IN THE HIGH COURT OF JUDICATURE AT PATNA

COMMERCIAL APPEAL No.15 of 2026

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1. The Bihar State Warehousing Corporation through its Chairman having its office at B/2, 1st Floor, Maurya Lok Complex, Patna.
2. The Managing Director, Bihar State Warehousing Corporation, B/2, 1st Floor, Maurya Lok Complex, Patna.

... ... Appellants

Versus

1. M/s Pushpheera Infrastructure Pvt. Ltd. through its Managing Director, Sri Nishant Sinha, having its registered office at Swaraj Bhawan, 163, East Boring Road, P.S. Buddha Colony, Patna-800 001.
2. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
3. The Principal Secretary, Bihar State Food and Civil Supplies Department, Government of Bihar, Patna (since deleted)
4. The Food Corporation of India through its Chairman-cum-Managing Director, 16- 20, Barakhamba Lane, New Delhi - 110 001.
5. The General Manager, Food Corporation of India, East Zone (Bihar Office) having its office at J-45R GMW, Arunachal Bhawan, 4th Floor, Exhibition Road Area, Near Exhibition Road Chauraha, Patna-800 001.

... ... Respondents

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Appearance :

For the Appellants	:	Mr. Rajendra Narain, Sr. Advocate Mr. Mithilesh Kumar Rai, Advocate Ms. Annapurna Sinha, Advocate Mr. Anant Kumar Sinha, Advocate
For the Resp No. 1	:	Mr. Amit Shrivastava, Sr. Advocate Mr. Kunal Tiwary, Advocate Mr. Himanshu Singh, Advocate
For the State	:	Mr. Shashwat Aggarwal, AC to AG

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 06-08-2026

By filing the present commercial appeal, the appellant has challenged the judgment and order dated 02.04.2026, passed by learned Principal District Judge-cum-Commercial Court, Patna in Arbitration Case No. 87 of 2024, whereby and whereunder the petition filed by the appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as '*the Act of 1996*') for setting aside the arbitral award dated 07.08.2024 rendered by a learned Sole Arbitrator has been dismissed on the solitary ground that as the deficit court fee was not made good within the mandatory outer limit of three months plus 30 days prescribed under Section 34(3) of the Act of 1996, the application preferred by the present appellants under Section 34 of the Act of 1996, though initially filed within time, was not a proper presentation in the eyes of law.

2. The facts of the case are not in dispute. The appellant and respondent no. 1 had entered into an agreement dated 29.06.2020, whereunder the respondent no. 1 agreed to provide a godown of 10,000 MT capacity for 10 years on rental basis to the Food Corporation of India (in short '*FCI*'). There are allegations and counter-allegations by the parties. It is stated that the claimant/respondent did not commence the construction upon execution of the agreement, citing the COVID pandemic as the reason. In spite of extension in respect of construction of godowns, the respondent no. 1 could not complete it and the construction of 2,500 MT capacity godown proceeded in contraventions of the specifications given. Gross deviations in construction from the specifications were observed on many fronts, leading to cancellation of the agreement on 05.04.2023.

3. In Request Case No. 49 of 2023, vide order dated 26.07.2023, a former Judge of this Court was appointed as Sole Arbitrator, who entered into reference on 10.08.2023. During the arbitral proceedings, at the instance of the claimant/respondent no. 1, the learned Arbitrator directed to delete the FCI as a party saying that it was non-signatory to the agreement so not liable.

4. The learned Arbitrator gave her award on 07.08.2024 with regard to both the godowns of 2,500 MT and 5,000 MT to the tune of Rs. 5,99,48,823/- in favour of the claimant/respondent. The learned Arbitrator granted interest of Rs. 1.19 crores and Rs. 37.50 lakhs as capital subsidy from NABARD, Rs. 61 lakhs towards additional cost, Rs. 11 lakhs towards stamp duties and compensation of Rs. 2 crores.

5. For purpose of consideration of the present appeal, this Court need not go into the submissions of the appellants as regards the grounds on which the appellants sought setting aside of the award by filing an application under Section 34(2) of the Act of 1996. What is important to take note of is stated hereinafter.

(i) The appellants challenged the award dated 07.08.2024 in the court of learned Principal District Judge, Patna by filing a petition under Section 34(2) of the Act of 1996 on 19.10.2024.

(ii) Admittedly, the application was filed within the period of limitation prescribed under sub-section (3) of Section 34 of the Act of 1996.

(iii) It is a matter of record that on presentation of the application under Section 34(2) of the Act of 1996, it was registered and ordered to be put up on 21.10.2024 with *Sheristadar's* report for hearing on admission. The *Sheristadar* submitted his report on 24.10.2024. The application under Section 34(2) of the Act of 1996 was registered as Miscellaneous (Arbitration) Case No. 87 of 2024, which was placed before the learned Presiding Officer on 26.11.2024. On the said date, both the parties filed *haziri*. The petitioner/appellant was directed to file the deficit court fee of Rs. 245 by 19.12.2024.

