IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

OMP(M) No. : 335 of 2025
Reserved on : 16.04.2026
Decided on : 22.04.2026

Er. Surinder Sharma ...Petitioner

Versus

H.P. Micro Small Enterprises Facilitation Council & Anr.
...Respondents

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?[1] *Yes.*

For the petitioner : Ms. Madhurika Sekhon Verma, Advocate.

For the respondents : None for respondent No. 1.

Mr. Utkarsh Singh Thakur and Mr. Lalit Kumar Sehgal, Advocates, for respondent No. 2.

Virender Singh, Judge

Applicant-Er. Surinder Sharma has filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act), against the order dated 21.08.2024, passed by the Himachal Pradesh Micro Small Enterprises Facilitation Council, Udyog Bhawan, Shimla, H.P., in case Reference No. 21 of 2024.

[1] *Whether Reporters of local papers may be allowed to see the judgment? Yes.*

2. Since those objections have been filed after the prescribed period of limitation, as such, present application has been filed under Section 34(3) of the Act, seeking condonation of delay, which according to the applicant, is of about seven months, and, as per the report of the Registry, is of 11 months and five days.

3. The delay in filing the objections, under Section 34 of the Act, has been sought to be condoned on the ground that applicant has preferred CMPMO No. 735 of 2024 along with CMPMO No. 753 of 2024, against the order, dated 21.08.2024. Those CMPMOs have been disposed of by this Court by a common judgment, dated 01.07.2025, by holding that the remedy available to the applicant is by challenging the impugned orders, under Section 34 of the Act and the Court has no jurisdiction to entertain the petition, under Articles 226 and 227 of the Constitution of India. As such, the delay in preferring the objections has been sought to be condoned. Application is duly supported by affidavit of Er. Surinder Sharma.

4. When put to notice, respondent No. 1 has not opted to put appearance, whereas, respondent No. 2 has contested the application by filing the reply, on the ground

that this Court cannot condone the said delay, as the same is beyond the jurisdiction of the Court, under Section 34(3) of the Act. On the basis of above facts, the present application is also stated to be not maintainable.

5. In addition to this, a plea has been taken that the present objections, under Section 34 of the Act, are not maintainable and the order passed by respondent No. 1 is liable to be assailed under Section 37 of the Act.

6. Prayer for condoning the delay has also been opposed on the ground that the applicant has not given day-to-day explanation of the delay. On the basis of the above facts, applicability of the application, under Section 14 of the Limitation Act, has also been questioned by respondent No. 2.

7. On the basis of above facts, it has been argued by learned counsel appearing for respondent No. 2 that even after giving the benefit of Section 14 of the Act to the applicant, the same does not fall under the outer limit, as prescribed under Section 34 of the Act. The reply is duly supported by the affidavit of Vice President (Corporate Affairs of respondent No. 2).

8. Applicant has filed the rejoinder, contesting the stand, as taken by respondent No. 2, in the reply and by reasserting the facts of the application.

9. Perusal of the record shows that the applicant Er. Surinder Sharma, has assailed the order passed by respondent No. 1, on 21.08.2024, by filing CMPMO No. 753 of 2024. As per the record, said petition, under Article 227 of the Constitution, has been filed on 17.12.2024, and the said petition along with CMPMO No. 735 of 2024 has been disposed of by this Court on 01.07.2025, by passing the following order:-

> *"11. Though, in Tamil Nadu Cements Corporation (supra) the issue of jurisdiction of this Court has been referred to the decision of larger bench but since the judgment in M/s India Glycols Ltd (supra) passed by a bench of equal strength subsists, this Court considers it appropriate to decide the issue against the petitioner taking into consideration the following observations of Hon'ble Supreme Court in* ***State of Maharashtra and Anr. vs. Sarva Shramik Sangh, Sangli and Ors., (2013)16 SCC 16****:-*
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> > *"20. It is, however, contended on behalf of the appellant that the said undertaking was being run by the irrigation department of the first appellant, and the activities of the irrigation department could not be considered to be an "industry" within the definition of the concept under Section 2(j) of the I.D. Act. As noted earlier, the reconsideration of the wide interpretation of the concept of "industry" in Bangalore Water Supply and Sewerage Board (1978) 2 SCC 213) is pending before a larger bench of this Court. However, as of now we will have to follow the*

