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

% Date of decision: 03.11.2026

\# **CNR No. DLHC010530782026**

\+ FAO (COMM) 323/2026, CM APPL. 76328/2026, CM APPL. 76329/2026 & CM APPL. 76330/2026

DAKSHINANCHAL VIDYUT VITRAN NIGAM LTD .....Appellant

Through: Mr. Rakesh U. Upadhyay, Ms. Aarti U. Mishra & Mr. Harsh Som, Advs.

versus

M/S. CREATIVE ENTREPRENEURS LLP .....Respondent

Through:

\# **CNR No. DLHC010530792026**

\+ FAO (COMM) 324/2026, CM APPL. 76331/2026, CM APPL. 76332/2026 & CM APPL. 76333/2026

DAKSHINANCHAL VIDYUT VITRAN NIGAM LTD .....Appellant

Through: Mr. Rakesh U. Upadhyay, Ms. Aarti U. Mishra & Mr. Harsh Som, Advs.

versus

M/S CREATIVE ENTREPRENEURS LLP THROUGH ITS DESIGNATED PARTNERS MR GAGAN AGARWAL .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MS. JUSTICE SHAIL JAIN

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AVNEESH JHINGAN, J. (ORAL)

1. These appeals are filed against the order dated 24.08.2026 (hereinafter 'impugned order') dismissing the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 as time-barred.

2. For convenience sake, the facts are being taken from FAO (COMM) 323/2026. The brief facts are that the appellant floated a tender for the construction of 33/11 KV sub-station with associated 33 KV and 11 KV lines at Kasganj, U.P. on turnkey-basis. The respondent was the successful bidder and was awarded work *vide* Letter of Intent (LOI) dated 01.06.2015. Pursuant to the LOI, three work orders were issued on 03.02.2016.

2.1 Dispute arose between parties to the *lis* and the respondent filed a reference to the Micro and Small Enterprises Facilitation Council under Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006 (for short 'MSMED Act'). On failure of the conciliation proceedings, the dispute was referred to the Delhi Arbitration Centre and arbitrator was appointed. The arbitral proceedings culminated in award dated 01.04.2024 and was served upon the appellant on 06.05.2024.

2.2 On 21.05.2024, the appellant filed objection petition under Section 34 of the Act. The objections were dismissed by the Commercial Court, Agra *vide* order dated 15.05.2025 for want of territorial jurisdiction. Thereafter the objection petition was filed before the Commercial Court, North-West, Rohini Courts, Delhi on

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10.06.2026 and was dismissed by the impugned order. Hence, the present appeal.

3. Learned counsel for the appellant contends that the Commercial Court should have applied Section 14 of the Limitation Act, 1963 (hereinafter 'Limitation Act') while considering the delay in filing the objection petition under Section 34 of the Act. Reliance is placed on the decision of the Supreme Court ***State of Maharashtra & Ors. v. M/s. Ark Builders Pvt. Ltd.*** (2011) 4 SCC 616 and ***M/s Motilal Agarwala v. State of West Bengal & Anr.*** 2025 INSC 1062 to buttress the argument that the delay in filing the objections should have been condoned.

3.1 It is contended that the MSME Board had no jurisdiction as turnkey projects are not covered under the MSMED Act. The decision of the Bombay High Court in ***Sterling and Wilson Private Limited and Ors. v. Union of India and Ors.*** 2017 SCC OnLine Bom 6829 is pressed into service to fortify the contention that the MSMED Act does not apply to composite works contracts.

3.2 It is submitted that the issue of jurisdiction can be raised for the first time in an appeal under Section 37 of the Act. Reliance is placed on the decision of the Supreme Court in ***Hindustan Zinc Limited (H.Z.L.) v. Ajmer Vidyut Vitran Nigam Limited*** (2019) 17 SCC 82.

3.3 The submission is that the grant of interest at exorbitant rate calls for interference.

4. Before proceeding further, it would be relevant to reproduce Section 34(3) of the Act:-

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> "**34. Application for setting aside arbitral award**
>
> (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."