(iv) It is further a matter of record that on 19.12.2024, the petitioner filed an application seeking time for depositing deficit court fee. The learned Presiding Officer passed an order directing the petitioner/appellant to file deficit court fee of Rs. 245 by 18.01.2025.

(v) On 18.01.2025, the Presiding Officer was on administrative work. Attendance was filed on behalf of the petitioner and opposite party. The petitioner was directed to remove the defects as pointed out in the *Sheristadar's* report and the matter was ordered to be put up on 07.02.2025. On 07.02.2025, the Presiding Officer was on casual leave. Attendance was filed on behalf of the petitioners with court fee of Rs. 245. The same was ordered to be kept on the record and the matter was ordered to be listed on 19.02.2025 for hearing on the point of admission.

(vi) It further appears that on 19.02.2025, on the request of learned counsel for the opposite parties-Respondent No. 1, the matter was adjourned for 10.03.2025 for filing objection on behalf of the opposite parties. On 10.03.2025, learned counsel for the opposite parties requested for time to file objection. The prayer was allowed and the matter was ordered to be put up on 23.04.2025 for filing objection on behalf of the opposite parties, as well as for hearing on the point of admission. On 23.04.2025, a counter affidavit/objection was filed on behalf of the opposite parties but the copy of the same was not served upon the petitioners. Therefore, the case was ordered to be put up on

13.05.2025 for supply of copy of objection to the petitioner and hearing on the point of admission.

(vii) On 13.05.2025, the case was taken up for hearing in admission matter. On that day, learned counsel for the respondents/claimant filed a supplementary affidavit to the objection filed earlier. A submission was made that the present arbitration case be dismissed at the threshold on the ground that subsequent to the filing of the application on 19.10.2024, there was a report of the *Sheristadar* that there is deficit court fee of Rs. 245, which the applicant was supposed to remove, but the applicant failed to do so and only after substantial passage of time, it was done so on 07.02.2025. The respondent/claimant relied upon the judgment of the Hon'ble Supreme Court in the case of **A. Nawab John and Ors. vs. V.N. Subramaniyam** reported in **(2012) 7 SCC 738**, to submit that when an application is filed by a party and deficit court fee is reported, it is not open to the said party to rectify such defect at his own sweet will and if it is beyond the period of limitation, it cannot be considered by the court.

(viii) Thereafter, the matter was adjourned from time to time. The parties were heard on the point of admission. On 20.12.2025, the petitioners filed a petition under Section 149 read with Section 151 of the Code of Civil Procedure. The same was responded to by the respondent/claimant and the record was ordered to be listed for judgment on 09.03.2026.

6. In the aforementioned background, the impugned judgment has been delivered by the learned Principal District Judge Patna-cum-Commercial Court on 02.04.2026. In its conclusion, the learned Commercial Court has held as under:-

> "64. In view of the foregoing discussion, this Court holds that the present application under Section 34 of the Arbitration and Conciliation Act, 1996, though initially filed within time, was not a proper presentation in the eye of law, as the deficit court fee was not made good within the mandatory outer limit of three months plus thirty days prescribed under Section 34(3). The payment of the deficit court fee on 07.02.2025, being 62 days beyond the statutory outer limit, cannot relate back so as to cure the fatal defect of limitation, and the application is therefore barred by time.
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> 65. The Court further holds that the discretionary power under Section 149 CPC cannot be invoked to override the express legislative command embodied in the words "but not thereafter" under Section 34(3). In the absence of any legally sustainable application seeking extension of time for payment of court fee within the permissible period, the petitioner cannot be granted the benefit of a belated cure of the defect.
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> **O R D E R**
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> 66. In the result, the preliminary objection raised on behalf of the respondent-claimant is upheld. The application filed under Section 34 of the Arbitration and Conciliation Act,

1996, assailing the Arbitral Award dated 07.08.2024, is hereby dismissed as barred by limitation."

Submissions on behalf of the appellants

7. Mr. Rajendra Narain, learned senior counsel for the appellant has assailed the impugned judgment. It is submitted that the learned court could not appreciate that Section 34(2) application under the Act of 1996 was filed within the prescribed period of limitation. In his submissions, sub-section (3) of Section 34 mandates that 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. Proviso to sub-section (3) of Section 34 enables the court to entertain the application within a further period of 30 days but not thereafter 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 is submitted that sub-section (3) together with its Proviso cannot be construed in a manner so as to suggest that the deficit court fee as pointed out by the Shristedar could have been deposited only within the prescribed period of limitation or at best within a further period of 30 days.

