

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Arb. A. No. 1 of 2025

The Chief Engineer, Public Works Department (including NH &
NEC) Imphal

Appellant

Vs.

M/S Keystone Infra Private Limited

Respondent

***Clubbed with
MC (Arb. A.) No. 5 of 2025
MC (Arb. A.) No. 6 of 2025 with
MC (Arb. A.) No. 7 of 2025 with
MC (Arb. A.) No. 2 of 2025***

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. M. SUNDAR
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA
(ORDER)**

(Order of the Court was made by M. Sundar, CJ)

08.10.2025

[1] Heard Mr. M. Rarry, learned senior counsel instructed by Ms. M. Nikita, learned counsel for appellant and Mr. HS Paonam, learned senior counsel instructed by Mr. Purvesh Buttan and Ms. Th. Lekhakumari, learned counsel for respondent.

[2] Captioned statutory appeal was last listed on 06.10.2025 and the following proceedings were made:

'06.10.2025.

[1] Captioned appeal is a statutory appeal under Section 37 of the 'Arbitration & Conciliation Act, 1996'(hereinafter 'A&C Act' for the sake of clarity and brevity).

[2] An 'Arbitral Award dated 20.02.2023' ('said award' for the sake of brevity) made by a 'Arbitral Tribunal'(AT for brevity and to be noted AT has been constituted by a sole Arbitrator) was assailed by the State respondents in the 34 court with a 'Condonation of Delay'('CoD' for brevity) application.

[3] Delay sought to be condoned was 11 days. The CoD application was dismissed by the 34 court in and by 'an order dated 04.07.2025'(impugned order).

[4] Assailing the impugned order of the 34 court, captioned statutory appeal under section 37 has been filed by State.

[5] As regards the appeal, learned senior counsel, Mr. M. Rarry, appearing on behalf of learned counsel on record for the State submits that it is under 37(1)(c) of A&C Act in the light of **Chintels reported in (2021) 4 SCC 602.**

Crucial Dates and Events set out in a tabulation is as follows:

Sl.	Date	Events	Remarks
1	20.02.2023	said Award made by AT	--
2	14.03.2023	Cover letter of State counsel(under covered of this letter said award is said to have been sent to State)	--
3	05.04.2023	Afore-referred cover letter is said to have been received by the State.	This was disbelieved by section 34 court
4	04.07.2025	34 courts dismissed the CoD application vide impugned order.	Impugned order is under challenge in captioned appeal

[6] In the afore-referred tabulation, one date is the bone of contention and that date is 05.04.2023. Section 34 court disbelieved the State version, held the date of receipt to be 14.03.2023 and dismissed the CoD application on the ground that it is beyond 30 days cap. To be noted, CoD application was resisted by the claimant before the AT.

[7] Claimant seeks time to get instruction on the date of receipt of said Award by the claimant.

[8] At request of claimant, list on 08.10.2025.'

[3] The afore-referred proceedings dated 06.10.2025 shall now be read as an integral part and parcel of this order. This means that short forms, abbreviations and short references used in the earlier proceedings dated 06.10.2025 shall continue to be used in the instant order also.

[4] Learned senior counsel on both sides submitted without any disputation that facts and dates have been correctly captured in 06.10.2025 proceedings.

[5] As would be evident from the earlier proceedings, an Arbitral Award made more than two and half years ago, to be precise, on 20.02.2023, i.e., 'said award' has not been tested by the Section 34 Court, as the Section 34 petition filed on 17.07.2023 has seen tributaries and orders owing to the same having been filed with a CoD prayer *qua* 11 days delay.

[6] The bone of contention is, while State contends that said award was received only on 05.04.2023 (under cover of State counsel's letter dated 14.03.2023), claimant contends to the contrary, *i.e.*, that soft copies of the award was e-mailed to both the claimant and the State by the Hon'ble AT on 20.02.2023, the same was received instantaneously and therefore, 20.02.2023 should be the reckoning date.

[7] Before we proceed further, we deem it appropriate to write that we would be referring to the 'appellant' before us as 'State' and the 'respondent' before us as 'contractor' for the sake of convenience and clarity.

[8] A contract dated 12.06.2014 for improvement of road between Bishnupur and Nungba from km 0.000 to km 89.520 is the nucleus of the entire matter. This contract shall be referred to as 'said contract' for the sake of convenience and clarity. This work shall be referred to as 'said work' also for the sake of convenience and clarity.

