OD-3

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE

AP/4/2025

UNION OF INDIA
VS
M/S ROYAL INFRACONSTRU LIMITED

BEFORE:
The Hon'ble JUSTICE GAURANG KANTH
Date : 19th January, 2026.

Appearance:
Mr. Ajit Kr. Mishra, Adv.
Mr. Abhishek Dey, Adv.
Mr. Suprovat Banerjee, Adv.
...for the petitioner

Ms. Srijani Ghosh, Adv.
Ms. Ankita Jha, Adv.
...for the respondent

The Court: The petitioner has preferred the present petition under Section 34 of the Arbitration and Conciliation Act, 1996.

At the threshold, learned Counsel for the respondent states that the present petition is not maintainable. Learned Counsel for the respondent further states that the arbitral award was passed on 05.04.2024. Admittedly, the petitioner had received the award on 12.04.2024. She states that the petitioner did not file the present petition within 90 days. Even assuming that the additional period of 30 days is granted to the petitioner, the present petition has not been filed within the outer limit of 120 days. She further submits that even according to the petitioner's own case, the present petition has been filed only on 07.10.2024 as reflected from the supplementary affidavit filed by the petitioner. She states that since the petition has been filed at a belated stage, the same is barred by limitation and is liable to be dismissed.

Learned Counsel for the petitioner submits that the present petition had been filed in the month of July, 2024. He states that it came to his knowledge only on 24.12.2024 that the petition has not been duly filed before the Registry. However, the petitioner wrote a letter to the Registrar, Original Side, stating that an application was filed under Section 34 of the Arbitration and Conciliation Act, 1996 which was duly affirmed in the Month of July and subsequently, the entire file was handed over to the clerk of the learned advocate concerned for filing. Due to certain corrections insisted upon by the filing department, the filing of the said application was unintentionally delayed and for no fault of the petitioner or his counsel. He further states that the department declined to accept the filing on the ground that the same was beyond the period of limitation prescribed under the said Act. He contends that on account of such miscommunication and delay the petitioner would suffer irreparable loss and injury for no fault of his own.

He further contends that another letter was written to the Registrar, Original Side on 06.03.2025 reiterating that the entire process of filing was hampered due to the miscommunication between the filing clerk and the department concerned and that at no point of time, the learned Advocate be faulted for the same. He submits that the present petition is maintainable, as the same was filed within the period of limitation i.e., in the month of July, 2024.

Learned Counsel for the petitioner has relied on the judgments of ***Shridhar Issar vs. Bharnobari Tea & Industries Ltd*** reported as ***AIR 2012 Cal 71,*** and ***Manbhupinder Singh Atwal vs. Neeraj Kumarpal Shah*** reported as ***2025 SCC OnLine Guj 2200.***

This Court has heard the learned counsel appearing for the respective parties and has carefully considered the materials placed on record.

It is not in dispute that the arbitral award was passed on 05.04.2024 and was received by the petitioner on 12.04.2024. As per the report submitted by the Department, the present petition came to be filed only on 07.10.2024, resulting in a delay of 178 days from the date of receipt of the award.

The limitation prescribed under Section 34 of the Arbitration and Conciliation Act, 1996 is mandatory and absolute, as conclusively settled by the Hon'ble Supreme Court. In ***Union of India v. Popular Construction Co.,*** reported as ***(2001) 8 SCC 470***, the Hon'ble Supreme Court held that the expression "but not thereafter" occurring in the proviso to Section 34(3) amounts to an express exclusion of the applicability of Section 5 of the Limitation Act, 1963, thereby clearly evincing the legislative intent to prohibit any extension beyond the statutorily prescribed period. This position was reiterated in ***Simplex Infrastructure Ltd. v. Union of India,*** reported as ***(2019) 2 SCC 455***, wherein it was held that an application for setting aside an arbitral award must be filed within three months from the date of receipt of the award, extendable only by a further period of thirty days upon sufficient cause being shown, and not beyond. Once the outer limit of three months plus thirty days expires, the Court is rendered functus officio and lacks jurisdiction to entertain or condone any further delay, such a course being contrary to the express mandate of the statute and the scheme of the 1996 Act, which seeks to minimise judicial interference in arbitral proceedings.

In the present case, the learned counsel for the petitioner sought to contend that the petition was initially filed in the month of July, 2024. However, there is no material on record to substantiate such contention. On the contrary, the report of the Superintendent, Central Filing Section, clearly records that the petition was presented beyond the prescribed period of 120 days (90 days plus a further 30 days) from the date of receipt of the award, and was therefore time barred under Section 34(3) of the Arbitration and Conciliation Act, 1996. The said report was annexed to the letter dated 24.12.2024 addressed by the petitioner's learned counsel. The assertion that the petition had earlier been filed before the department finds no corroboration whatsoever from the official records.

Even a perusal of the correspondence addressed by the learned counsel for the petitioner to the Registrar, Original Side, merely indicates that the petition was affirmed in the month of July, 2024, and alleges a miscommunication between the clerk and the department. Affirmation of pleadings, however, cannot be equated with filing of the petition before the competent filing section so as to stop the running of limitation.

The judgments relied upon by the petitioner are wholly inapplicable to the facts of the present case. ***Shridhar Issar*** (supra) arose out of a civil proceeding and does not consider or interpret the provisions of the Arbitration and Conciliation Act, 1996. Insofar as ***Manbhupinder Singh***

Atwal (supra) is concerned, the said judgment of the Hon'ble Division Bench of the Gujarat High Court was rendered in the context of the relevant Gujarat High Court Rules governing presentation and removal of office objections. The ratio laid down therein is clearly distinguishable on facts and law and cannot be mechanically applied to the present case.

In the instant matter, there is no documentary evidence or specific pleading to establish that the petition was filed within the period of limitation. The petitioner has not even disclosed the precise date of the alleged filing, rendering the plea on limitation vague, speculative, and unsubstantiated. The petition was admittedly not filed within the statutorily prescribed period, and the decisions relied upon by the petitioner turn on entirely different factual and procedural matrices concerning the date of filing.

In view of the aforesaid discussion, this Court is of the considered opinion that the present petition has not been filed within the time period prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996. The petition is therefore barred by limitation and is not maintainable.

Accordingly, AP/4/2025 is dismissed.

(GAURANG KANTH, J.)

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