8. It is submitted that in the present case the deficit court fee of Rs.245/- has been deposited within the time granted by the learned court. The Shristedar's report came on 24.10.2024 whereafter the Misc.(Arbitration) Case No.87 of 2024 was listed on 26.11.2024. On 26.11.2024, the learned court directed the appellant to file deficit court fee by 19.12.2024. According to claimant-respondent no.1 the 30 days period in terms of Proviso to sub-section (3) of Section 34 of the Act of 1996 would expire on 07.12.2024. If this period of 30 days is taken as the final period of limitation for filing the deficit court fee, the date fixed by the learned court for filing the deficit court fee by 19.12.2024 was much beyond the last date. The order dated 26.11.2024 was passed in presence of learned counsel for the claimant-respondent no.1. No objection was raised either on 26.11.2024 or on 19.12.2024. On 19.12.2024, on the prayer of the petitioners-appellants the time to file deficit court fee was extended by 18.01.2025 and on 18.01.2025 it was again directed to the petitioners-appellants to remove the defects as pointed out by the Shristedar. The next date was fixed on 07.02.2025. On this date, the petitioners-appellants filed deficit court fee which was duly taken on the record. All these orders were passed in presence of learned counsel for the claimant-respondent no.1. No objection whatsoever was raised at any point of time. Subsequently, the claimant-respondent no.1 filed its written objection to the application for setting aside the award but even in the written objection, the claimant-respondent no.1 did not raise any objection. It is only at a belated stage when the application was being heard on the point of admission, the claimant-respondent no.1 filed a supplementary counter affidavit-cum-written objection and sought dismissal of the application on the ground of non-filing of the deficit court fee within the period prescribed under sub-section(3) of Section 34. Learned senior counsel for the appellant submits that Section 149 of the Code of Civil Procedure (in short 'CPC') confers power upon the learned court to extend the period to deposit the deficit court fee. It is his submission that in this case the learned court would be deemed to have exercised its power under Section 149 read with Section 151 CPC. No written application is required for this purpose.

9. It is submitted that the petition under Section 149 read with Section 151 CPC was filed in course of hearing of the case in admission, by way of abundant caution. Relying upon the judgment of the Hon'ble Supreme Court in the case of **A. Nawab John and Others Vs. V.N. Subramanyam** reported in **(2012) 7 SCC 738** (para 44), learned senior counsel submits that if a plaint is filed within time and the court exercises its powers under

Section 149 CPC such discretion is conditional upon the satisfaction of the court. In the present case, short adjournments were granted by the learned court fixing time for the appellant to pay deficit court fee. The discretion exercised by the learned court has never been challenged by and on behalf of the claimant-respondent no.1.

10. Learned senior counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Northern Railways vs. M/S Pioneer Publicity Corporation Pvt. Ltd.** reported in **(2017) 11 SCC 234** wherein the Hon'ble Supreme Court has held that Section 34 (3) would apply only to the initial filing and not to any extension granted by the court for removing the deficiency.

11. Learned senior counsel has further relied upon the judgment of the Hon'ble Calcutta High Court in the case of **Sajarul Rahaman & Another vs. SREI Equipment Finance Ltd. and Another in AP-COM/304/2024 (Old Case No.AP/250/2023 and AP/262/2023) decided on 27.08.2024** to submit that if the initial filing under Section 34 was within time and later on if time was granted to deposit the deficit court fee which was a curable defect, there would be no delay in filing. It is lastly submitted that the impugned judgment dismissing the application under Section 34 of the Act of 1996 on the ground that deficit court fee was deposited on 07.02.2025 being 62 days beyond the statutory outer limit is wholly illegal and does not lay down a correct statement of law. Hence, the same is liable to be set aside.

Submissions on behalf of the respondent no.1

12. On the other hand, Mr. Amit Shrivastava, learned senior counsel representing the claimant-respondent no.1 has defended the impugned judgment. It is submitted that in terms of statutory mandate of Section 34(3) of the Act of 1996, the deficit court fee was required to be paid on or before 07.11.2024 or positively on or before 06.12.2024. It is admitted that on 26.11.2024 itself the appellant was directed by the learned court to file deficit court fee of Rs.245/- by 19.12.2024 and again on 19.12.2024 the appellant was directed to deposit deficit court fee of Rs.245/- by 18.01.2025. On 18.01.2025, once again no step was taken by the appellant to deposit deficit court fee, hence, the appellant was directed to remove the defects as per Shristedar's report and the matter was adjourned to 07.02.2025. On 07.02.2025, the deficit court fee was deposited and the case was fixed for hearing on the point of admission.

13. Mr. Shrivastava, learned senior counsel for the respondent no.1 submits that the applicant was required to satisfy the court that it was prevented by sufficient cause from depositing the deficit court fee within the period of 90+30 days. According to him, the learned court below become *functus officio* and ceased of its jurisdiction to accept the deficit court fee on expiry of 120 days (90+30) i.e. after 07.12.2024.