5. Section 34(3) of the Act provides that the limitation for filing the objection petition under Section 34 of the Act is three months from the date of receipt of the award. The proviso provides the power to condone delay of thirty days beyond the prescribed limitation period of three months. The language of Section 34(3) is unambiguous and consequence is that by Section 29(2) of the Limitation Act the applicability of Section 5 of the Limitation Act is ousted. This court has the power to condone the delay only for a period of thirty days beyond the prescribed limitation period of three months.

6. The issue is no longer *res integra* in view of the settled position of law laid down by the Supreme Court in the following judgments:

6.1 In ***Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and Others***, (2008) 7 SCC 169 held as under:

> "20. When any special statute prescribes certain period of limitation as well as provision for extension upto specified time limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail

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and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act."

6.2 In ***Singh Enterprises vs. CCE***, (2008) 3 SCC 70 held as under:

"8. The Commissioner of Central Excise (Appeals) as also the tribunal being creatures of statute are not vested with jurisdiction to condone the delay beyond the permissible period provided under the statute. The period up to which the prayer for condonation can be accepted is statutorily provided. It was submitted that the logic of Section 5 of the Limitation Act, 1963 (in short 'the Limitation Act') can be availed for condonation of delay. The first proviso to Section 35 makes the position clear that the appeal has to be preferred within three months from the date of communication to him of the decision or order. However, if the Commissioner is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of 60 days, he can allow it to be presented within a further period of 30 days. In other words, this clearly shows that the appeal has to be filed within 60 days but in terms of the proviso further 30 days' time can be granted by the appellate authority to entertain the appeal. The proviso to sub-section (1) of Section 35 makes the position crystal clear that the appellate authority has no power to allow the appeal to be presented beyond the period of 30 days. The language used makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning delay only up to 30 days after the expiry of 60 days which is the normal period for preferring

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appeal. Therefore, there is complete exclusion of Section 5 of the Limitation Act. The Commissioner and the High Court were therefore justified in holding that there was no power to condone the delay after the expiry of 30 days' period."

6.3 In ***Commissioner of Customs and Central Excise v. Hongo India (P) Ltd. and Anr.,*** (2009) 5 SCC 791 held as under:

"32. As pointed out earlier, the language used in Sections35, 35- B, 35-EE, 35-G and 35-H makes the position clear that an appeal and reference to the High Court should be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days."

6.4 In ***Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission*** (2010) 5 SCC 23 held as under:

"25. Section 125 lays down that any person aggrieved by any decision or order of the Tribunal can file an appeal to this Court within 60 days from the date of communication of the decision or order of the Tribunal. Proviso to Section 125 empowers this Court to entertain an appeal filed within a further period of 60 days if it is satisfied that there was sufficient cause for not filing appeal within the initial period of 60 days. This shows that the period of limitation prescribed for filing appeals under Sections 111(2) and 125 is substantially different from the period prescribed under

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> the Limitation Act for filing suits, etc. The use of the expression 'within a further period of not exceeding 60 days' in the proviso to Section 125 makes it clear that the outer limit for filing an appeal is 120 days. There is no provision in the Act under which this Court can entertain an appeal filed against the decision or order of the Tribunal after more than 120 days."
>
> *(emphasis supplied)*

7. In the case in hand, the initial objection petition filed before the Commercial Court, Agra was within ninety days and was dismissed for want of territorial jurisdiction *vide* order dated 15.01.2025. Thereafter, the objection petition was filed before the Commercial Court, North-West, Rohini Courts, Delhi on 10.06.2026 after a delay of approximately one and a half years. Section 14 of the Limitation Act is applicable despite the language of Section 34(3) of the Act. Even if the period from May, 2024 to January, 2025 during which the appellant was pursuing the objection petition before the Commercial Court, Agra is excluded under Section 14 of the Limitation Act, the objection petition filed before the Commercial Court, Delhi was beyond the prescribed period of hundred and twenty days under Section 34(3) of the Act. The Commercial Court rightly dismissed the objection petition as time barred. Section 14 of the Limitation Act excludes the period in pursuing proceedings before a Court that lacked jurisdiction. The delay in filing the objection petition before the competent court after excluding the period under Section 14 of the Limitation Act has to be dealt as per the proviso to Section 34(3) of the Act.