> *interpretation of law presently holding the field as per the approach taken by this Court in State of Orissa v. Dandasi Sahu (supra) (1988) 4 SCC 12), referred to above. The determination of the present pending industrial dispute cannot be kept undecided until the judgment of the larger bench is received.*
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> *12. In result, both the petitions are dismissed being not maintainable. No order as to the costs. Needless to say, this order will not stand in the way of petitioner in pursuing such remedies, against the orders impugned herein, as may be available to him as per law."*

10. Thereafter, the present application for condonation of delay, along with the objections, under Section 34 of the Act, has been filed on 14.08.2025. It seems that the applicant is seeking the condonation of delay in preferring the objections under Section 34 of the Act, after excluding the time, which was spent by the applicant in pursuing the remedy by way of CMPMO No. 753 of 2024, which, later on, was held to be not maintainable.

11. Provisions of Section 34 of the Act are reproduced as under:-

> "***34. Application for setting aside arbitral award****.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
>
> *(2) An arbitral award may be set aside by the Court only if—*
>
> *(a) the party making the application 1 [establishes on the basis of the record of the arbitral tribunal that]—*

(i) a party was under some incapacity, or
(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration: Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or
(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
(ii) the arbitral award is in conflict with the public policy of India.
[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—
(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81;or
(ii) it is in contravention with the fundamental policy of Indian law; or
(iii) it is in conflict with the most basic notions of morality or justice. Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]
[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may

also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the 1. Subs. by Act 33 of 2019, s. 7, for "furnishes proof that" (w.e.f. 30-8-2019). 2. Subs. by Act 3 of 2016, s. 18, for the Explanation (w.e.f. 23-10-2015). 3. Ins. by s. 18, ibid. (w.e.f. 23-10-2015) arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party."

12. In view of the above provisions, now, the material question, which arises for determination before

this Court, is as to whether the applicant is entitled for the benefit of Section 14 of the Limitation Act.

13. By way of Section 34 of the Act, the Legislature, in its wisdom, has enacted a special provision, excluding the applicability of provisions of Section 5 of the Limitation Act, to the arbitral proceedings.

14. Hon'ble Supreme Court in recent decision titled as "**My Preferred Transformation & Hospitality Pvt. Ltd. & Anr. Versus M/s Faridabad Implements Pvt. Ltd.**" reported as **(2025) 6 Supreme Court Cases 481**, has elaborately discussed the applicability of Section 14 of the Limitation Act viz-a-viz Section 34 of the Act. Relevant paragraphs 24 and 25, of the judgment, are reproduced, as under:-

> "*24. In State of Goa v. Western Builders (2006) 6 SCC 239, a Division Bench of this Court held that nothing in the ACA or in the language of Section 34 excludes the applicability of Section 14 of the Limitation Act. Hence, the time spent by a party who was bona fide prosecuting his remedy before a court that did not have jurisdiction must be excluded while calculating the prescribed period under Section 34(3). It held that when the special law is silent and there is no specific prohibition, it must be interpreted in a manner that advances justice. While the object of the ACA is to ensure expeditious decisions in commercial matters through arbitration, Section 43 makes the entirety of the Limitation Act applicable. The Limitation Act is excluded only to that extent of the area which is covered under the ACA, and hence*