14. In course of hearing of the appeal, learned senior counsel for the respondent no.1 submits that initial filing of the application under Section 34 was within the limitation period and the defect or deficiency in form of deficit court fee could have been removed thereafter but according to him the defect/deficiency could have been removed only within the permissible period of 120 days. According to him, it was incumbent upon the appellant to file a petition seeking condonation of delay by explaining the cause of delay in not depositing the deficit court fee before expiry of three months or further 30 days period and the moment the extended period of 30 days expired on 07.12.2024, the learned court below could not have condoned further delay and accept the deficit court fee.

15. It is submitted that the arbitration proceeding originates from a special Statute i.e. the Act of 1996 which contains specific provisions on a particular subject. The special provision such as sub-section (3) of Section 34 is a self-contained

Code and it would prevail over the general provisions under the CPC which govern all civil proceedings. It is his submission that the Proviso to sub-section (3) of Section 34 prescribes specific limitation with an express bar "but not thereafter", this specific provision must prevail over the general discretionary provision in Section 149 CPC.

16. Learned senior counsel has relied upon the judgments of the Hon'ble Supreme Court in the case of (i) **Union of India Vs. Popular Construction** reported in **(2001) 8 SCC 470** (ii) **Ramjee Power Construction Limited Vs. Jharkhand Urja Vikash Nigam Limited and Another in Civil Appeal Nos.9774-9775 Of 2018 (Special Leave Petition (C) Nos.1005-1006 of 2012) decided on 19.09.2018** (iii) **Simplex Infrastructure Ltd. Vs. Union of India** reported in **(2019) 2 SCC 455** (iv) **Buta Singh (dead) by LRS Vs. Union of India** reported in **(1995) 5 SCC 284** (v) **H. Guruswamy and Others Vs. A. Krishnaiah since deceased by LRS** reported in **2025 SCC OnLine SC 54** (vi) **M. Gajendran and Others Vs. M/s Everest Blue Metals and Others in Appln. Nos.4872 and 4874 of 2025 decided on 23.10.2025** (vii) **Ajay Dabra Vs. Pyare Ram** reported in **2023 SCC OnLine SC 92** (viii) **Basawaraj and Another Vs. Special Land Acquisition Officer** reported in **(2013) 14 SCC 81** (ix) **M/s**

Oriental Cuisines Pvt Ltd. Vs. Sricharan Foods in Arb.O.P. (Com.Div.) No.354 of 2021 decided on 17.12.2025 (x) **Waaree Energies Limited Mumbai Vs. Sahasradhara Energy Private Limited, Chennai** reported in **AIR Online 2021 Mad 2445** and (xi) **Roger Shashoua vs. Mukesh Sharma** reported in **AIR 2017 SC 3166**.

17. In course of hearing of the appeal, learned senior counsel has mainly relied upon the judgments of the Hon'ble Madras High Court in the case of **M/s Oriental Cuisines Pvt. Ltd.** (supra) and **Waaree Engergies Limited Mumbai** (supra) to submit that the Hon'ble Madras High Court has held that filing of a petition with deficit court fee cannot be construed as proper presentation of the petition. If such presentation has to be regularized, the deficit court fee must be paid within the limitation period prescribed under Section 34(3). If this is not done, the court is divested of its power to condone the delay.

18. Learned senior counsel for the respondent no.1 has sought to distinguish the judgments on which reliance has been placed on behalf of the appellants. It is submitted that the judgment of the Hon'ble Supreme Court in the case of **Northern Railway** (supra) is inapplicable in the instant case as the decision in the said case is in respect of condonation of delay in re-filing.

As regards the judgment of the Hon'ble Supreme Court in the case of **Sajarul Rahaman** (supra), it is submitted that though the said case is arising out of arbitration proceeding but the fact involved therein is entirely different than the present case. In the said case, the petitioner of the said case had filed the application under Section 34(3) with appropriate court fee of Rs.130/-after 90 days but before expiry of extended period of 30 days as provided under Section 34(3) and a proper application was filed for condonation of delay with sufficient cause for making the application after expiry of 90 days. For all these reasons, learned senior counsel for the respondent no.1 has sought dismissal of the present appeal.

Consideration

19. We have heard learned counsel for the parties at length and perused the records. Since, Section 34(3) of the Act of 1996 has fallen for consideration in the present appeal, this Court would extract sub-section (3) of Section 34 hereunder:-

> "34 (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."

20. It is well settled by judicial pronouncements that by virtue of Section 34 (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). Sub-section (2) relates to the grounds for setting aside an award but an application filed beyond the period mentioned in Section 34, sub-section(3) would not be an application "in accordance with" that sub section. In the case of **Popular Construction Co.** (supra), the Hon'ble Supreme Court has discussed in detail the import of sub-section (3) of Section 34 and it has been held that an application for setting aside the arbitral award cannot be made beyond the period prescribed under Sub-section (3) of Section 34. The Hon'ble Supreme Court noted that the importance of the period fixed under Section 34 is emphasized by the provisions of Section 36 which provide that "where the time for making an application to set aside the arbitral award under Section 34 has expired...the award shall be enforced and the Code of Civil Procedure 1908 in the same manner as if it were a decree of a court".

