

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**COMMERCIAL APPEAL No.18 of 2025**

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1. East Central Railway through Chief Administrative Officer (Construction), East Central Railway, Mahendru Ghat, P.O. and P.S. Mahendru Ghat, Patna, Bihar.
2. The Financial Advisor and Chief Accounts Officer (Construction), East Central Railway, Mahendru Ghat, P.O. and P.S. Mahendru Ghat, Patna, Bihar.
3. The Chief Engineer (Construction), (South) East Central Railway, having its office situated at Mahendru Ghat, P.O. and P.S. Mahendru Ghat, Patna, Bihar.
4. The Deputy Chief Engineer (Construction), East Central Railway, Barkakana, P.O. and P.S. Barkakana, Ramgarh, Jharkhand.

... .. Appellants

Versus

M/s Pratibha Royal (JV) a Joint Venture Company having its office at 18 R.N. Mukherjee Road, 6th Floor, P.O. and P.S. R.N. Mukherjee Road, Kolkata-700001, represented through its authorized signatory namely, Dhananjay Kumar, S/o late Kamdeo Sharma, resident of Plot no. C-69, Police Colony, Anisabad, P.O. and P.S. Gardanibagh, District- Patna.

... .. Respondent

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**Appearance :**

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| For the Appellants | : | Mr. Satyabir Bharti, Senior CGC<br>Mr. Ram Tujabh Singh, CGC |
| For the Respondent | : | Mr.                                                          |

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date : 09-02-2026**

**I.A. No. 1 of 2026**

Heard Mr. Satyabir Bharti, learned Senior Counsel  
assisted by Mr. Ram Tujabh Singh, learned counsel for the  
appellants.



2. By filing this interlocutory application, the appellants are seeking condonation of delay of 85 days in filing of the present commercial appeal for setting aside the impugned judgment dated 24.06.2025 passed by learned Principal District Judge, Patna in Miscellaneous (Arbitration) Case No. 09 of 2024 on an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act of 1996').

**Submissions on behalf of the Appellants**

3. Learned Senior Counsel for the appellants submits that the present appeal has been preferred under Section 13(1-A) of the Commercial Courts Act, 2015 (hereinafter referred to as the 'Act of 2015'). The period of limitation for filing the appeal is 60 days from the date of the judgment or order.

4. It is his submission that in this case, after the delivery of judgment/order, the appellant filed an application for obtaining a certified copy of the same on 27.06.2025. The office notified the requirement of folios on 12.07.2025 which was supplied on 14.07.2025 and the certified copy was made ready for delivery on 14.07.2025. In this way, altogether 18 days' time were taken in providing the certified copy. It is his submission that the period of limitation expired on 10.09.2025. The appeal was presented



through e-filing on 03.12.2025 and the date of final presentation is 04.12.2025. In this background, 85 days' delay has taken place.

5. To show the bona fide reasons behind the delay, learned Senior Counsel has drawn the attention of this Court towards the statements made in paragraphs '5', '6' and '7' of the interlocutory application. His submissions is that the delay has taken place in movement of files, deliberations on the merits and in obtaining legal opinions from the Law Officer. Due to this official procedure requiring multi-level approvals for litigation involving public funds, the delay has taken place.

6. Learned Senior Counsel has submitted that the issue of limitation under Section 13(1-A) of the Act of 2015 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. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.** reported in **(2021) 6 SCC 460**. The Hon'ble Supreme Court has, upon consideration of the scheme of the statute, taken a view that if the party has otherwise acted bonafide and not in a negligent manner, a short delay beyond such period can in the discretion of the Court be condoned. It is submitted that in the case of **United India Insurance Company Limited Vs. Bansal Wood Product Private Limited** reported in



**(2023) 1 High Court Cases (Del) 111**, the Hon'ble Delhi High Court has been pleased to condone delay of 76 days in filing of the appeal for the reason that the counsel for the appellant was unwell due to which he was unable to instruct his associates or finalise the appeal himself.

7. It is, thus, submitted that this Court may consider the reasons provided by the appellants as sufficient and cogent reasons and condone the delay.

**Consideration**

8. We have heard learned Senior Counsel for the appellant and perused the records. Section 13(1-A) of the Act of 2015 reads as under:-

**“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).]”

9. The Hon’ble Supreme Court has considered the scheme of the statute, the object of speedy disposal sought to be achieved under the statute and concluded in paragraph ‘63’ of the judgment in the case of **Borse Brothers** (supra) as under:-

“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.”

10. Articles 116 and 117 in the Schedule Part X (Second Division-Appeals) of the Limitation Act prescribes the period of limitation for filing an appeal against a decree under the Code of



Civil Procedure, 1908. The same has been taken note of and examined by the Hon'ble Supreme Court in case of **Borse Brothers** (supra). What is culled out from the ratio of the judgment of the Hon'ble Supreme Court is that the delay beyond the prescribed period of limitation is to be condoned by way of exception and not by way of rule. The party who is looking for the condonation of delay must have otherwise acted bona fide and not in a negligent manner. The delay should not be such that the other side may have acquired rights both in equity and justice. If these conditions are satisfied then a short delay beyond the said period can, in the discretion of the Court, be condoned.

