

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.637 of 2025

1. The Bihar State Housing Board, Through its Managing Director, Having its registered office at 6, Sardar Patel Marg, Patna - 800015, Bihar.
2. The Managing Director, Bihar State Housing Board having its Office 6, Sardar Patel Marg, Patna- 800015.
3. The Secretary, Bihar State Housing Board, 6, Sardar Patel Marg, Patna-800015.
4. The Chief Engineer, Bihar State Housing Board, 6, Sardar Patel Marg, Patna- 800015.

... .. Appellant/s

Versus

M/s Enarch Consultants Private Limited, a company incorporated under the Companies Act, having its registered office at B-66, Sector-63, Noida 201301 (U.P.), through its Managing Director, Rahul Gupta, son of Shri Jai Prakash Gupta, resident of House No. E-56, Sector-41, P.S. Sector-39, Noida, District GautamBudh Nagar, Pin Code-201301 (U.P.).

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Brajesh Kumar Singh, Adv.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 12-02-2026

Heard Mr. Brajesh Kumar Singh, learned counsel for
the appellant.

2. The present application has been preferred:

*against the order dated 20.09.2024
passed by the Learned District Judge, Patna
in Misc. (Arbitration) Case No. 16/2023,
whereby the application filed under Section
34 of the Arbitration & Conciliation Act by
the appellants challenging the arbitral award
dated 18.07.2021 has been dismissed solely
on the ground of limitation.*



3. The appellant- Bihar State Housing Board, Patna (henceforth for short 'the Board') entered into an agreement with the sole respondent for the Infrastructure development of the lands under 'the Board' and the agreement was signed between the parties on **01.12.2011**.

4. The sole respondent thereafter submitted bills for the work undertaken which was not cleared by 'the Board'. He earlier moved before this Court in CWJC No. 9212 of 2017 (M/s Enarch Consultants Private Limited vs. The Bihar State Housing Board and others) which was disposed of on 23.02.2018 allowing the petitioner to represent 'the Board'. (Annexure A/3 to the petition).

5. The representation of the petitioner thereafter was negated by 'the Board' on 19.09.2018 duly signed by its Managing Director (Annexure A/4 to the petition).

6. Thereafter the petitioner moved before the Patna High Court in **Request Case No. 210 of 2019 (M/s Enarch Consultants Private Limited vs. Bihar State Housing Board & ors.)** for the appointment of an Independent Arbitrator. The order came to be passed in the said request case on **19.02.2020** by the then Hon'ble the Chief Justice appointing a retired Judge of Patna High Court with a direction to the parties to appear on



30.04.2020 (Annexure- A/6 to the petition).

7. The parties appeared and thereafter, the **sole Arbitrator** vide an order dated **18.07.2021** directed 'the Board' to make payment of **Rs. 1,74,85,026.00/-** (rupees one crore seventy four lakh eighty five thousand and twenty six only) along with an interest of 12% on the award amount from the date of the award till the realization is made (Annexure-7 to the appeal).

8. 'The Board' chose to sleep over the matter inasmuch as neither the payment was made nor it took recourse to the legal remedy available to it under the Arbitration and Conciliation Act, 1996 (henceforth for short 'the Act'). The sole respondent in the meantime preferred **Execution Case No. 244 of 2021 (M/s Enarch Company Private Limited vs. Bihar Housing Board & ors.)**.

9. 'The Board' finally came out of deep slumber and preferred **Misc. (Arbitration) Case No. 16 of 2023 (Bihar State Housing Board & ors. vs. M/s Enarch Consultants Private Limited)** before the learned **District Judge, Patna**.

10. The Court took note of the fact that **Section 34(3) of 'the Act'** mandates an award to be challenged within a period of three months with an additional period of 30 days if the Court



is satisfied with the reasons assigned for the delay and not thereafter. It further recorded that there is a delay of 472 days in filing the present case by 'the Board' and in that background, no relief can be extended.

11. The **Misc. (Arbitration) Case No. 16 of 2023** came to be dismissed on **20.09.2024**. The relevant **paragraphs 10 and 11** read as follows:

10. In the present case, there is a delay of 472 days, after allowing 3 months for filing of application under Section 34 of Arbitration and Conciliation Act, 1996, in filing of this Miscellaneous (Arbitration) case. A condonation petition has been filed and it has been stated that the appellants had got knowledge of the impugned award from Execution Case No.244 of 2021 after which they initiated and obtained certified copy of the award and filed the present case. From perusal of Para-11 of the impugned award, it transpires that the appellants had appeared in the arbitration proceedings. Hence, the averment made on behalf of the appellants that the award was passed ex-parte does not hold ground. Since under no circumstance, this Court can condone delay beyond a period of thirty days after completion of three months from the day the party making the application has received the arbitral award, in the instant case the same being beyond that, this



Court, under the circumstances, cannot entertain the present application seeking condonation of delay.