21. In the case of **Ramjee Power Construction Ltd.** (supra), the Hon'ble Supreme Court held in paragraph '6', '7', '8' and '9' as under:-

> "6. If the application under section 34 of the Act is not filed within the stipulated time of three months, it can be filed within further 30 days vide the proviso.
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> 7. In these cases clearly there was no scope for having the delay condoned because the application under section 34 of the Act was well beyond even the extended period of 30 days.
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> 8. The High Court appears to have fully cognizant of this fact and has even observed that “the time limit prescribed under section 34 of the Act to challenge the award is no doubt absolute and unextendable by the court under section 5 of the Limitation Act.” Yet observing that this is an exceptional case, it has condoned the delay because the officers of the erstwhile Board adopted a delaying tactics in various proceedings with an intention to favour the appellant.
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> 9. Assuming that the High Court was justified in making these observations about the intention of the officers, we are clearly of the view that it had no power to condone the delay in filing the application under section 34 of the Act beyond the period prescribed by the Parliament. It was not permissible for the High Court to open a window in the wall of limitation put up by Parliament."

22. In the case of **Simplex Infrastructure Ltd.** (supra), once again the Hon'ble Supreme Court considered sub-section(3) of Section 34 of the Act of 1996. Paragraph '13' of the said judgment reads as under:-

> "13. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate."

23. From the aforementioned judgments of the Hon'ble Supreme Court, it is well settled that an application for setting aside the award cannot be filed beyond the strict timelines prescribed in sub-section(3) read along with the Proviso to Section 34 of the Act of 1996. But that is not the question involved in the present case.

24. Admittedly, in this case the initial filing of Section 34 application is within the prescribed period of limitation. What is being submitted is that the initial filing was not accompanied by the requisite court fee. The court fee was found deficit by Rs.245/- and in this regard the Shristedar made a report on 24.10.2024 which was placed before the learned court on 26.11.2024. The learned court granted time to the appellant to file the deficit court fee, orders were passed in this regard in presence of learned counsel for the respondent no.1. Learned counsel for the respondent no.1 never raised any objection. The court fee was finally deposited on 07.02.2025. Thereafter, written objection was filed on behalf of the respondent no.1 but in the written objection also no plea was taken against deposit of deficit court fee. It is only in course of hearing of the matter in admission, a supplementary counter affidavit/written objection was filed in which for the first time an issue was raised that the deficit court fee had been filed beyond the prescribed period of limitation as envisaged under sub-section (3) of Section 34 of the Act of 1996, therefore, the learned court could not have accepted the deposit of deficit court fee.

25. At this stage, this Court would examine as to whether an application presented under Section 34(2) before the learned Principal District Judge-cum-Commercial Court gives rise to a civil proceeding. A reading of the scheme of the Act of 1996 would show that the word "court" has been defined under clause

(e) of Section 2 of the Act of 1996. The definition of the word "court" reads as under:-

> "[(e) "Court" means—
> (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
> (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]

26. Section 9 of the Act of 1996 empowers a court to pass interim orders on an application moved on behalf of one of the parties. The court is empowered to pass an interim injunction or an order for the appointment of a receiver. So far as the conduct of arbitral proceeding is concerned, as per Section 19 of the Act of 1996, the arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872 and the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings. We are not concerned with the conduct of the arbitral proceeding before an arbitral tribunal in the present case. Chapter VII of the Act of 1996 contains Section 34 which provides for taking recourse to a court against an arbitral award, by making an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

In the case of **Harjinder Singh Bhatia versus Suresh Kapoor (Civil Revision No. 89 of 2002)**, the Hon'ble Allahabad High Court held that the Act of 1996 is a self-contained Code in itself but it does not provide that the CPC would not apply to the proceedings before the court arising out of arbitral award. Section 19 of the Act of 1996 only provides that the arbitral tribunal shall not be bound of CPC. It only excludes the applicability of CPC before the arbitral tribunal and not the proceedings before the court arising out of the arbitral award.

27. Section 149 of the CPC confers power upon the court to allow the person by whom the deficit court fee is payable, to pay the whole or part, as the case may be, of such court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

28. Learned senior counsel for the respondent no.1 does not dispute that the court may in its discretion at any stage allow the person by whom the fee is payable, to pay the deficit court fee but his contention is that the discretion as envisaged under Section 149 CPC could have been exercised judiciously only upon showing that the petitioners-appellants were prohibited by sufficient cause in not filing of the deficit court fee within the prescribed period of limitation i.e. three months under sub-section (3) of Section 34. According to him, within the extended period of 30 days the petitioners could have deposited the deficit court fee after satisfying the court with the reasons for not filing the court fee within the three months period. An application under Section 34 of the Act of 1996 lies before a court. It is the Principal Civil Court of original jurisdiction of the district. A Civil court is ordinarily bound to follow the CPC in dealing with any proceeding before it or an application under Section 34 of the Act until and unless the applicability of the CPC has been excluded. In the case of **ITI Ltd versus Siemens Public Communications Network Ltd** reported in **(2002) 5 SCC 510**, the Hon'ble Apex Court has observed that under the Act, the application of Code of Civil Procedure is not specifically provided for but at the same time, there is no express prohibition against it's application to a proceeding arising out of the Act before the civil court. As a matter of corollary exclusion of CPC in matters arising under the Act before the civil court cannot be presumed or inferred.

