

IN THE HIGH COURT OF JUDICATURE AT PATNA
COMMERCIAL APPEAL No.17 of 2025

1. The General Manager, East Central Railways.
 2. The Chief Administrative Officer, East Central Railways, Mahendrughat.
 3. The Chief Engineer, East Central Railways, Mahendrughat.
 4. The Deputy Chief Engineer, East Central Railways, Samastipur.
- Appellants

Versus

M/s KEC-DELCO- VARAHA (JV), Administrative Office at First Floor
Building 9-A DLF, Cybercity, Phase III, Gurgaon 122002.

... .. Respondent

Appearance :

For the Appellants	:	Mr. Anand Kumar Ojha, Senior CGC Mr. Ram Tujabh Singh, CGC
For the Respondent	:	None

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE PRAVEEN KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

5 29-01-2026

I.A. No. 3 of 2026

This interlocutory application has been filed seeking condonation of delay of 222 days in filing of the Commercial Appeal against the impugned judgment dated 28.05.2024 passed by learned Additional District Judge-XIV, Patna in Miscellaneous (Arbitration) Case No. 173 of 2019.

2. By the impugned judgment, the learned Additional District Judge-XIV has been pleased to dismiss the application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996') and thereby refused to interfere with the award.



3. It appears on perusal of the interlocutory application that the delay occurred in the process of completing the formalities in getting approval for filing of the appeal from various Departments of the Railways. The contention of the appellants is that there had been no deliberate and intentional laches on the part of the Railways in filing of the appeal. The delay is totally attributable to the procedures which are required to be followed in getting approval at various levels of the Department.

4. Mr. Anand Kumar Ojha, learned Senior Counsel assisted by Mr. Ram Tujabh Singh, learned CGC representing the Railways has taken this Court through the statements made in paragraphs '4' to '7' of the application. It is his submission that there are procedures and hierarchy in the administrative, finance and legal Departments of the Railways. It is his submission that an attempt to act in unison and in alignment to the compulsory protocol has resulted into this delay.

5. We have considered the application seeking condonation of delay.

6. This is an appeal preferred under Section 37 of the Act of 1996 read with Section 13(1-A) of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act of 2015' or



the ‘Commercial Courts Act’). Section 13(1-A) of the Act of 2015 and Section 37 of the Act of 1996 are being reproduced hereunder for a ready reference:-

“Section 13. Appeals from decrees of Commercial Courts and Commercial Divisions. (1-A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

Section 37. Appealable order.- (1)

²[Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

³[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) Appeal shall also lie to a Court from an order of the arbitral tribunal-

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

2. Substituted by Act 33 of 2019, S.8, for “An appeal” (w.e.f. 30-8-2019).

3. Substituted by Act 3 of 2016, S. 20, for Cls. (a) and (b) (w.r.e.f. 23-10-2015).



(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

7. On a bare perusal of the provisions noted hereinabove, it would appear that the maximum period prescribed for preferring an appeal under Section 13(1-A) of the Act of 2015 is a period of 60 days from the date of the judgment or order. The Commercial Courts Act does not prescribe any provision empowering the Court to condone a delay over and above the 60 days’ period, however, this issue came up for consideration before the Hon’ble Supreme Court in the case of **Government of Maharashtra (Water Resources Department) Represented by Executive Engineer Vs. Borse Brothers Engineers & Contractors Private Ltd.** reported in **(2021) 6 SCC 460**. Their Lordships of the Hon’ble Supreme Court having gone through the scheme of the Act of 1996 and then the scheme of the Commercial Courts Act held that even though there is no provision for condonation of delay, the Court may in its discretion condone delay of few days in the nature of a short delay beyond the period of limitation but that would be by way of an exception and not by way of rule. In this regard, the opinion of the Hon’ble Supreme Court contained in paragraph ‘63’ of the judgment in case of **Borse Brothers**



(Supra) is extracted hereinbelow for a ready reference:-

“63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.”

8. When we consider the kind of delay which has taken place in filing of the present appeal, it is found that the delay is a kind of inordinate delay and it cannot be said to have occurred on account of any *bona fide* reason. We further find that this delay has definitely given rise to certain rights to the other side who had already filed an execution case giving rise to Execution Case No. 627 of 2019 and the appellants were well aware of the said execution case.

9. In course of hearing, we have been informed that even before presenting this appeal before this Court, the Railways were in discussions with the party and from a minute



of the meeting held on 25.07.2025, it has been informed to this Court that on the said date, the Railways Officials had a discussion with the Agency Representative and it was agreed by both the Agency and the Railways Representatives that the awarded amount will be submitted before the Hon'ble Court at all items, however, further discussion would be required in respect of three items. It is, thus, an admitted position that in this case, the Railways decided to submit the entire awarded amount based on the discussions with the Agency. This Court has been informed that the awarded amount has already been paid. We have taken note of this fact only to complete the records. The fact remains that there is an inordinate delay of 222 days. In case of **Borse Brothers** (Supra), the Hon'ble Supreme Court has held the delay of 131 days beyond the 60 days' period as a long delay and the appeal was dismissed.

10. We are of the considered opinion that the explanation furnished in the application seeking condonation of delay only shows that the Railways was not acting with promptness and the negligence in taking appropriate decision within the prescribed period of limitation or even with a delay of a short period is writ large on the face of the record. The Railways have to blame themselves for this inordinate delay.



11. We find no reason to condone this huge delay of 222 days. I.A. No. 3 of 2026 stands dismissed.

12. As a result of the dismissal of the interlocutory application seeking condonation of delay, the appeal itself stands dismissed.

(Rajeev Ranjan Prasad, J)

(Praveen Kumar, J)

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