11. Accordingly, having regard to the abovementioned facts & circumstances as well as mandate of Section 34(3) of Arbitration and Conciliation Act, 1996, this Miscellaneous (Arbitration) case being time barred, stands dismissed.

12. By that time, 'the Board' had again gone for its long sleep and it was only after a delay of 207 days that the present appeal was filed before the Patna High Court.

13. The case of the appellant is that the sole respondent pressed his case in **Execution Case No. 244 of 2021** in which notice was issued to 'the Board' to make payment by **16.09.2025** failing which warrant of attachment shall be issued. This has been brought on record by way of **Interlocutory Application No. 3 of 2025**.

14. Learned counsel for the appellant submits that there had been procedural formalities, no intentional delay on the part of 'the Board' and as such the delay is bonafide. He submits that the learned District Judge, Patna erred in passing the order in question rejecting the petition of 'the Board' on the ground of delay. Learned counsel further submits that in the interest of justice, the Interlocutory Application be allowed and



the further proceeding of **Execution Case No. 244 of 2021** be stayed beside the issuance of notice upon the sole respondent.

15. This Court has heard the learned counsel for the appellant at length. Before proceeding further, it is important to take a look on the **Section 34(3)** of '**the Act**' which read as follows:

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

16. Section 34(3) of 'the Act' is very clear, the application has to be submitted for setting aside the award within a period of three months from the date, it has been prepared. Further, if the Court is satisfied with the sufficient cause presented in the application detailing out bonafide delay, it may entertain the application within further 30 days, but not



thereafter.

17. Further, Chapter- VIII deals with the Finality and Enforcement of Arbitral Awards and it would be proper to incorporate Section 36 of 'the Act' which deals with the Enforcement and read as follows:

“36. Enforcement- (1) *Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section(2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*

(2) *Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*



(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

[Provided further that where the Court is satisfied that a prima facie case is made out that,-

(a) the arbitration agreement or contract which is the basis of the award;

or

(b) the making of the award, was induced or effected by fraud or corruption, it shall stay the award unconditionally pending



disposal of the challenge under section 34 to the award.”

18. Again Section 36(1) of ‘the Act’ is very clear-once the period for making an application to set aside the arbitral award under section 34 has expired, subject to Sub-Section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure in the same manner as if it were on decree of the court.

19. This Court in the case of **Union of India through Airports Authority of India, Gaya Airport & ors. vs. Brajesh Kumar Sinha (M.A. 449 fo 2025)** delivered a judgment on **11.12.2025** after deliberating upon Section 34(3) of ‘the Act’.

20. It is important to incorporate **paragraphs 48 to 55** of the aforesaid judgment and order dated **11.12.2025** in the **Airports Authority of India** (supra) case which read as follows:

*48. The language of Section 34(3) of ‘the 1996 Act’ is very clear. After the lapse of three months, if the Court is satisfied that sufficient cause is there and the reasons have been explained which prevented them to file a petition within the said period, it can entertain the application for further period of thirty days **but not thereafter**. Thus, ‘the*



Act' completely bars entertaining any petition after lapse of thirty days.

*49. This Court is further guided by the order passed by the **Hon'ble Apex Court in the case of Union of India vs. Popular Construction Company reported in (2001) 8 SCC 470. Paragraphs 12, 14 and 16 of the said order read as follows:***

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 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 the Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

"5. Extent of judicial intervention. Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

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 sub-section. 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



"where the time for making an application to set aside the arbitral award the award shall be enforced under the Code under Section 34 has expired of Civil Procedure, 1908 in the same manner as if it were a decree of the court"

This is a significant departure from the provisions of the Arbitration Act, 1940. Under the 1940 Act, after the time to set aside the award expired, the court was required to "proceed to pronounce judgment according to the a award, and upon the judgment so pronounced a decree shall follow" (Section 17). Now the consequence of the time expiring under Section 34 of the 1996 Act is that the award becomes immediately enforceable without any further act of the court. If there were any residual doubt on the interpretation of the language used in Section 34, the scheme of the 1996 Act would resolve the issue in favour of curtailment of the court's powers by the exclusion of the operation of Section 5 of the Limitation Act.

50. Hon'ble Apex Court made it clear that one of the main objective of 'the Act' is "to minimise the Supervisory role of the Courts in the arbitral process."

51. The Hon'ble Apex Court further took note of Section 36 of 'the Act'



and recorded that once the time under Section 34 of 'the Act' expires, the award immediately becomes enforceable without any further act of the Court.

