



2025:DHC:2035



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

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Reserved on: 25th February 2025.

Pronounced on: 24th March 2025.

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

+ O.M.P. (COMM) 483/2024 I.A. 44982/2024 I.A. 44983/2024

NHPC LTD

.....Petitioner

Through: Mr. S.S. Ahluwalia, Ms. Saniya Zehra,
Mr. Nakul Sachdeva, Mr. Karundeep
Singh, Mr. Abhinandan Sharma, Advs.

Versus

V3S INFRATECH LTD.

.....Respondent

Through: Mr. Sudhir Nandrajog, Sr. Adv. along
with Mr. Praveen Kumar Singh, Mr.
Sujit Kumar Singh, Md. Ziauddin
Ahmad, Mr. Abhishek Mehra, Ms.
Ankita Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

I.A. 44984/2024 in O.M.P. (COMM) 483/2024 (*Application seeking
condonation for delay of 21 days in re-filing of the petition*)

1. This judgment seeks to assess and decide the issue of *non-est* filing of the petition under Section 34 of the Arbitration & Conciliation Act, 1996 ('A & C Act') by the petitioner; therefore, its rejection on account of being delayed



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beyond the maximum permitted period of *120-days* [*90-days*, as per Section 34(3) of the A & C Act, and a maximum of *30 days*' extension after proving sufficient cause, as per the proviso to Section 34(3) of the A & C Act].

2. The petition was filed for setting aside the Arbitral Award dated 23rd April 2024. An application under Section 33(1)(a) of the A & C Act was filed for corrections in the award. The corrected award was passed on 8th June 2024. The same, therefore, would be the starting point of limitation, as per the provisions of Section 34(3), which is extracted as under:

“Section 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.”

(emphasis added)

3. The three-month limitation would, therefore, expire on 7th September 2024, and the additional *30 days* on 7th October 2024.

4. Counsel for petitioner's contended that the instant petition was filed by the petitioner on 6th September 2024, and therefore, within the prescribed period of *90 days*.



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5. Mr. Sudhir Nandrajog, Senior Counsel for respondent, however, argued that the filing on 6th September 2024 was a *non-est* filing as the petition only had ‘*thirty pages*’ at that stage, which was later amplified to ‘*two thousand pages*’, when the re-filing was done on 12th November 2024.

6. Even, on 12th November 2024, the filing contained numerous defects, and a request was made by the petitioner for the petition to be placed before the Court, subject to objections. The same was stated by the petitioner at the bottom of the Index and was noted in the scrutiny sheet by the Registry.

7. The fulcrum of respondent’s contention was based upon decision of a Full Bench of this Court in ***Pragati Construction Consultants v Union of India & Anr.*** 2025:DHC:717-FB, wherein the Court held that if the award was not filed along with the petition under Section 34 of the A & C Act, the same would be considered as *non-est*.

Filing without Award

8. It was an admitted position even as per the filing record, that when the petition was filed on 6th September 2024, it was without the award, which is also borne out by the fact that the majority award was in about ‘*one hundred thirty pages*’, whereas the minority award was around ‘*hundred pages.*’ The petition, as finally filed, ran into approximately ‘*two thousand pages.*’

9. The Full Bench, in ***Pragati Construction Consultants (supra)***, was dealing with a reference from a Division Bench of this Court in relation to conflicting views taken by Division Benches on the question of ‘*what constitutes a valid filing under Section 34 of the A & C Act*’. It must be noted that the basic conflict in the views expressed by Division Benches was essentially on the issue of whether the non-filing of a statement of truth or filing



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with an unsigned statement of truth, not supported by an affidavit, would be *non-est*. While *Oil and Natural Gas Corporation Ltd. v Planetcast Technologies Ltd.* 2023 SCC OnLine Del 8490 held that such petition, without a proper statement of truth would be *non-est*, the Court in *Oil and Natural Gas Corporation Ltd. v Joint Venture of M/S Sai Rama Engineering Enterprises (Sree) & M/S Megha Engineering & Infrastructure Limited (Meil)* 2023 SCC OnLine Del 63 stated that such a petition would not be *non-est*.

10. An additional issue arose before the Division Bench in *Pragati Construction Consultants v Union of India & Anr.* FAO(OS) (COMM) 70/2024, regarding whether a petition filed without the arbitral award would also be *non-est*.

11. The Full Bench assessed all the previous decisions of the Supreme Court and this Court on the issue and in fact, referred to a chart submitted by one of the parties tabulating all the decisions relating to *non-est* filing, correlating with various filing defects. The said charts are reproduced in *paragraph 21* of the said judgment.

12. The Full Bench after assessing submissions of the parties, opined that the conditions under Section 34 of the A & C Act could not be satisfied unless the arbitral award under challenge was placed before the Court. The filing of the award was not a mere procedural formality but an essential requirement. Non-filing of the same was, therefore, held to render the application *non-est*.

13. In this regard, relevant paragraphs of *Pragati Construction (supra)* are extracted as under:

“59. *In our opinion, none of the above conditions can be satisfied unless the Arbitral Award under challenge*



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is placed before the Court. Therefore, filing of the Arbitral Award under challenge along with the application under Section 34 of the A&C Act is not a mere procedural formality, but an essential requirement. Non-filing of the same would, therefore, make the application “non-est” in the eyes of the law.