[9] There is no disputation or disagreement between State and Contractor that there is an arbitration clause in the Special Conditions of Contract (SCC) as between the parties. To be noted, SCC forms part of said contract. The said work has been completed but there is allegation of delay. To be noted, time frame for completing said work is 36 months (3 years). It is also to be noted that the value of the contract is a little over 92.25 crores INR (Rs. 92,25,04,156.23/- to be precise).

[10] On arbitrable disputes having erupted between the contractor and the State, arbitration clause was triggered. A Sole arbitrator constituted the Arbitral Tribunal (AT) and AT after full contest, made an award in favour of the claimant to the tune of a little over Rupees 96.16 crores (Rs. 96,16,28,522/- to be precise). The counter claim of the State was negated wholly by the AT.

[11] State filed a petition under Section 34 (as alluded to *supra*) and this Section 34 petition was filed with a delay which is 11 days according to State, 11 days has been computed by State by taking 05.04.2023 as the date of receipt

of award for the purposes of 34(3) of A&C Act. As already alluded to *supra*, contractor contends that date of receipt of award should be 20.02.2023, *i.e.*, the date on which soft copies were e-mailed to both contractor and State by the Hon'ble AT.

[12] Multiple pleadings of different hues and shades have been made before the Section 34 Court. The reason is, both parties sought amendments of pleadings in CoD application. The crux and gravamen of the matter is while State originally pleaded that the date of receipt of said award is 14.03.2023 and computed 120 days therefrom, it subsequently changed its stand and took the plea that the said award was received by the Chief Engineer of the Public Works Department (PWD) only on 05.04.2023 under cover of State counsel's letter dated 14.03.2023. In this regard, this Court is acutely conscious that '120 days' is plainly incorrect as it is '3 months and 30 days' but it is not necessary to dilate on this.

[13] The details of the pleadings before the Section 34 Court can be put in a nutshell. State sought amendment of its pleading in the aforesaid manner *vide* an amendment application dated 21.08.2023 and it also sought amendment of the rejoinder *vide* another amendment application dated 27.10.2023. Both these amendment applications were allowed by the Section 34 Court by an order dated 08.01.2024 on terms, *i.e.*, on terms of Rs. 10,000/- (Rupees Ten Thousand), the same has been paid by State, accepted by contractor and the matter has been given legal quietus. To put it differently, contractor has not chosen to assail the orders allowing amendment applications.

Be that as it may, the Contractor also chose to amend the pleadings which according to the contractor is consequential *qua* amendments by State, the same was also allowed but State assailed the amendment order of the Section 34 Court of the contractor. This was assailed by the State *vide* CRP (C.R.P. Art. 227) No. 36 of 2024 and the same came to be dismissed by a Hon'ble Single Judge of this Court in and by a detailed order dated 16.01.2025. It may really not be necessary to dilate further on these aspects of the matter as the pleadings stood frozen post amendments and the matter was heard out by the Section 34 Court on the basis of the amended pleadings.

[14] At the outset, it is necessary to write that the Section 34 Court did not accept the contractor's plea that 20.02.2023 is the date of receipt of award. The reason as can be culled out from the impugned order of the Section 34 Court is, the contents of the cover e-mail under which the soft copies of the said award were sent to the contractor and the State. The Section 34 Court has construed the contents of the e-mail as a disclaimer, as it makes it clear that the e-mail is only for the purposes of information and that a signed hard copy is being couriered to both parties. This part of the order means that e-mail is no compliance with Section 31(5) of A&C Act but the same has not been assailed by the contractor. To be noted, law is now settled that Section 31(5) requirement is not merely procedural but a matter of substance.

[15] The above leads us to the question as to whether the date of receipt is 17.03.2023 as originally contended or it is 05.04.2023 as contended post amendment of pleadings. Once pleadings are amended, the original pleadings

stand effaced. The pleading as amended to which quietus has been given will govern the parties.

[16] In the case on hand, as would be evident from the allusion *supra*, the amendments were given quietus and therefore the parties stood governed by the amended pleadings.