29. This Court is unable to agree with the contentions advanced on behalf of the respondent no.1. At first instance, it appears to this Court that by making such a submission, learned senior counsel for the respondent no.1 is trying to read something in the Statute which is not provided therein. Sub-section (3) of Section 34 applies to the initial filing of an application for setting aside the award, beyond that it says nothing.

30. Deposit of the court fee or deficit court fee is a matter between the applicant and the State. In the case of **Sri Rathnavarmaraja vs. Smt. Vimla** reported in **AIR 1961 SC 1299**, the Hon'ble Supreme Court was considering as to whether a defendant, who may believe and even honestly that proper court fee has not been paid by the plaintiff, has any right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. It has been held as under:-

> "2. The Court-fees Act was enacted to collect revenue for the benefit of the State and not to arm a contesting party with a weapon of defence to obstruct the trial of an action. By recognising that the defendant was entitled to contest the valuation of the properties in dispute as if it were a matter in issue between him and the plaintiff and by

entertaining petitions preferred by the defendant to the High Court in exercise of its revisional jurisdiction, against the order adjudging court-fee payable on the plaint, all progress in the suit for the trial of the dispute on the merits has been effectively frustrated for nearly five years. We fail to appreciate what grievance the defendant can make by seeking to invoke the revisional jurisdiction of the High Court on the question whether the plaintiff has paid adequate court-fee on his plaint. Whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State. How by an order relating to the adequacy of the court-fee paid by the plaintiff, the defendant may feel aggrieved, it is difficult to appreciate. …"

31. So far as payment of court-fee on an application under Section 34(2) of the Act of 1996 is concerned, it would be governed by Entry No. 17(iv) of Schedule II under the Court-Fees Act, 1870.

32. In the case of **Prakash Narayan Singh vs. Dayamani Devi & Ors.** reported in **2018 (4) BLJ 145**, a learned Single Judge of this Court relied upon the judgment of the Hon'ble Supreme Court in the case of **Tajender Singh Ghambhir and Another vs. Gurpreet Singh and Others** reported in **(2014) 10 SCC 702** and held that adverse consequences of non-payment of requisite court fee will ensue only if despite the order of the court deficiency in court fee is not made good. It has been held that the mandate of law under the Act is that for payment of deficit court fee, time has to be granted by the court. It has been observed that the Hon'ble Supreme Court referring to Section 12(ii) of the Court Fees Act, 1870 held in clear terms that the appellate court is empowered to direct the party to make up deficit court fee in the plaint at the appellate stage. Similar view has been taken by the Supreme Court in case of **Mannan Lal vs. Chhotaka Bibi, (Dead) by Lrs. B. Sharda Shankar and Others** reported in **(1970) 1 SCC 769.**

33. In **Jonha Devi and Ors. vs. Dinesh Singh and Ors.** reported in **2019 (3) BLJ 329**, a learned Single Judge of this Court was considering Section 4 of the Court Fees Act, 1870 read with Section 149 of the Code of Civil Procedure. After reviewing the case laws on the subject, the learned Single Judge recorded in paragraph '29', '30', and '31' as under:-

> "**29.** Section 149 of the C.P.C. empowers the Court to accept deficit court-fee. The provision reads as follows:-
>
> > "Section 149 of the C.P.C. Power to make up deficiency of Court-fees. --- Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such

payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

30. The provisions of Section 4 of the Court-fees Act, 1870 and Section 149 of the C.P.C. were subject matter of consideration before the Hon'ble Supreme Court in Mannan Lal v. Mst. Chhotka Bibi (dead) by her legal representative and others reported in AIR 1971 SC 1374 observed as follows:-

"Apart from the decisions bearing on the point, there can in our opinion, be no doubt that Sec. 4 of the Court Fees Act is not the last word on the subject and the Court must consider the provisions of both the Act and the Code to harmonise the two sets of provision which can only be done by reading Section 149 as a proviso to Section 4 of the Court Fees Act by allowing the deficiency to be made good within a period of time fixed by it. If the deficiency is made good no possible objection can be raised on the ground of the bar of limitation : the memorandum of appeal must be treated as one filed within the period fixed by the Limitation Act subject to any express provision to the contrary in that Act and the appeal must be treated as pending from the date when the memorandum of appeal was presented in Court. In our view it must be treated as pending from the, date of presentation not only for the purpose of limitation but also for the

> purpose of sufficiency as to courtfee under Section 149 of the Code."

