2026:DHC:6903

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

% ***Date of Decision: 14.08.2026***

\# **CNR No.DLHC010375242026**

\+ **O.M.P. (COMM) 367/2026, I.A. 21960/2026, I.A. 21961/2026, I.A. 21962/2026, I.A. 21963/2026**

DAKSHINANCHAL VIDYUT VITRAN NIGAM LTD .....Petitioner
Through: Ms. Aarti Mishra, Advocate (through VC).

versus

M/S CREATIVE ENTREPRENEURS LLP THROUGH ITS DESIGNATED PARTNERS MR GAGAN AGARWAL...Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (*ORAL*)

1. This petition has been filed by Dakshinanchal Vidyut Vitran Nigam Ltd. ('DVVNL') under Section 34 of the Arbitration and Conciliation Act, 1996 ('A&C Act'), assailing the Award dated 21.05.2024 passed by the learned Sole Arbitrator, Justice K. Ramamoorthy (Retd.), in DIAC/5223D/09-22, titled *M/s Creative Entrepreneurs LLP v. M/s Dakshinanchal Vidyut Vitran Nigam Ltd.*, whereby the claim of the respondent was allowed and the petitioner was directed to pay Rs. 2,42,63,079/- with interest @18% per annum from 13.10.2022 till realisation, together with costs of Rs. 4,90,082/- with interest @10% per annum from the date of the Award till realisation.

2. The dispute arises from a contract dated 04.02.2016 executed between

the parties pursuant to a Letter of Intent dated 12.05.2015, for construction of 1X5 MVA,33/11 KV sub-station and associated 33 KV lines and 11 KV lines at Ganjdundwara, District Kasganj, for a contract value of Rs. 3,47,16,452.85/-. On a reference made by the respondent to the Micro, Small Enterprises Facilitation Council on 22.12.2021 under Section 18 of the MSMED Act, and upon conciliation proceedings before the Council not succeeding, the dispute was referred for arbitration to the Delhi International Arbitration Centre ('DIAC') on 25.08.2022. The respondent filed its Statement of Claim on 13.10.2022, to which the petitioner filed its Statement of Defence on 04.11.2023. The learned Sole Arbitrator thereafter passed the impugned Award on 21.05.2024, allowing the claim substantially as set out above.

3. Being aggrieved by the Award, the petitioner filed a petition under Section 34 of the A&C Act before the Commercial Court, Agra, sometime in August 2024, registered as Miscellaneous Case No. 01/2025, together with an application for condonation of delay and an application for time to deposit 75% of the awarded amount under Section 19 of the MSMED Act. The respondent raised a preliminary objection to the territorial jurisdiction of that court. Vide order dated 08.01.2026, the Commercial Court, Agra upheld the said objection and dismissed Miscellaneous Case No. 01/2025, together with the applications pending therein on the ground of want of territorial jurisdiction.

4. In so holding, the Commercial Court, Agra relied on Section 18(4) of the MSMED Act, which provides that, notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution

services shall have jurisdiction to act as arbitrator or conciliator in a dispute between a supplier located within its jurisdiction and a buyer located anywhere in India. It also relied on Section 24 of the MSMED Act, which extends this non-obstante, overriding effect to the provisions of Sections 15 to 23 of the Act generally, over any other law for the time being in force that is inconsistent therewith, and on the decision of the Hon'ble Supreme Court in M/s Harcharan Dass Gupta v. Union of India, AIR 2025 SC 2800, which holds that a private agreement between the parties cannot obliterate this statutory mechanism, and that, once the process under Section 18 is triggered by a party, it overrides any agreement independently entered into between the parties, in view of the non-obstante clauses contained in sub-sections (1) and (4) of Section 18, read with the overriding effect given to Sections 15 to 23 of the Act by Section 24 thereof. Applying this principle, the Commercial Court, Agra held that the respondent, being the supplier for the purposes of the MSMED Act, is situated at Rohini, Delhi, and that the arbitral proceedings before the DIAC, as well as the Award itself, were conducted and passed at Delhi; on this basis, it held that jurisdiction to entertain a challenge to the Award vests exclusively in the courts at Delhi. It further held that the private forum-selection clause in the contract, Clause 2.17, which conferred jurisdiction on the courts at Agra and the High Court of Judicature at Allahabad, was a contractual stipulation that could not override or derogate from this statutory scheme of jurisdiction under the MSMED Act.

5. Thereafter, the present petition was filed before this Court on 10.06.2026. The petitioner’s case is that they were pursuing Miscellaneous Case No. 01/2025 before the Commercial Court, Agra bona fide and with

due diligence. The petitioner invokes Section 14 of the Limitation Act, 1963 to submit that the time spent bona fide in prosecuting Miscellaneous Case No. 01/2025 before a court lacking jurisdiction ought to be excluded while computing limitation, and that the petition is accordingly within time.

