



\$~63

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Decision: 19th November 2025+ **O.M.P. (COMM) 260/2025 & I.A. 16562/2025****PANAAYA TECHNOLOGIES PRIVATE LIMITED &
ANR.**

.....Petitioners

Through: Mr. Abhishek Tripathi, Mr. Pranav
Malhotra and Mr. Udwipt Verm,
Advocates.

versus

**ELECTRONIC TENDER. COM (INDIA) PRIVATE
LIMITED & ANR.**

.....Respondents

Through: Mr. Gautam Narayan, Senior
Advocate with Ms. Asmita Singh, Mr.
Arav Kapoor, Ms. Radhika Gupta and
Ms. Akshita Gupta, Advocates.**CORAM:****HON'BLE MR. JUSTICE AMIT BANSAL****AMIT BANSAL, J. (Oral)**

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter 'Act') against the interim award dated 23rd December, 2024.
2. The petition is accompanied by an application under Section 5 of the Limitation Act seeking condonation of delay of 49 days in re-filing the petition.
3. Mr. Gautam Narayan, senior counsel appearing on behalf of the respondents, opposes the application filed for condonation of delay in re-filing. He places reliance on the judgment of this Court in ***Govt. (NCT of***



*Delhi) v. Y.D. Builders & Hotels Pvt. Ltd.*¹, to contend that in case a petition under Section 34 of the Act is re-filed beyond the aggregate period of 30 days, the filing shall be considered as a fresh institution in terms of Rule 5, Chapter I of Volume V, Delhi High Court Rules and Orders.

3.1. He submits that there has been a total delay of 84 days beyond the maximum permissible condonable period of 30 days.

4. On merits, it is submitted by counsel for the respondents that the impugned order passed by the Arbitrator does not amount to an interim award. It does not, in any manner, adjudicate the issues that were referred for arbitration. Reliance in this regard is placed on the judgment of the Division Bench in *Rhiti Sports v. Power Play*².

5. The findings given are for the purposes of initiating contempt proceedings against the petitioner for having violated the undertaking given in the arbitration proceedings. After the passing of the aforesaid order, the respondents have initiated contempt proceedings, which are pending before the Coordinate Bench.

6. On the aspect of delay, counsel for the petitioner submits that Rule 5, Delhi High Court Rules and Orders, which were the subject matter of the decision in *Y.D. Builders* (supra), have subsequently been amended and replaced by Rule 3, Chapter IV of the Delhi High Court (Original Side) Rules, 2018.

7. He submits that in view of the judgment passed by the Division Bench of this Court in *Madhyam Agrivet Industries Limited v. Snup Fresh Milk*

¹ 2017 SCC OnLine Del 6812

² 2018 SCC OnLine Del 8678



*and Diary Products Private Limited*³, the law laid down in *Y.D. Builders* (supra) no longer applies to the re-filing of petitions under Section 34 of the Act.

8. On merits, counsel for the petitioner submits that in view of the findings which are given in paragraphs 47 and 48 of the impugned award, the said order would constitute an interim award. These are findings that finally determine issues between the petitioners and the respondents and hence, they would qualify as an interim award.

9. I have heard the counsel for the parties.

10. First, I shall deal with the aspect of delay.

11. As regards the delay in re-filing the petition, reference may be made to the judgment of *Madhyam Agrivet* (supra) wherein it was held that the Rules of 2018 do not contemplate that if a pleading/document is filed after the aggregate of 30 days, then it shall be treated as a fresh filing. Rather, the Rules provide that if the objections are not cleared by the party within the aggregate of 30 days, then the case shall be placed before the court for orders. The relevant paragraphs of the said judgment are set out below:

*“18. Insofar as the reference made by the learned Single Judge to the judgment in the case of **Government of NCT of Delhi vs. Y.D Builders & Hotels Pvt. Ltd., 2017 SCC OnLine Del 6812** is concerned, we find that in that case, the Division Bench had referred to Rule 5 of the Delhi High Court Rules to hold that the re-filing therein was to be considered as a fresh institution. The said judgment was rendered in the year 2017. Subsequent thereto, Delhi High Court (Original Side) Rules, 2018 (hereinafter ‘Rules of 2018’) have been notified which are applicable to petitions filed under the Act of 1996. Chapter IV Rule 3 thereof stipulates as under:-*

³ FAO (OS) (COMM) 9/2023



“3. Defective pleading/ document.-(a) If on scrutiny, the pleading/ document is found defective, the Deputy Registrar/ Assistant Registrar, Incharge of the Filing Counter, shall specify the objections, a copy of which will be kept for the Court Record, and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate.

