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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\# **CNR No. DLHC010416432023**

\+ FAO (COMM) 210/2023

M/S PAHAL .....Appellant

Through: Mr. YashasviVirendra, Mr. Anany Mishra and Mr. Jay Wadhwa, Advs.

versus

SMALL INDUSTRIES DEVELOPMENT BANK OF INDIA .....Respondent

Through: Ms. SharanyaBhatnagar, Mr. Sagar Aggarwal and Mr. H.C. Suri, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE BHARAT PARASHAR

O R D E R

% 07.10.2026

1. Through the present appeal,filed under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as 'A&C Act'], read with Section 13 of the Commercial Courts Act, 2015,the Appellant assails the order dated 28.07.2023 [hereinafter referred to as the 'Impugned Order'] passed by the learned Commercial Court in the Restoration Application filed in O.M.P.(Comm.) No. 37/2021 [hereinafter referred to as 'Section 34 Petition'].

2. The Arbitral Award was passed on 16.10.2017. The Appellant challenged the said Award by filingthe aforesaid Section 34 Petition before the learned Commercial Court. However, the said petition was

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dismissed for non-prosecution on 14.07.2022.

3. Thereafter, the Appellant filed two applications seeking restoration of the aforesaid Section 34 Petition. The first application, filed on 26.07.2022, sought recall of the order dated 14.07.2022. The second application was filed on 16.09.2022 under Order IX Rule 9 of the Code of Civil Procedure, 1908. Both applications were dismissed by the learned Commercial Court *vide* the Impugned Order, *inter alia*, on the ground that the Appellant had failed to produce any medical record in support of the sufficient cause pleaded for its absence.

4. Learned counsel representing the Respondent submits that she has no objection to the Impugned Order being set aside, subject to the Appellant demonstrating its *bona fides*. It is further submitted that the amount recoverable under the Arbitral Award presently exceeds Rupees two (02) crore and that the Award remains unsatisfied.

5. In response, learned counsel representing the Appellant submits that no execution petition has been filed by the Respondent for enforcement of the Arbitral Award.

6. Be that as it may, it is evident that the Appellant had approached the learned Commercial Court seeking restoration of the aforesaid Section 34 Petition within twelve (12) days of its dismissal for non-prosecution, the first application having been filed on 26.07.2022.

7. Having regard to the aforesaid facts and circumstances, this Court is of the view that the Appellant deserves an opportunity to pursue its objections under Section 34 of the A&C Act. The Appellant had approached the learned Commercial Court seeking restoration within twelve (12) days of dismissal of the Section 34 Petition for non-prosecution. The prompt filing of the first restoration application

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indicates that the Appellant was desirous of pursuing its challenge to the Arbitral Award.

8. At the same time, the Respondent's interest in enforcement of the Arbitral Award, which remains unsatisfied, must also be protected. Accordingly, balancing the interests of both parties, the aforesaid Section 34 Petition, i.e., O.M.P.(Comm.) No. 37/2021,is restored, subject to the Appellant depositing twenty-five per cent (25%) of the amount payable under the Arbitral Award, computed as on date, within a period of four (04) weeks from today.

9. If the Appellant deposits the aforesaid amount and the Section 34 Petition is restored, the same shall be decided by the learned Commercial Court within a period of two (02) months. The learned Commercial Court shall decide the objections on their own merits, uninfluenced by any observations made in the present order.

10. The appeal is accordingly disposed of.

ANIL KSHETARPAL, J

BHARAT PARASHAR, J

OCTOBER 7, 2026
JYH/shah

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