[17] Learned senior counsel for the contractor contended that the pleadings have not been amended in its entirety and only sub-clauses (a) and (b) of para 1.7 of the original pleadings stood amended, whereas sub paragraph (c) and (d) were not amended. We carefully considered this arguments. This point turns on a very simple issue is our considered view. The issue is in cases of Government, the award should be received by a person who is in full control of the arbitration proceedings and who is in a position to take a decision about assailing the award under Section 34 of A & C Act. This principle was laid down by Hon'ble Supreme Court in **M/S. Motilal Agarwala Vs. State Of West Bengal & Anr.** reported in Neutral Citation of Hon'ble Supreme Court being **2025 INSC 1062**. In **Motilal**, a similar issue arose and after considering all the facts and circumstances of the case, Hon'ble Supreme Court made it clear that the term 'party' occurring in Section 34(3) is 'party' within the meaning of Section 2(1)(h) of A & C Act. It was further elucidated that parties within the meaning of Section 2(1)(h) in the context of Government should be understood as a person who has knowledge and is in the best person to understand and appreciate an award and more particularly to take a decision for its challenge. In this regard, Hon'ble Supreme Court reiterated the principle laid down in **Union of India Vs.**

Tecco Trichy Engineers & Contractors reported in **(2005) 4 SCC 239**. In **Tecco Trichy**, the arbitral award was served on 12.03.2001, but the service on the person having control over the arbitral proceedings was on 19.03.2001 and 19.03.2001 was taken as the relevant reckoning date. The judgement of Hon'ble Supreme Court in **Motilal** which reiterates **Tecco Trichy** is very instructive and we respectfully follow the same and for the sake of convenience, we deem it appropriate to extract and reproduce paragraph 21 of **Motilal**, which reads as follows:

'21. What exactly constitutes a "party", in the context of Government, has been interpreted by this Court in Union of India vs. Tecco Trichy Engineers & Contractors, reported in (2005) 4 SCC 239. In the said decision, this Court held that in order to constitute an effective service, a copy of an award, where such party is the Ministry of a particular Department, is to be delivered to a person who has the knowledge and is the best person to understand and appreciate an award and more particularly, to take decision for its challenge. We are of the view that the authorised representative of the State could not have taken the final decision to challenge the award. It is only the Secretary of the concerned Department or the Executive Engineer, who could be said to be the competent authority to take a decision as to whether the award could be challenged or not.'

[18] This Court also deems it appropriate to refer to an earlier judgment of the Hon'ble Supreme Court rendered in **Benarsi Krishna Committee and others Vs. Karmyogi Shelters Private Limited** reported in **(2012) 9 SCC 496**. In **Karmyogi**, Hon'ble Supreme Court made it clear that term 'party'

occurring in Section 34(3) is 'party' within the meaning of Section 2(1)(h). As already alluded to *supra*, party within the meaning of Section 2(1)(h) with regard to Government has been explained in **Motilal** to be a person who has control over the arbitral proceedings and who is in a position to appreciate the award and also take a decision with regard to challenge to the award under Section 34. In the case on hand, 'party' is Chief Engineer of PWD and this is clear as day light from proceedings of AT and said award. The cover letter of State counsel dated 14.03.2023 has been received by the Chief Engineer on 05.04.2023 and the cover letter together with the endorsement (acknowledgment) has been placed before the Section 34 Court but the Section 34 Court has disbelieved this on the basis of the contents of the State counsel's cover letter. The Section 34 Court has proceeded on the basis that learned State Counsel in the cover letter has held that the limitation is 3 months and condonation is permissible only for 30 days thereafter, in other words, 3 months limitation period which is the prescribed period and 30 days cap which is the condonable period have been set out by the learned State counsel in the cover letter itself. The Section 34 Court took the view that a learned State counsel who is responsible and who has taken pains to make it clear that said award has to be challenged within 3 months and that the condonable period is only 30 days, would not have slept over it till 05.04.2023.

[19] It is in the aforesaid backdrop that the matter has come to this Court under Section 37. As already adverted to *supra*, the appeal fits into Section 37(1)(c) slot in the light of **Chintels India Limited Vs. Bhayana Builders Private Limited** reported in **2021 (4) SCC 602** which reiterates **Essar**

Constructions Vs. NP. Rama Krishna Reddy reported in **(2000) 6 SCC 94**.

Essar principle reiterated in **Chintels** is to the effect that refusal of a Section 34 Court to condone delay in filing a Section 34 petition will tantamount to refusal to set aside an award and therefore, the same can be challenged *vide* a statutory appeal under Section 37 and therefore it snugly fits into 37(1)(c). It is in this scenario and setting that we heard out the captioned matter which is a statutory appeal.

