the Arbitration Act is no longer *res integra*. In this regard, he referred to the judgment of Hon'ble Supreme Court passed in "***Mahindra and Mahindra Financial Services Ltd. Vs. Maheshbhai Tinabhai Rathod and others***" ***(2022) 4 SCC 162***, to contend that it is a settled law now that even an application under Section 5 of the Limitation Act is not maintainable in objections under Section 34 of the Arbitration Act and if the prescribed statutory period i.e. 3 months+30 days expires, then the same is fatal to the objections and therefore, the argument of the learned counsel for the appellant pertaining to the fact that there was a *bona fide* reason and sufficient cause for delay is of no significance, hence, the learned Additional District Judge has rightly dismissed the objections on the ground of delay.

6. Learned Senior Counsel also submitted that so far as the aforesaid dates which have been so stated by learned counsel for the appellant is concerned, the same is not in dispute and admittedly, the objections under Section 34 of the Arbitration Act were filed after a period

of 142 days and therefore, even at the most, if 30 days are added with 3 months still there will be a delay of 22 days and even one day delay cannot be condoned because there is no provision for condonation of delay as so settled by Hon'ble Supreme Court and therefore, prays for dismissal of the present appeal.

7. Learned Senior Counsel while responding to the argument raised by learned counsel for the appellant with regard to the objections being also filed under Section 19 of the MSMED Act submitted that this argument is totally misconceived. He further submitted that by virtue of the provisions of Section 18 of the MSMED Act, the provisions of the Arbitration Act are applicable and admittedly the objections were filed under Section 34 of the Arbitration Act before the learned Additional District Judge, Ambala and therefore, the provisions of Section 34 of the Arbitration Act would govern the appellant.

8. So far as the argument raised by learned counsel for the appellant pertaining to the fact that Section 34 of the Arbitration Act is to be segregated from Section 19 of the MSMED Act because the objections were also filed under Section 19 of the MSMED is concerned, learned Senior Counsel submitted that Section 19 of the MSMED Act pertains to the pre-deposit of 75% of the amount and it would not mean that the operation and effectiveness of the provision of law under Section 34 of the Arbitration Act would not be applicable once it is so mentioned in the title of the objections that the objections are also filed under Section 19 of the MSMED Act. In this regard, he also referred to the judgment passed by Hon'ble Supreme Court in "***India Glycols Limited and another Vs. Micro and Small Enterprises Faciliation Council, Medchal-Malkajgiri and others***", ***(2025)***

5 SCC 780 to contend that Section 19 of the MSMED only pertains to the provision of pre-deposit but in any case, it cannot be said that the provisions of the Arbitration Act itself would not be applicable particularly in Section 34 of the Arbitration Act where admittedly the present appellant has filed the objections under Section 34 of the Arbitration Act.

9. I have heard the learned counsels for the parties and also perused the affidavit of the Divisional Railway Manager, Northern Railway, Ambala which has been filed in pursuance of the order passed by this Court on 28.08.2025.

10. It is undisputed that the objections which have been dismissed by way of the impugned order were filed after 142 days of the receipt of the award. The total period of limitation for filing the objections under Section 34 of the Arbitration Act is 3 months+30 days. Even after counting the aforesaid period of 30 days, admittedly, there was a delay of 22 days in filing the objections. A perusal of the impugned order would show that in the title of the objections so filed, the appellant has also stated that the objections are being filed under Section 34 of the Arbitration Act read with Section 19 of the MSMED Act.

11. The law with regard to the condonation of delay and applicability of Section 5 of the Limitation Act in the objection petition under Section 34 of the Arbitration Act is well settled. Hon'ble Supreme Court in ***Mahindra and Mahindra Financial Services Ltd.'s case (Supra)*** has discussed the law with regard to this issue as aforesaid. The relevant portion of the same is reproduced as under:-

> *"9. The scope available for condonation of delay being self-contained in the proviso to Section 34(3) and*

Section 5 of Limitation Act not being applicable has been taken note by this Court in its earlier decisions, which we may note. In Union of India vs. Popular Construction Co. it has been held as hereunder: (SCC pp.474-76, paras 12, 14 & 16)

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In 4 of 7 our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

* * *

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process". This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

