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IN THE HIGH COURT OF BOMBAY AT GOA

**WRIT PETITION NO.764 OF 2019
AND
CIVIL APPLICATION NO.78 OF 2022**

**UNION OF INDIA, BY CHIEF
ENGINEER (NAVY), MUMBAI** ...PETITIONER

Versus

S.N. CONSTRUCTIONS RESPONDENTS

Mr Raviraj Chodankar, Central Government Standing Counsel for the Petitioner.

Mr A.D. Bhobe with Ms A. Fernandes, Advocates for the Respondent.

CORAM: M. S. SONAK, J.

DATE : 12th JANUARY 2024

P.C.i

1. Heard Mr Chodankar, learned Central Government Standing Counsel for the petitioner and Mr A.D. Bhobe for the respondent.
 2. This petition challenges an order dated 12.02.2019 by which the Principal District Judge has declined to condone the delay or extend the period for filing a petition under Section 34 of the Arbitration and Conciliation Act 1996.

3. Mr Bhobe, the learned Counsel for the respondent relies on *Chintels India Limited V/s. Bhayana Builders Private Limited*¹ to urge that this Writ Petition may not be entertained because the petitioner has an alternate remedy of instituting an appeal under Section 37 of the said Act.

4. In *Chintels India Limited* (supra), the Hon'ble Supreme Court has held that an appeal against the order refusing to condone the delay in filing an application under Section 34 of the said Act is maintainable under Section 37(1)(c), as such, order amounts to an order refusing to set aside the award. Therefore, following the judgment of the Hon'ble Supreme Court in *Chintels India Limited* (supra), it will have to be held that the present petition cannot be entertained.

5. Besides, the application seeking condonation of delay for extension of time was filed before the Principal District Judge almost 574 days from the notice of the award. *Chintels India Limited* (supra) also holds that any delay beyond 120 days is not condonable. The learned Principal District Judge has also adverted to the various delays on the part of the petitioner in taking steps to issue notices as contemplated by Section 34(5) of the said Act. Mr Chodanakr, however, pointed out with the Principal District Judges's order dated 17.02.2018 holding that the application under Section 34 was not maintainable for want of notice under Section 34(5) was not correct

¹ (2021) 4 SCC 602

given the decision of the Hon'ble Supreme Court in the case of *State of Bihar and Ors. V/s. Bihar Rajya Bhumi Vikas Bank Samiti*².

6. Although *Bihar Rajya Bhumi Vikas Bank Samiti* (supra), does take the view that notice under Section 34(5) was not mandatory, the Union of India did not bother to challenge the order dated 17.02.2018. At the same time, the Union of India also did not bother to promptly comply with the requirements of Section 34(5) of the said Act. In such a situation, the Principal District Judge cannot be faulted for dismissing the application seeking exclusion or condonation.

7. For all the above reasons, this petition is dismissed. There shall be no order for costs.

8. Civil Application No.78/2022 does not survive and is disposed of.

M. S. SONAK, J.

² (2018) 9 SCC 472