**11.** Keeping in view the aforesaid views of the Hon'ble Supreme Court, this Court has considered the reasons shown in paragraphs '5', '6' and '7' of the interlocutory application. Those are being reproduced hereunder for a ready reference:-

“5. That as part of official Railway procedure requiring multi-level approvals for litigation involving public funds, the certified copy was forwarded internally on 16/07/2025 for processing through competent authorities including Dy.CE/Con, CE/Con, CAO/Con, and AGM/ECR.

6. That the file movement involved detailed deliberations on merits, legal opinions from Law Officer, finance concurrence, and final approval from AGM/ECR/HJP, consuming time



due to hierarchical official protocols followed diligently without negligence.

7. That on 01/12/2025, after obtaining necessary approvals and drafting by counsel following discussions, the Commercial Appeal was filed before this Hon'ble Court. ”

**12. Recently, in Commercial Appeal No. 3 of 2024 (The Union of India and Another Vs. M/s Oberoi Thermit Pvt. Ltd),** this Court had occasion to consider an application seeking condonation of delay for a period of 5 months and 23 days. This Court having noticed the submissions of the Railways which were not contested by the sole respondent that the order was not pronounced in the open court, therefore, learned counsel for the appellant did not know whether the order has been passed on the date fixed in the matter or not, which led to a delay in obtaining the certified copy of the order, this Court took a view that there was no reason on the record to doubt the bona fide of the appellants, hence, the delay was taken as well explained and it was condoned.

**13.** In the present case, however, we find that the only reason shown by the appellant is that the delay occasioned due to file movement and with procedural follow up. In such circumstances, a question arises as to whether the reasons shown by the appellant may be said to have an element of bona fide so as



to bring this case within the ambit of the observations of the Hon'ble Supreme Court in the case of **Borse Brothers** (supra). We find that the Act of 2015 came into force as back as on 31<sup>st</sup> December, 2015. Even the judgment of the Hon'ble Supreme Court in the case of **Borse Brothers** (supra) came in the year 2021.

14. Despite all clarity available under Section 13(1-A) of the Act of 2015 with regard to the period of limitation for filing the Commercial Appeal and the judgment of the Hon'ble Supreme Court clearly saying that only for bona fide reasons, a short delay may be condoned, the authorities of the Railways are taking the matters of filing of appeal leisurely. If the officers of the Railways do not show urgency to prefer an appeal within the period of limitation or for some bona fide reasons within a short period thereafter, they have to blame themselves for this.

15. Recently, in another Commercial Appeal being **Commercial Appeal No. 17 of 2025 (General Manager, East Central Railways and Others Vs. M/s KEC-DELCO-VARHA (JV))**, this Court refused to condone the delay of 222 days in filing of the appeal wherein similar kind of reasons were shown as the cause for delay in filing of the appeal. This Court held that the delay caused due to procedural compliance and



hierarchical administrative orders cannot be taken as a bona fide reason. This Court also noticed that in the case of **Borse Brothers** (supra), the Hon'ble Supreme Court held that the delay of 131 days beyond the 60 days' period was a long delay and the appeal was dismissed. So far as the judgment of the Hon'ble Delhi High Court in case of **United India Insurance Co. Ltd** (supra) is concerned, it appears that in the said case, the appellant was able to demonstrate that the counsel for the appellant was unwell due to which he was unable to instruct his associates or finalise the appeal. Thus, there was no question of taking an adverse view as to the bona fide of the appellant, therefore, in the opinion of this Court, the facts of the case in case of **United India Insurance Co. Ltd** (supra) were quite different and distinct.

16. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **Bharat Petroleum Corpn. Ltd. and Another Vs. N.R. Vairamani and Another** reported in (2004) 8 SCC 579 wherein the Hon'ble Supreme Court has observed in paragraph '9' as under:-

“9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These



observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton*<sup>2</sup> (AC at p. 761) Lord MacDermott observed : (All ER p. 14 C-D)

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...”

**17.** Keeping in view the aforesaid discussions, we are of the considered opinion that the delay of 85 days over and above the period of limitation in the present case remains unexplained. The explanations offered in paragraphs ‘5’, ‘6’ and ‘7’ of the interlocutory application are completely vague and sweeping kind of reasons shown which are a kind of general statements introduced in the application seeking condonation of delay in a

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2. [1951 AC 737 : (1951) 2 All ER 1 (HL)]



routine manner. This Court cannot take such reasons as bona fide reasons for purpose of condonation of delay keeping in view the aims and objects of the Act of 1996 and the Act of 2015.

**18.** We refuse to condone the delay. I.A. No. 1 of 2026 is dismissed.

**19.** As a result of dismissal of the I.A., the appeal stands dismissed.

**(Rajeev Ranjan Prasad, J)**

**(Shailendra Singh, J)**

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