31. In Baijnath Prasad Singh and others vs. Umeshwar Singh and others reported in AIR 1937 Patna 550, a Special Bench of Patna High Court observed as follows:-

> "The Court has a double function : it has its judicial function to hear and decide cases; it also acts as a Collector of Revenue, and its duty is to collect the revenue for the Government in the shape of court-fees according to the statues provided, and in exercising that function it has a discretion granted it to allow time. In the exercise of both of these functions, Subordinate Courts are under the direction of the High Court."

34. It is evident on going through the aforesaid provisions of the Court Fees Act and the Code of Civil Procedure that while filing of the court fees on an application for setting aside the award would be governed by the provisions of Schedule II of the Court Fees Act, Section 149 of the CPC empowers the Court in its discretion at any stage to allow the person by whom such fee is payable, to pay the whole or part of the court fees and upon such payment, the document, in respect of which fee is payable shall have the same force and effect as if such fee had been paid in the first instance. The application for setting aside the award must be treated as pending from the date of it's initial presentation in court not only for purpose of limitation but also for the purpose of sufficiency as to court fee under Section 149 of the CPC.

35. In the aforesaid background, when we examine the impugned judgment of the learned Commercial Court, it is found that the learned Commercial Court has read a period of limitation for filing of the deficit court fee under sub-section (3) of Section 34 of the Act of 1996. We are of the considered opinion that sub-section (3) of Section 34 of the Act of 1996 neither prescribes any period of limitation for filing the deficit court fee nor any such provision may be read into the said sub-section of Section 34 of the Act of 1996. The statutory outer limit for filing the application for setting aside the award cannot be extended co-incidentally and co-extensively for purpose of filing of the deficit court fees. This Court is afraid that any such embargo read into sub-section (3) of Section 34 of the Act of 1996 would amount to rendering the provisions of the Court Fees Act, 1870 and Section 149 of the CPC redundant in the eyes of law. The words “but not thereafter” occurring under Section 34(3) is to be read limited to the period within which an application for setting aside of the award may be presented. There is no question of overriding the express legislative command embodied in the words “but not thereafter” occurring under Section 34(3) of the Act of 1996.

36. Section 149 CPC empowers the Court where the application under Section 34(3) is pending, to allow the person by whom the fee is payable to pay the whole or part of the court fees and upon such payment, the document in respect of which such fee is payable shall have the same force and effect as if such fee has been paid in the first instance. Both the provisions under the CPC and the Act of 1996 are operating under two different fields and they do not come in conflict with each other.

37. Learned Senior Counsel for the respondent no. 1 has relied upon the judgments of the Hon’ble Madras High Court in the case of **M/s. Oriental Cuisines Private Limited** (supra) and **Waaree Energies Limited Mumbai** (supra). In the case of **M/s. Oriental Cuisines Private Limited** (supra), the learned Single Judge of Madras High Court was considering a preliminary objection on the maintainability of the petition under Section 34 of the Act of 1996 on the ground that there was a delay of 352 days in paying the deficit court fee, the said delay had been condoned by the learned Master, but it was contended that such delay could not have been condoned since it was beyond the powers of the Court.

38. The learned Single Judge relied upon his own judgment in A. Nos. 4872 and 4874 of 2025 dated 23.10.2025, in which it was held that filing of a petition with deficit court fee cannot be construed as proper presentation of the petition. If such presentation of the petition is to be regularized, the deficit court fee must be paid within the limitation period prescribed under Section 34(3) of the Act of 1996. The preliminary objection raised by the respondent was upheld and the petition was dismissed.

The judgment in the case of **M/s. Oriental Cuisines Private Limited** (supra) nowhere takes note of the nature of the proceeding registered before the Commercial Court on an application for setting aside of the award. This judgment nowhere talks of Section 149 of the Code of Civil Procedure.

39. In case of **Waaree Engergies Limited Mumbai** (supra), the Hon'ble Division Bench of the Madras High Court was considering the appeals against an order by which a belated petition under Section 34 of the Act of 1996 was thrown out without considering the merits of the matter. The Hon'ble Division Bench found that the period of three months from the date of receipt of the arbitral award dated February 14, 2019 ran out on May 14, 2019 and the further 30 days period elapsed on June 13, 2019. Thus, a valid petition ought to have been filed by the appellant herein by May 14, 2019 or, upon leave being obtained in terms of Section 34(3) of the Act, by June 13, 2019. In the said case, the petition was presented with court fees of Rs.1,000/- when the actual court fees payable amounted to Rs. One lakh. The petition was presented on June 3, 2019, returned by the department for rectification on June 10, 2019 and the deficit court fees were tendered only on August 6, 2019. The Master dismissed the applications for condonation of delay and for acceptance of the petition, against which the appeal was preferred. The Hon'ble Division Bench held that the presentation of the petition on June 3, 2019, is clearly not proper presentation and does not arrest limitation period prescribed under sub-section (3) of Section 34 of the Act of 1996. The Hon'ble Division Bench of the Madras High Court held that the condonation of delay was not possible in the given situation and the only way of a petitioner in such a position is to indicate the exclusion of any time in terms of the Limitation Act, 1963. No explanation of any kind was found to have been preferred.