> *Section 5 is excluded by virtue of the stipulation of the mandatory 30-day condonable period under Section 34(3).*
> *25. A three-Judge Bench of this Court in Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169, also held that Section 14 of the Limitation Act applies to Section 34(3). Merely because Section 5 of the Limitation Act stands excluded, does not lead to a conclusion that other provisions are also excluded. Adopting a similar reasoning as Western Builders, the Court held that there is no provision in the ACA that excludes the applicability of Section 14 of the Limitation Act to Section 34 proceedings. Further the Court held that there is a fundamental distinction between Sections 5 and 14 of the Limitation Act. Section 5 allows the court to exercise discretion to condone delay, and thereby extends the period of limitation. However, under Section 14, the exclusion of time is mandatory if certain conditions are satisfied. Exercise of power under Section 5 is therefore broader than Section 14, as a wide range of reasons can be put forth to show sufficient cause for delay. Hence, it held that the decision in Popular Cosntruction does not mean that Section 14 of the Limitation Act is also inapplicable to Section 34(3) of the ACA. This decision has been subsequently followed by this Court in other cases."*

15. The applicant, in the present case, is seeking the benefit of Section 14 of the Limitation Act, which is reproduced as under:-

> "***14. Exclusion of time of proceeding bona fide in court without jurisdiction.*** *- (1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*

> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
> *(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature."*

16. In order to get the benefit under this Section, the following ingredients are required to be satisfied:-

1. *Both the proceedings must be civil proceedings in a Court;*
2. *The earlier proceeding must have been prosecuted with due diligence;*
3. *The earlier proceeding must have been in respect of the same matter in issue;*
4. *The earlier proceeding must have been prosecuted in good faith in a court which enable to entertain the suit for defect of jurisdiction or other cause of a like nature.*

17. The application under consideration is totally silent about the ingredients of Section 14 of the Limitation Act. In the application, simple averments have been made that delay of seven months in filing the application is neither intentional nor deliberate. The above averments are too short to comply with the mandate of Section 14 of

the Limitation Act, for claiming the benefit of said Section. Merely, this Court while deciding CMPMO No. 753 of 2024, has held that the Court is not having the jurisdiction to entertain the petition under Articles 226 and 227 of the Constitution of India, does not mean that the delay of seven months, that too, in violation of Section 34(3) of the Act, can be condoned, merely on the ground that the applicant was pursuing the remedy under the wrong provisions of law.

18. The order was passed by respondent No. 1 on 21.08.2024 and as per Section 34 (3) of the Act, the same is required to be assailed under Section 34 of the Act within three months and a window has further been provided by the Legislature, in its wisdom, to condone the delay of 30 days, if sufficient cause is shown. Petition before this Court, under Article 227 of the Constitution of India, was filed on 17.12.2024. On that day, three months' period, as per Section 34(3) of the Act has already elapsed. Out of the 30 days' period, for which the Court can condone the delay, 25 days have already elapsed. In order to get the benefit of the window provided under Section 34(3) of the Act, the applicant is required to file the present

application, for condonation of delay, within five days from the date of decision of the petition by this Court, on 01.07.2025. Admittedly, the same has been filed on 14.08.2025, i.e. after 44 days. If five days period, out of 30 days, is excluded, then also, the present application has been filed after 39 days.

19. Keeping in view the legislative intent to file the objections expeditiously, the time frame of three months has been prescribed under Section 34 of the Act and a window has been provided to condone the delay of further 30 days, if the petition is not filed within three months. In such situation, this Court has to maintain a delicate balance between Section 34(3) of the Act (special statute) and the provisions of Section 14 of the Limitation Act (General Law). Situation would have been otherwise, had this petition been filed within five days from the date of dismissal of the petition filed under Article 227 of the Constitution of India, by this Court on 01.07.2025.

20. As per Section 34(3) of the Act, maximum period, which can be condoned is 30 days in case, the objections could not be filed within prescribed period of

three months and the period above 120 days, has been held to be non-condonable, as per the provisions of the Act.

21. Consequently, there is no merit in the application and the same is accordingly dismissed.

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22. In view of the dismissal of the OMP(M) No. 335 of 2025 (supra), the present objections are also dismissed, being time barred.

23. Pending application(s), if any, are also ordered to be disposed of, accordingly.

(Virender Singh)
Judge

22nd April, 2026
(*Pramod Kumar*)