(b) If the pleading/ document is not taken back for amendment within the time allowed under sub-rule (a), it shall be registered and listed before the Court for its dismissal for nonprosecution.

(c) If the pleading/ document is filed beyond the time allowed under subrule (a) the pleading/ document must be accompanied with an application for condonation of delay in re-filing of the said pleading/ document.

(d) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers.”

19. The Rules of 2018 do not contemplate that if a pleading/ document is filed after the aggregate of 30 days then it shall be treated as a fresh filing. It was by relying on the Delhi High Court Rules, the Division Bench in Govt. of NCT of Delhi (supra) has held that any filing beyond a period of 30 days, shall be treated as fresh filing. But such a stipulation is not to be found in the Rules of 2018. Rather Chapter IV Rule 3 contemplates, after a period of 30 days, if the objections are not taken back by the party, then the case shall be placed before the Court for orders.

As such, the judgment in the case of Govt. of NCT of Delhi (supra) is clearly distinguishable on facts. In any case, in terms of the judgments of **Delhi Development Authority (supra)** and **Tanaria Infrastructure Pvt. Ltd (supra)**, the issue of delay in filing and delay in re-filing need to be considered on different parameters. In fact, the Division Bench in Delhi Development Authority (supra) has stated as under:-



"17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in **Ashok Kumar Parmar v. D.C. Sankhla**: 1995 RLR 85, whereby a Single Judge of this Court held as under:-

"Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit."

*A Division Bench of this Court upheld the aforesaid view in **D.C. Sankhla v. Ashok Kumar Parmar**: 1995 (1) AD (Delhi) 753 and while dismissing the appeal preferred against decision of the Single Judge observed as under:-*

"5. In fact, that is so elementary to admit of any doubt. Rules 1 and 2 of (O.S.) Rules, 1967, extracted



above, do not even remotely suggest that the re-filing of the plaint after removal of the defects as the effective date of the filing of the plaint for purposes of limitation. The date on which the plaint is presented, even with defects, would, therefore, have to be the date for the purpose of the limitation act."

18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. **It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.**

(emphasis supplied)

12. In light of the legal position highlighted above, the delay in re-filing beyond 30 days would be condonable. However, it would be the discretion of the Court whether sufficient cause has been shown to condone such delay.

13. Undoubtedly, there has been a delay on the part of the petitioner in re-filing the present petition. However, the petitioners have explained the delay on account of the fact that the parties have been engaged in settlement talks since January 2025. When the petition was first listed before this Court on



16th July 2025, the petitioner took an adjournment on account of settlement talks between the parties.

14. In my view, the Court should not take a hyper-technical view in not condoning the delay and adopt a liberal approach. It would be in the interest of justice if the case of the parties is heard on the merits instead of being dismissed on grounds of delay.

15. Accordingly, the delay in re-filing the present petition is condoned, subject to the payment of costs of Rs. 20,000/- by the petitioner to the respondents.

16. Now I shall proceed to deal with the merits of the matter.

17. The issue whether a determination by an Arbitral Tribunal amounts to an award was considered by this Court in *Shyam Telecom Ltd. Vs. Icomm Ltd.*⁴. The relevant observations are set out below:

“Clearly an interim Award has to be on a matter with respect to which a final Award can be made i.e. the interim Award is also the subject matter of a final Award. Putting it differently therefore an interim Award has to take the colour of a final Award. An interim Award is a final Award at the interim stage viz. a stage earlier than at the stage of final arguments. It is a part final Award because there would remain pending other points and reliefs for adjudication. It is therefore, that I feel that an interim Award has to be in the nature of a part judgment and decree as envisaged under Section 2(2) of CPC and the same must be such that it conclusively determines the rights of the parties on a matter in controversy in the suit as done in a final judgment. An interim order thus cannot be said to be an interim Award when the order is not in the nature of a part decree. In my opinion the impugned order in view of what I have said hereinabove, is not an interim Award as it is not in the nature of a part decree being only an