6. Petitioners state that they were advised to file a fresh petition before the courts at Delhi only on 28.01.2026; and some time was taken for drafting the petition and getting the documents, which were with the local Court of Agra, after which the present petition came to be filed. They also state that certain documents annexed to the petition were found by the Registry to be dim, blurred and not clearly legible, requiring fresh/legible copies to be obtained, which is stated to have consumed some time. The petition, in fact, came to be re-filed only on 11.08.2026 after a gap of over two months from the initial filing on 10.06.2026 The petitioner relies on Section 5 of the Limitation Act, 1963 and seeks condonation of delay in filing this petition and re-filing the petition after removal of Registry objections.

7. Section 34(3) of the A&C Act does not exclude the applicability of Section 14 of the Limitation Act, 1963, which permits exclusion, while computing limitation, of time spent bona fide in prosecuting a proceeding before a court unable to entertain it for want of jurisdiction. In *Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department*, (2008) 7 SCC 169, the Supreme Court has observed as follows:

> *"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:*
> *(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*

(2) The prior proceeding had been prosecuted with due diligence and in good faith;
(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
(5) Both the proceedings are in a court."

8. Even proceeding on the footing most favourable to the petitioner, namely that the entire period during which Miscellaneous Case No. 01/2025 remained pending before the Commercial Court, Agra, from its filing in August 2024 until its dismissal on 08.01.2026, stands excluded under Section 14 of the Limitation Act, 1963, the petitioner's own case discloses that the petitioner was advised to file a fresh petition before the Delhi courts as far back as 28.01.2026. The present petition, however, was filed only on 10.06.2026. The only explanation offered for this gap of over four months between the date on which the petitioner was admittedly advised to approach this Court and the date on which the present petition actually came to be filed is that some time was taken for drafting the petition and for obtaining the documents, which were with the Commercial Court, Agra; no date is disclosed, however, for when those documents were in fact received back from that Court.

9. The petitioner's initial recourse to the Commercial Court, Agra, having regard to the forum-selection clause, Clause 2.17, contained in the parties' contract, does not itself evidence a lack of due diligence, and this Court, for that reason, would be inclined to grant the petitioner the benefit of exclusion under Section 14 of the Limitation Act, 1963 for the entire period spent before the Agra Court. Even so, the period between 28.01.2026, when the petitioner was admittedly advised to approach this Court, and

10.06.2026, when the present petition was in fact filed, by itself exceeds the maximum period of delay condonable under the proviso to Section 34(3) of the A&C Act. Therefore, whether the reason offered for the delay would otherwise have amounted to sufficient cause is immaterial.

10. Under Section 34(3) of the A&C Act, an application for setting aside an award has to be made within three months of the date on which the party making the application received the arbitral award, extendable by a further period of thirty days but not thereafter, only on the applicant satisfying the Court that it was prevented by sufficient cause from making the application within the said period of three months. It is well settled that the words "but not thereafter" amount to an express exclusion of Section 5 of the Limitation Act, 1963 within the meaning of Section 29(2) thereof, as explained in *State of Himachal Pradesh v. Himachal Techno Engineers*, (2010) 12 SCC 210:

> *"5. Having regard to the proviso to Section 34(3) of the Act, the provisions of Section 5 of the Limitation Act, 1963 will not apply in regard to petitions under Section 34 of the Act. While Section 5 of the Limitation Act does not place any outer limit in regard to the period of delay that could be condoned, the proviso to sub-section (3) of Section 34 of the Act places a limit on the period of condonable delay by using the words 'may entertain the application within a further period of thirty days, but not thereafter'. Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown. Where a petition is filed beyond three months plus thirty days, even if sufficient cause is made out, the delay cannot be condoned."*

11. It follows that, Section 5 of the Limitation Act, 1963, cannot in law assist the petitioner in bypassing the limitation prescribed under Section 34(3). Even on taking the ingredients of Section 14 of the Limitation Act, 1963 to stand fully satisfied, and even treating the explanation offered for the period after 28.01.2026 as sufficient cause, the delay herein exceeds

even the outer limit of thirty days fixed by the proviso to Section 34(3) of the A&C Act, and no application founded on Section 5 of the Limitation Act, 1963 can extend that limit.

12. In these circumstances, this Court is satisfied that the present petition is barred by limitation under Section 34(3) of the A&C Act, and that no case for condonation of delay is made out.

13. In view of the above conclusion, this Court has not considered it necessary to examine the merits of the grounds urged for setting aside the Award.

14. The petition, along with all applications, is consequently dismissed.

SACHIN DATTA, J

AUGUST 14, 2026
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