[20] This Court also notices that the Section 34 Court has made it clear that 3 months occurring in 34(3) should not be construed as 90 days. This aspect of the matter is correct and we deem it appropriate to make it clear that periods can be expressed in different units, it can either be months or days. As regards the manner for computing the periods when expressed in different units, when the period is expressed in terms of months, the same date in the next English calendar month will be one month and likewise it would be for two months or three months. Therefore, one month may or may not be 30 days depending on the calendar months over which the two months spread. This is regarding period as defined in the Limitation Act, 1963 (Act No. 36 of 1963) *vide* 2(j). To be noted 2(j) defines 'period of limitation' as well as 'prescribed period'. As regards the condonable period, which occurs *vide* proviso to 34(3), the same has been expressed in terms of another unit, namely, days. In terms of condonable period, it is 30 days. Therefore, computation of condonable period will be in terms of number of days and not in terms of one month. It has become necessary to make

this clarification so that there is absolute specificity and clarity with regard to matters arising under Section 34.

[21] It was also argued that even 1 day delay beyond the condonable period of 30 days is not permissible and there can be no disputation or quarrel on this proposition. In this view of the matter, if 14.03.2023 is taken as the reckoning date, the condonation will be beyond the tolerance period or beyond the cap but if it is 05.04.2023, it is well within the tolerance period, *i.e.*, cap of 30 days. This Court has already set out this dispositive reasoning with regard to 05.04.2023 being the appropriate date in the case on hand. To be noted, this Court has arrived at 05.04.2023 as the reckoning date by applying **Tecco Trichy** as reiterated in **Motilal** more particularly paragraph 21 thereof which has been extracted and reproduced *supra*. This Section 37 Court deems it appropriate to add that Section 34 Court disbelieving 05.04.2023 acknowledgment solely by making an inference on the basis of contents of State counsel's letter is in the realm of surmises and conjectures.

[22] If 05.04.2023 is taken as the reckoning date, the period of delay to be condoned is 11 days according to the State, we find that this computation also may not be correct and it is 12 days.

[23] As the Section 34 Court has proceeded on the basis that the delay sought to be condoned is beyond the cap of 30 days and on that basis rejected the CoD application, the reasons for delay from 05.04.2023 to 17.07.2023 has not been gone into. Ideally, under such circumstances, a remand would have

been a good option but considering the length of time that has been spent on a CoD application, we deem it appropriate to consider the reason given by State.

[24] As would be evident from the pleadings before us, the Chief Engineer of PWD, on receipt on 05.04.2023, has sent a communication on the same day to the Commissioner as regards challenge to the said award. Thereafter, the Section 34 petition has been finalized and the same has been filed. In this view of the matter, the 12 days delay explained as time consumed in preparing, finalizing and filing the Section 34 petition is clearly condonable. Therefore, we have no difficulty in holding that the order of the Section 34 Court rejecting the CoD application deserves to be interfered with.

[25] We make the following order:

- (i) The impugned order of the Section 34 Court dated 04.07.2025 made in Judl. Misc. Case No. 37 of 2023 is set aside;
- (ii) The delay of 12 days in filing the Section 34 petition by the State is condoned;
- (iii) The Section 34 Court is requested to take up the Section 34 petition of the State, consider the same on its own merits in accordance with law and render a verdict as expeditiously as the business of the Court would permit;
- (iv) With regard to the above, we deemed it appropriate to write that the statute itself prescribes a period for disposal of 34 petition and that is contained in Sub-section (6) of Section 34;

- (v) Sub-section (6) of Section 34 talks about 1 year from the date on which Sub-section (5) notice is served, but Sub-section (5) notice has been held to be not mandatory in **State of Bihar Vs. Bihar Rajya Bhumi Vikas Bank Samiti** reported in **(2018) 9 SCC 472**;
- (vi) As Sub-section (5) notice has been held to be not mandatory, now the 1 year reckoning date will be from the date of filing of the petition;
- (vii) The Section 34 Court would do well to dispose of the Section 34 petition on its own merits and in accordance with law as expeditiously as its business would permit as directed *supra* keeping in mind Sub-sections (5), (6) of Section 34 in the light of ratio of Hon'ble Supreme Court in **Bhumi Vikas** were expeditious disposal of Section 34 petition has also been emphasized;
- (viii) Captioned appeal is allowed with aforementioned observations. Consequently, captioned miscellaneous cases are also disposed of as closed. There shall be no order as to costs.

Sandeep

JUDGE

CHIEF JUSTICE