⁴ (2010) 116 DRJ 456



interim order”

18. In ***Rhiti Sports*** (supra), a Coordinate Bench of this Court has elaborated as to what would constitute an award for the purposes of a challenge under Section 34 of the Act. The relevant observations of the Court in paragraphs 17 and 18 are set out below:

“17. As indicated above, a final award would necessarily entail of (i) all disputes in case no other award has been rendered earlier in respect of any of the disputes referred to the arbitral tribunal, or (ii) all the remaining disputes in case a partial or interim award(s) have been entered prior to entering the final award. In either event, the final award would necessarily (either through adjudication or otherwise) entail the settlement of the dispute at which the parties are at issue. It, thus, necessarily follows that for an order to qualify as an arbitral award either as final or interim, it must settle a matter at which the parties are at issue. Further, it would require to be in the form as specified under Section 31 of the Act.

18. To put it in the negative, any procedural order or an order that does not finally settle a matter at which the parties are at issue, would not qualify to be termed as “arbitral award”.”

19. To appreciate the rival submissions, it may be relevant to peruse the aforesaid paragraphs 47 and 48, which are set out below:

“47. The respondents have tried hard to justify the detailed presentations stating that it is merely informative in nature, the argument is unacceptable for the reason why would a person inform public at large of its activities without a software and if no software is required why was it stated “services launched on 23.11.2023”. The Tribunal can not loose track of the fact that the respondent has obtained the CERC licence based on the software of the claimant and based on the ASP Licence Agreement. The respondent claim is of being an OTC platform and there can be no OTC service without a software .



48. The respondents have also tried to justify their actions by stating that the Respondents are only involved in the banking and swapping of energy and not the services which they were restrained from doing as per the order. In their reply, they further claim that Banking and swapping of electricity “does not involve any form of e-bidding or other competitive mechanisms of procurement”. The stand taken by the Respondent is patently false. The email received from Mr. Kapil Dev, sent to the Claimant on 25.11.2021, where with respect to Banking and swapping of electricity, Mr. Kapil Dev has himself attached sample tender documents, by way of which Banking and swapping of electricity is carried out, which clearly shows that banking/swapping services in energy sector involves tendering services.”

20. Based on the aforesaid observations, the Tribunal gave its findings in paragraph 49, which are set out below:

“49. For the reasons stated above, I am of the prima facie view that the Respondents have wilfully and deliberately and in a brazen manner violated the orders with impunity.

Accordingly, the present order is to be treated as a representation to the Hon'ble High Court of Delhi as per the law laid down by the Apex Court in the case of the case of Alka Chandewar vs. Shamshul Ishrar Khan, 2017 (16) SCC 119 and in the case of M/s. Amba Lal Sarabhai Enterprises vs. M/s. Amrit Lal & Co. & Anr. 2001 (8) SCC 397 wherein it has been held that should the Tribunal arrive at a conclusion that the violation is deliberate, the Tribunal has the power to initiate the proceedings and matter can be referred to the High Court to pass appropriate orders under the Contempt of Court's Act. The application is allowed in above terms.”

21. A perusal of the aforesaid paragraphs clearly demonstrates that the aforesaid findings of the Arbitral Tribunal were only in the context of an application filed on behalf of the respondent, under Section 17(2) of the Act, alleging wilful and deliberate violation of the orders passed by the Tribunal.



22. In my considered view, the aforesaid order does not have the trappings of an interim arbitral award as it does not purport to settle the matter on which the parties are at issue. These findings are not a final determination of the issues that would be the subject matter of the final award.

23. Therefore, in my opinion, the impugned order would not constitute an interim award as it does not conclusively determine the rights of the parties on a matter in controversy.

24. The petition is disposed of in light of the aforesaid observations.

25. Needless to say, the aforesaid observations would not have a bearing on the contempt proceedings initiated by the respondents.

AMIT BANSAL, J

NOVEMBER 19, 2025

Rzu/ at

CORRECTED AND UPLOADED ON 22.11.2025