

**IN THE HIGH COURT OF CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

**AO-COM/10/2026
IA NO: CAN/1/2026
CAN/2/2026**

Divisional Railway Manager, South Eastern Railway, Adra

Vs.

M/s V-Bro Engineering Service

For the Appellant : Mr. Rudra Jyoti Bhattacharjee, Adv.
/Petitioner Ms. Debjani Ghosal, Adv.

For the Respondent : Mr. Bhaskar Roy, Adv.
Ms. Debangana Dey, Adv.

Hearing concluded on: 07.05.2026

Judgment on : 07.05.2026

MD. SHABBAR RASHIDI, J.:-

1. The instant appeal has arisen out of the order dated July 17, 2025 in I.A. No.01 of 2024 in Miscellaneous Arbitration (Commercial) 41/2024 by learned Commercial Court at Asansol.

2. By the impugned order, an application filed on behalf of the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 was dismissed on the ground that no sufficient cause was made out for condoning the delay in terms of the provisions of Section 34(3) of the Arbitration and Conciliation Act, 1996 (for short, 'of the Act of 1996').

3. There is a delay in preferring the present appeal.

4. Appellant by way of IA CAN 1 of 2026 is seeking condonation of delay in filing the appeal.

5. In its application for condonation of delay in preferring the appeal, the appellant pleaded the causes for the delay. Essentially, department red tapism and the time taken by the learned Advocate as also the medical condition of the learned Advocate, are grounds for condonation of delay.

6. The grounds offered for condonation of delay are much more detailed and particulars than the application for condonation of delay filed before the learned Trial Judge. Purely on the principle that, the time taken by the advocate to prepare and file the appeal, should not cause prejudice to the appellant, we accept the causes shown and condone the delay in making and filing the appeal.

7. IA CAN 1 of 2026 is allowed. The appeal is taken up for hearing by consent of the parties on merits.

8. Learned advocate appearing for the appellant submits that, the appellant was exercising due care and diligence in challenging the award passed by the learned Arbitrator on June 1, 2024 in terms of the provisions of Section 34 of the Act of 1996.

9. Learned advocate appearing for the appellant also submits that, there was no default on the part of the appellant in preferring the appeal with a delay. It is the learned advocate for the appellant who was entrusted with the filing of the challenge under Section 34 of the Act of 1996 took time in preparing and presenting the challenge under Section 34 of the Act of 1996.

10. Learned advocate for the appellant submits that, the delay was not intentional on the part of the appellant and as such, the impugned order is liable to be set aside.

11. The respondent participated in a tender floated by the appellant in respect of the work of Electrification of unwired loop lines and yard lines of Adra Division over South Eastern Railway under jurisdiction of ADEE/TRD/ADRA under an agreement entered into between the parties on August 30, 2019. Differences and disputes arose between the parties whereupon the respondent invoked the arbitration clause in the agreement which resulted in an award dated June 1, 2024.

12. Being aggrieved and dissatisfied with the award dated June 1, 2024, the appellant preferred an application under Section 34 of the Act of 1996 challenging the award passed by the arbitral tribunal consisting of three arbitrators.

13. The appellant filed an application under Section 34 of the Act of 1996 challenging the arbitral award dated June 1, 2024. Such challenge was filed with a delay beyond the period prescribed under Section 34(3) of the Act of 1996. By filing IA No.1/2024 in such challenge, the appellant sought for condonation of delay in filing the challenge under Section 34 of the Act of 1996. Such IA No.1/2024 was dismissed by the learned Trial Court on the ground that no sufficient cause was shown by the appellant justifying the condonation of delay in filing the challenge under Section 34 of the Act of 1996. Learned Court while deciding the I.A. No.1/2024 held as follows:-

“(15) In the case on hand the applicant did not furnish any cause much less “sufficient cause” for condoning the delay in not filing the Section 34 application within the prescribed period of three months. There is no whisper as to what prevented the applicant from challenging the award within the period of three months from the date of receiving the signed copy of the award. The applicant also did not state as to when the Ld. Advocate for the applicant was contacted after re-opening of the court and how long the Ld. Advocate took

the peruse the documents and when the application was ready to be filed.