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8. The decision of the Supreme Court in ***M/s Motilal Agarwala*** (supra) relied upon by learned counsel for the appellant is not applicable to the facts of the present case. The issue therein was whether service of the award on the Assistant Engineer who was neither a party to the arbitration nor was in a decision-making capacity to take further recourses would be a valid service of the award or not. In the present case, there is no dispute with regard to the service of the award. Further reliance on ***State of Maharashtra & Ors. V. M/s Ark Builders Pvt. Ltd.*** (supra) does not enhance the case of the appellant. It was held that the limitation for filing objection petition under Section 34 of the Act commences from the date of receipt of the signed copy of the award. In the present case, the date of receipt of award is not in dispute.

9. The reliance placed by learned counsel for the appellant on the decision of ***Sterling and Wilson Private Limited and Ors.*** (supra) does not enhance the case of the appellant for challenging the dismissal of the objection petition as time-barred or in seeking condonation of delay beyond thirty days after excluding the period under Section 14 of the Limitation Act.

10. The authorities relied upon by learned counsel for the appellant are not on the proposition that where the objection petition under Section 34 of the Act has been dismissed as time-barred, the Court in appeal under Section 37 of the Act can go into the merits of the case.

11. The objection petition under Section 34 of the Act was dismissed as time-barred and the merits were not gone into. The

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contentions raised by learned counsel for the appellant on merits need no adjudication. In appeal it is to be considered that the objection petition was decided within the four corners of Section 34 of the Act. The dismissal of the objection petition as time-barred is upheld and this court cannot go into the merits.

12. It is a settled law that in appeal under Section 37 of the Act, it is to be considered that the exercise of powers under Section 34 of the Act was within the four corners of the provisions. Reference in this regard be made to the following decisions of the Supreme Court:-

12.1 In ***AC Chokshi Share Broker (P) Ltd. v. Jatin Pratap Desai***, (2025) 5 SCC 321 it was held:

> "29. The limited supervisory role of courts while reviewing an arbitral award is stipulated in Section 34 of the Act, beyond whose grounds courts cannot intervene and cannot correct errors in the arbitral award. [McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181, para 52] The appellate jurisdiction under Section 37 is also limited, as it is constrained by the grounds specified in Section 34 and the court cannot undertake an independent assessment of the merits of the award by reappreciating evidence or interfering with a reasonable interpretation of contractual terms by the Arbitral Tribunal. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Konkan Railway Corpn. Ltd. v. Chenab Bridge Project, (2023) 9 SCC 85, para 25 : (2023) 4 SCC (Civ) 458.] The court under Section 37 must only determine whether the Section 34 court has exercised its jurisdiction properly and rightly, without exceeding its scope. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163, para 14 : (2019) 2 SCC (Civ) 293; Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani, (2024) 7 SCC 218, para 26.]"

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12.2 In ***SEPCO Electric Power Construction Corpn. v. GMR Kamalanga Energy Ltd.,*** (2026) 2 SCC 542 it was held:

> "72. The decision in MMTC [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , as referenced recently by a coordinate Bench of this Court in Reliance Infrastructure Ltd. [Reliance Infrastructure Ltd. v. State of Goa, (2024) 1 SCC 479 : (2024) 1 SCC (Civ) 412] , unfolds in an involute manner that a court under Section 37 of the 1996 Act can only determine as to whether the court concerned under Section 34 has not travelled beyond the parameters of the scope therein. No independent evaluation is permitted on the merits of the award."
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> *(emphasis supplied)*

13. There is no factual or legal error calling for interference in the impugned order. The appeals are dismissed.

14. All pending applications are disposed of.

AVNEESH JHINGAN, J

SHAIL JAIN, J

NOVEMBER 3, 2026
Ch

Reportable: **Yes**

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