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> *16. Furthermore, Section 34(1) itself provides that recourse to a court against an arbitral award may be made only by an application for setting aside such award "in accordance with" sub-section (2) and sub-section (3). Sub-section (2) relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub-section (3) would not be an application "in accordance with" that subsection. Consequently by virtue of Section 34(1), recourse to the court against an arbitral award cannot be made beyond the period prescribed. The importance of the period fixed under Section 34 is emphasised by the provisions of Section 36 which provide that*

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9.1 Further, in State of H.P. v. Himachal Techno Engineers, it was noted and held as hereunder: (SCC pp.211-12, paras 2 & 5)

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> *5. Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under Section 34 of the Act. While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act places a limit on the period of condonable delay by using the words "may entertain the application within a further period of thirty days, but not thereafter". Therefore, if a petition is filed beyond the prescribed period of three months,*

the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned."

9.2 The same view was taken by this Court in P. Radha Bai v. P. Ashok Kumar, wherein this Court held as follows: (SCC pp.457-58, para 33)

'33.2. The proviso to Section 34 (3) enables a court to entertain an application to challenge an award after the three months' period is expired, but only within an additional period of thirty dates, "but not thereafter". The use of the phrase "but not thereafter" shows that the 120 days' period is the outer boundary for challenging an award. If Section 17 were to be applied, the outer boundary for challenging an award could go beyond 120 days. This Court has consistently taken this view that the words "but not thereafter" in the proviso of Section 34(3) of the Arbitration Act are of a mandatory nature, and couched in negative terms, which leaves no room for doubt.'

9.3 The observations of this Court in different decisions relating to nonapplicability of Section 5 of the Limitation Act in condoning the delay and extending the limitation prescribed under Section 34(3) of Act 1996 was taken note of by a bench of three Hon'ble Judges of this Court with approval, in Chintels (India) Limited v. Bhayana Builders Ltd."

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12. Therefore, so far as the delay in filing the objections under Section 34 of the Arbitration Act is concerned, there is no scope left for the

condonation of delay of even one day whereas in the present case, admittedly, there was a delay of 22 days after calculating 3 months+30 days. Therefore, no such delay could have been condoned even after showing any *bona fide* reason which is so stated by the Divisional Railway Manager, Northern Railway, Ambala in his affidavit in which he has so stated that because of the involvement of the multiple departments, festival rush duties and other than routine work and also that the various departments were handling the case, the delay has occurred in filing of the objections.

13. So far as the second argument raised by learned counsel for the appellant and so responded by learned Senior Counsel for the respondent pertaining to the plea that the objections were also filed under the provisions of Section 19 of the MSMED Act is concerned, the same is totally unsustainable and is a misconceived argument. The provision of Section 19 of the MSMED Act is only pertaining to pre-deposit and the same has now been so discussed in the judgment passed by Hon'ble Supreme Court in ***India Glycols Limited and another Vs. Micro and Small Enterprises Faciliation Council, Medchal-Malkajgiri's case (Supra)*** which has been so relied upon by learned Senior Counsel for the respondent. Admittedly, in the present case, the objections have been filed under Section 34 of the Arbitration Act which were filed beyond the period of limitation/prescribed period. Therefore, there was no scope left for the learned Additional District Judge to have condoned the delay and hence he has rightly dismissed the objections on the ground of delay.

14. This Court is therefore unable to accept the arguments raised by learned counsel for the appellant and the present appeal is liable to be dismissed.

15. Dismissed.

16. Before parting with the judgment, this Court would also take note of the fact that the appellant is the Railway Department of Government of India and huge amount is also involved which may not just be in this case but may be in other cases. The reasoning which has been given by the Divisional Railway Manager, Northern Railway, Ambala in his affidavit with regard to the involvement of the multiple departments, festival rush duties and other than routine work and also the administrative work ultimately has an effect upon the State exchequer. A perusal of Para No.10 of the affidavit would show that there is only one Law Officer in the Department to deal with the case who is also responsible for legal work of the multiple order unit. Therefore, the order of the present case be sent to the General Manager of the Northern Railway for his information.

06.11.2025 **(JASGURPREET SINGH PURI)**
Bhumika **JUDGE**

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No