



## Supreme Court holds that appeal against order refusing to condone delay under Section 34(3) of the Act is maintainable under Section 37(1)(c) of the Act<sup>1</sup>

### Brief Facts

Chintels India Ltd. (“**Appellant**”) belatedly filed an application under Section 34(1) of the Arbitration and Conciliation Act, 1996 (“**Act**”) before a Single Judge of the Hon’ble High Court of Delhi (“**Court**”) seeking to set aside an award dated 3 May 2019 passed by an arbitral tribunal. The Ld. Single Judge, *vide* judgment dated 4 June 2020, dismissed the Appellant’s application for condonation of delay. Consequently, the Appellant’s application under Section 34(1) was also dismissed.

Aggrieved by the aforementioned judgment, the Appellant approached the Division Bench of the Court by way of an appeal under Section 37(1)(c) of the Act read with Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015. In the said appeal, the issue before the Division Bench was whether an appeal against an order refusing to condone delay under Section 34(3) of the Act is maintainable under Section 37(1)(c) of the Act. The Division Bench, *vide* judgment dated 4 December 2020 (“**Impugned Judgment**”), dismissed the Appellant’s appeal by *inter alia* relying on the decision of the Hon’ble Supreme Court in **BGS SGS Soma JV v. NHPC Ltd.**<sup>2</sup> In **Soma** (*supra*), the Supreme Court held that an appeal under Section 37 of the Act is not maintainable when an application under Section 34 is simply returned on the ground of lack of territorial jurisdiction, since the same does not amount to an order refusing to set aside the arbitral award under Section 34.

Thereafter, the Appellant filed an appeal (“**Appeal**”) before the Supreme Court, pursuant to a certificate issued by the Court under Article 133 read with Article 134A of the Constitution of India in the Impugned Judgment.

### Issue

Whether an appeal against an order refusing to condone delay under Section 34(3) of the Act is maintainable under Section 37(1)(c) of the Act?

### Judgment

The Supreme Court held that an appeal under Section 37(1)(c) against an order refusing to condone delay under Section 34(3) is maintainable for *inter alia* the following reasons: (i) the expression “*setting aside or refusing to set aside an arbitral award under section 34*” appearing in Section 37(1)(c) is not limited to grounds made out under Section 34(2); (ii) Section 39(1)(vi) of the Arbitration Act, 1940 is *pari materia* to Section 37(1)(c) of the Act. In this regard, the Supreme Court relied on its decision in **Chief Engineer of BDPD/REO Ranchi v. Scoot Wilson Kirpatrick India (P.) Ltd.**,<sup>3</sup> (iii) the judgment in **Soma** (*supra*) can be distinguished since it dealt with a completely different issue, which is evident from paragraph 1 of the judgment. The Supreme Court’s focus while deciding **Soma**

### In this Issue

#### Brief Facts

#### Issue

#### Judgment

#### Analysis





(supra) was not concerned with the language of Section 37(1)(c) and no arguments were addressed as to its correct interpretation; and (iv) while dealing with its order in **State of Maharashtra and Anr. v. M/s Ramdas Construction Co. and Anr.**,<sup>4</sup> the Supreme Court held that it had not stated the law correctly as it did not advert to its decision in **Essar Constructions v. N.P. Rama Krishna Reddy**.<sup>5</sup> In the present judgment, the Supreme Court did not touch upon the reasoning of the High Court of Bombay but referred to its judgment in **State of Himachal Pradesh v. Himachal Techno Engineers**.<sup>6</sup>

## Analysis

The Supreme Court, while coming to the aforementioned conclusion, applied the 'Effect Doctrine' and rightly considered the effect of an order of the court refusing to condone the delay in filing an application under Section 34 of the Act. An order refusing to condone delay has the effect of finally disposing off an application under Section 34. Therefore, an order of the said nature, in effect, refuses to set aside the arbitral award under challenge and hence, should be appealable.

Further, the Supreme Court clarified: (i) the context in which its decision in **Harmanprit Singh Sidhu v. Arcadia Shares and Stock Brokers Pvt. Ltd.**<sup>7</sup> was relied upon in **Soma** (supra); and (ii) its reasoning in **Ramdas Construction** (supra). The present decision brings quietus to the widespread confusion which prevailed in relation to maintainability of appeals challenging orders wherein courts did not condone the delay in filing an application under Section 34 of the Act.

## Endnotes

1. Authored by Aashish Gupta, Partner and Varun Byreddy, Associate; *Chintels India Ltd. v. Bhayana Builders Pvt. Ltd.*, Civil Appeal No. 4028 of 2020, Supreme Court, 2021 SCC OnLine SC 80, judgment dated 11 February 2021.  
**Coram:** R.F. Nariman, Navin Sinha and K.M. Joseph, JJ.
2. (2020) 4 SCC 234.
3. *Chief Engineer of BDPD/REO Ranchi v. Scoot Wilson Kirpatrick India (P.) Ltd.*, (2006) 13 SCC 622.
4. *State of Maharashtra and Anr. v. M/s Ramdas Construction Co. and Anr.*, 2017 SCC OnLine SC 2029.
5. *Essar Constructions v. N.P. Rama Krishna Reddy*, (2000) 6 SCC 94.
6. *State of Himachal Pradesh v. Himachal Techno Engineers*, (2010) 12 SCC 210.
7. *Harmanprit Singh Sidhu v. Arcadia Shares and Stock Brokers Pvt. Ltd.*, 2016 SCC OnLine Del 5383.

## In this Issue

Brief Facts

Issue

Judgment

Analysis

## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Gauhar Mirza

Partner  
+91 70423 98844  
E: gauhar.mirza@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

## Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.