*52. There is a recent judgment of the Hon'ble Apex Court in the case of **State of West Bengal represented through the Secretary & ors. vs. Rajpath Contractors and Engineers Limited reported in (2024) 7 SCC 257** wherein paragraph nos. 8 and 9 recorded as follows:*

8. As per Section 12(1) of the Limitation Act, the day from which the limitation period is to be reckoned must be excluded. In this case, the period of limitation for filing a petition under Section 34 will have to be reckoned from 30-6-2022, when the appellants received the award. In view of Section 12(1) of the Limitation Act, 30-6-2022 will have to be excluded while computing the limitation period. Thus, in effect, the period of limitation, in the facts of the case, started running on 1-7-2022. The period of limitation is of three months and not ninety days. Therefore, from the starting point of 1-7-2022, the last day of the period of three months would be 30-9-2022. As noted earlier, the pooja vacation started on 1-10-2022.

9. We may note here that Section



43 of the Arbitration Act provides that the Limitation Act shall apply to the arbitrations as it applies to proceedings in the Court. We may note here that the consistent view taken by this Court right from the decision in Union of India v. Popular Construction Co. is that given the language used in the proviso to sub-section (3) of Section 34 of the Arbitration Act, the applicability of Section 5 of the Limitation Act to the petition under Section 34 of the Arbitration Act has been excluded.

(emphasis added)

53. As observed above, the admitted position is that the award/order came to be passed on 26.04.2022, the petition under Section 33 of 'the Act' filed thereafter too was rejected on 31.05.2023. The three months period ended on 31.08.2023 by which an application under Section 34 of 'the Act' should have been filed by the appellants. Further, alongwith the sufficient reason explaining the delay, the petition could have been filed upto 30.09.2023 and not thereafter. However, the petition was filed only on 14.03.2024. Section 34(3) of 'the Act' records three months and not 90 days and as such, there was delay of 195 days in filing the petition. The award became enforceable after the



period under Section 34(3) of 'the Act' came to an end.

54. In that background, the learned Principal District Judge, Patna was fully justified in coming to the conclusion that under no circumstances, it can entertain the application of the appellants beyond the period mandated under Section 34(3) of 'the Act'. The well reasoned order dated 07.04.2025 passed in Arbitration Case No. 18 of 2024 need no interference.

55. M.A. No. 449 of 2025 stands dismissed.

21. In the present case, the Award was signed on 18.07.2021 and three months period came to an end on 18.10.2021. If the further 30 days is included, the period comes to an end on 17.11.2021. In that background, the case preferred by 'the Board' i.e. the **Misc. (Arbitration) case no. 16 of 2023** after lapse of 472 days (as recorded by the learned District Judge) was rightly rejected by the learned District Judge, Patna as the Court cannot go beyond 34(3) of 'the Act'.

22. Further section 36 makes the arbitral award enforceable immediately after the period for filing appeal under section 34 of 'the Act' expires subject to provisions of Sub-section (2).

23. However, this Court would like to clarify on the



point of time that is allowed under section 34(3) of 'the Act'. Paragraph 7 of the learned District Judge, Patna's order dated 29.09.2024 records about 90 days period with an additional 30 days. It is to be noted that Section 34(3) of 'the Act' records about three months (and not 90 days) and 30 days.

24. To make it simpler, if an Award has been signed on 1st of February (with February having 28 days in that year), the three months period shall come to an end on 1st of May and not 3rd of May. Similarly, if the order has been passed on 1st of November, the three months period shall again come to an end on 1st of February and not 30th January. 'The Act' clearly talks about three months period and not 90 days.

25. Further, though the observation made below has no relevance in the present case, this Court must record that even after the dismissal of the **Misc. (Arbitration) Case No. 16 of 2023 on 20.09.2024** on the ground of delay in filing of the petition beyond section 34(3) of 'the Act', 'the Board' once again went in silent mode and got activated only in the second part of the year 2025 when the present appeal was filed. The office report shows that it has been filed after a delay of 207 days. This clearly shows how 'the Board' functions and why it suffers. The appeal(s) in the opinion of the Court is/are filed



only to complete the process and to show that they took the legal route but failed. Clearly, the accountability part is missing in ‘the Board:

26. In that background, this Court holds that the learned District Judge, Patna was fully justified in rejecting the petition preferred by the Bihar State Housing Board filed after lapse of 472 days. The order dated 20.09.2024 has been passed in line with the mandate of section 34(3) of ‘the Act’.

27. This takes the appeal to only one conclusion. It is fit to be dismissed. Accordingly, ordered. The **M.A. No. 637 of 2025** stands dismissed. All the Interlocutory Applications also stand consigned along with the dismissal of the appeal.

(Rajiv Roy, J)

Vijay Singh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.02.2026
Transmission Date	