40. This Court finds, on going through the entire judgment in the case of **Waaree Engergies Limited Mumbai** (supra) that the attention of the Hon'ble Division Bench of Madras High Court was neither drawn towards the provisions of the Court Fees Act, 1870, nor towards Section 149 of the CPC. On facts also, it is not clear whether the court fees was deposited on August 6, 2019 as per time granted by the Court.

41. This Court is, therefore, of the considered opinion that the judgments of the Hon'ble Madras High Court cannot be said to be laying down a law that the deficit court fee has to be filed within the prescribed period of limitation under sub-section (3) of Section 34 for initial presentation of an application for setting aside the award.

42. Learned Senior Counsel for the respondent no. 1 has, though, cited several other judgments which have been taken note of by this Court hereinabove, but in course of his submissions, learned Senior counsel for the respondent no. 1 has admitted that except the two judgments of the Hon'ble Madras High Court, no other judgment deals with the case of payment of deficit court fee.

43. Learned Senior counsel for the appellant has relied upon the judgment of the Hon'ble Calcutta High Court in the case of **Sajarul Rahaman** (supra). In the said case, the Hon'ble Calcutta High Court has, though in ultimate analysis, found that the petitioners had furnished sufficient justification for filing the applications beyond three months but within thirty days from receipt of the award and the objection as to maintainability on the ground of deficit court fees is liable to be declined. It was held that the application of the petitioners under Section 34 of the Arbitration Act was maintainable and the court fees paid therewith were sufficient in terms of the West Bengal Court Fees Act, 1970. In the same judgment, the Hon'ble Calcutta High Court has taken note of the judgments of the Hon'ble Madras High Court in the case of **General Manager vs. Veeyar Engineers & Contractors** reported in **(2019) SCC Online Mad 5586** and **Waaree Energies Limited Mumbai** (supra).

44. What has been held in paragraph '35', '36' and '41' of the judgment in the case of **Sajarul Rahaman** (supra) are being reproduced hereunder for a ready reference:-

> "**35.** Insofar as the judgments of the Madras High Court are concerned, those pertain to the T.N. Act. Even in the said judgments, the power of the court to condone the delay in case of insufficiently stamped documents inadvertently received was not considered. Section 5 of the T.N. Court Fees Act permits, if a document is received by mistake or inadvertence, for the defect to be cured by the court upon subsequent payment of the deficit court fees.
>
> **36.** It is to be noted that the bar regarding deficit court fees does not emanate from the Arbitration Act, which is a special statute in respect of arbitration and conciliation, but

from the Court Fees Act, which is a special statute regarding payment of court fees.

41. Hence, even if there was a deficit in the court fees paid, the bar under Section 4 of the Court Fees Act is not absolute and the court has ample power to cure such defect, under Section 42 and/or under Section 46 of the said Act. Since the defect is curable, it is subject to the discretion of the court to accept or not to accept the same upon directing the deficit court fees to be paid later. Hence, it is not a legally tenable argument that the application, if filed with deficit court fee, is absolutely time-barred under Section 34(3) of the Arbitration Act or the proviso thereto."

45. Keeping in mind the aforesaid judicial pronouncements on the subject and the admitted position in the present case, it is held that the learned Principal District Judge-cum-Commercial Court, Patna was extending the period for filing deficit court fees from time to time and at no point of time any objection was taken by respondent no. 1 even as the court fee was deposited within the extended period, therefore, it would be no longer open to the respondent no. 1 to argue that the application under Section 34(2) of the Act of 1996 would be liable to be dismissed on the ground of non-filing of the deficit court fee within the period prescribed under sub-section (3) of Section 34 of the Act of 1996. As held in the case of **Northern Railway**

(supra), sub-section (3) of Section 34 of the Act of 1996 is confined to the initial presentation of the application for setting aside of the award.

46. The learned Principal District Judge-cum-Commercial Court, Patna has committed error in appreciation of law on the subject. The impugned judgment is hereby set aside.

47. The records are remitted to the learned Principal District Judge-cum-Commercial Court, Patna for passing an appropriate order on the merits of the application under Section 34(2) of the Act of 1996 at the earliest, preferably within a period of three months from the date of receipt/production of a copy of this judgment.

48. The records of the case be transmitted forthwith.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

arvind/Rishi-

AFR/NAFR	AFR
CAV DATE	05.08.2026
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