(16) Therefore, in view of the discussions made hereinabove and also in view of the legal precedents cited above, this court finds that no “sufficient cause” has been made out for condoning the delay under the proviso to Section 34(3) of the A & C Act, 1996. The application being I.A No.01 of 2024 dated 22/11/2024 seeking condonation of delay in filing the petition under Section 34 of the A & C Act, 1996 is accordingly dismissed. Consequently, the application for setting aside the arbitral award being Misc. Arbitration (Commercial) 41 of 2024 is also dismissed. Pending applications if any also stand disposed of.”

14. From the impugned order, it transpires that the learned Trial Judge noted in the impugned order that the application for setting aside the award was filed on behalf of the statutory three months period prescribed under Section 34(3) of the Act of 1996. It further noted that the exact quantum of delay in terms of the time period was not disclosed in the application. The learned Trial Court observed in the impugned order that the application seeking condonation of delay was one page application consisting of three paragraphs only. The first paragraph mentioned the date of award of the day on which it was received. In such application intervention of puja vacation was pleaded as the cause of delay. The second paragraph stated that there was no laches on the part of the

appellant whereas the third paragraph of such application mentioned that the applicant was a Government concerned and, hence, delay was required to be condoned. The entire text of the application for condonation of delay filed on behalf of the appellant before learned Trial Court was set out in the impugned order.

15. While considering the application so filed on behalf of the learned Trial Court noted that the Courts remain closed for the puja vacation from October 9, 2024, however, the application did not disclose the date of reopening. Considering the provisions of Section 34(3) of the Act of 1996, the learned Trial Court stressed upon the requirement of existence of 'sufficient cause' to allow an application for condonation of delay in terms of the provision of Section 34(3) of the Act of 1996. Learned Trial Court also noted that the award was passed on June 1, 2024 and the copy of such award was received by the appellant on July 16, 2024. According to learned Trial Court, the period of limitation for the purpose of Section 34 of the Act of 1996 started running for the appellant on and from July 17, 2024 which ended with October 16, 2024. The Court remained closed for puja vacation on and from October 9, 2024 till November 4, 2024. The application under Section 34 of the Act of 1996 was filed on November 12, 2024. The learned Trial Court also noted that the impugned order and award, the appellant/applicant did not

quantify the number of days for which the delay was required to be condoned. The appellant also did not offer any explanation for such delay and ultimately proceeded to dismiss the application filed on behalf of the appellant.

16. It is trite law that condonation of delay cannot be claimed as a matter of right. It is entirely the discretion of the Court whether or not to condone delay. Despite all the latitude that is shown to a 'State' the cause sought to be shown by the 'State' within the meaning of Article 12 of the Constitution of India must come up with sufficient reasons explaining the delay in order to invite the Court to exercise its discretion. The factors which are peculiar to and characteristic of the functioning of the Government due to considerable degree of procedural red tape in the process must be considered as a 'sufficient ground' where 'State' is a litigant.

17. In the case at hand, although, such red tapism has been set up as the cause of delay in filing the application for condonation of delay, however, the relevant dates etc. have not been disclosed in the pleading put in by the appellant. Not only that, the 'sufficient ground' sought to be pleaded on behalf of the appellant in the present appeal appears to be diametrically opposite to that which was placed before the learned Trial Court.

18. At the time of hearing before this Court, learned advocate appearing for the appellant also failed to explain the delay in preferring the challenge under Section 34 of the Act of 1996 against the arbitral award dated June 1, 2024.

19. In such circumstances, we find no merit in the present appeal and we are not in a position to interfere with the impugned order passed by the learned Trial Court.

20. **AO-COM/10/2026** along with connected application(s) is **dismissed** without any order as to costs.

21. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(MD. SHABBAR RASHIDI, J.)

22. I agree.

(DEBANGSU BASAK, J.)