60. In fact, we find that this Court has almost consistently held that non-filing of the Arbitral Award would make the petition “non-est”. Reference in this regard may be made to: **SKS Power Generation (Chhattisgarh) Ltd.,(supra), SPML Infra Ltd. v. Graphite India Ltd., 2020 SCC OnLine Del 2808, Air India Ltd.,(supra), Reacon Engineers India Pvt. Ltd., (supra), Executive Engineer National Highway Division v. S&P Infrastructure Developers (P) Ltd., 2022 SCC Online Del 1859, ITDC v. Bajaj Electricals Ltd., 2023 SCC Online Del 158, NHAI v. KNR Constructions, 2023 SCC Online Del 519, Brahamputra Cracker and Polymer Ltd. (supra), Panacea Technologies Ltd., (supra), Delhi Development Authority v. Gammon Engineers & Contractors Private Limited, 2024 SCC Online Del 5154, Container Corp. of India v. Shivhare Road Lines, 2024 SCC Online Del 5490, and, Good Health Argo Tech Pvt. Ltd. v. Haldiram Snacks Pvt. Ltd., 2024 SCC Online Del 6050.**

61. Even in both the Judgments which led to the present Reference, that is, in **Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil) (supra)**, and in **Planetcast Technologies Ltd. (supra)**, both the Division Benches have held that the filing of the Impugned Arbitral Award is not an empty procedural requirement and is, therefore, absolutely essential. We may first quote from **Joint Venture of Sai Rama Engineering Enterprises**



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(Sree) & Megha Engineering & Infrastructure Ltd. (Meil), (supra) as under:

“32. It is material to note that Section 34 of the A&C Act does not specify any particular procedure for filing an application to set aside the arbitral award. However, it does set out the grounds on which such an application can be made. Thus, the first and foremost requirement for an application under Section 34 of the A&C Act is that it should set out the grounds on which the applicant seeks setting aside of the arbitral award. **It is also necessary that the application be accompanied by a copy of the award as without a copy of the award, which is challenged, it would be impossible to appreciate the grounds to set aside the award.** In addition to the above, the application must state the name of the parties and the bare facts in the context of which the applicants seek setting aside of the arbitral award.”

(Emphasis Supplied)

62. In *Planetcast Technologies Ltd. (supra)*, the requirement of filing of the Impugned Arbitral Award was reiterated as under:

“37. Therefore, it has been consistently held that non filing of the Award along with the Petition under Section 34 of the Act, 1996 is a fatal defect, making such filing as non-est. The objections under Section 34 must be on justiciable grounds as prescribed under Section 34(2) as such grounds can be ascertained only by referring to the Award made by the learned Arbitrator. **The filing of an Award is not an empty procedural requirement since sans the Award, the Court is left absolutely clueless to comprehend the grounds taken in the objection Petition and thereby unable to decide whether the Petition merits Notice to be issued or**



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out-right rejection. *In the absence of the Award, the grounds on which the objections have been taken cannot be appreciated and considered if they are within the scope of Section 34(2) and thus, such filing of objections without the impugned Award render the entire objections incomprehensible for consideration under Section 34 of the Act.”*

(Emphasis Supplied)

63. Consequently, we have no hesitation in holding that for an application under Section 34 of the A&C Act, non-filing of the Impugned Arbitral Award is a fatal defect, making the application “non-est.”

64. We may, herein, itself note that the only Judgment which may be read as dispensing with the requirement of filing of the Arbitral Award was in **Ambrosia Corner House Pvt. Ltd. v. Hangro S Foods**, 2023 SCC OnLine Del 517, of which one of us namely (Navin Chawla, J) was the author. However, the same has been rightly distinguished by the Division Bench of this Court in **Planetcast Technologies Ltd.** (supra), by observing as under:

“36. To further clarify the law on the indispensable requirements while filing a Petition under Section 34 of the Act, 1996, it is pertinent to refer to the judgment of the Single Bench of this Court in **Ambrosia Corner House Private v. Hangro S Foods**, 2023 SCC OnLine Del 517. **It has been widely misconstrued that the said judgment recognised the filing of a Petition under Section 34 of the Act, 1996 to be valid even though it was not accompanied by the Award. However, the perusal of the judgment itself makes it evident that the impugned Award had not been e-filed in a separate folder as was required under the Delhi High Court (Original Side) Rules, 2018. In those peculiar circumstances, the objections were**



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entertained and the first filing was not found to be non-est. Clearly, it is not as if the Award had not been filed along with the objections under Section 34 of the Act. The facts as involved in Ambrosia Corner House (supra) are, therefore, clearly distinguishable.

(emphasis added)

14. Senior counsel for respondent, therefore, highlighted the fact that almost all the judgments, including those that had been placed before the Full Bench (listed in paragraphs 60, 61, and 62 of the Full Bench decision, extracted above), had held that the non-filing of the award would render it as *non-est*. The only dissonant view was in *Ambrosia Corner House Private Limited v Hangro S Foods*, 2023 SCC OnLine Del 517, which in any case had been distinguished by the Division Bench in *Oil and Natural Gas Corporation Ltd. v. Planetcast Technologies Ltd.* 2023 SCC OnLine Del 8490, as noted in paragraph 64 extracted above.

15. The Full Bench, therefore, concluded as under:

“66. We, therefore, have no hesitation in holding that filing of the copy of the Impugned Award, which is under challenge, is a bare minimum, rather, mandatory requirement for an application under Section 34 of the A&C Act. Further, non-filing of the same would make such an application “non-est” in the eyes of law, thereby, not stopping the period of limitation from running.

67. The Reference in FAO(OS)(COMM) 70/2024 titled *Pragati Construction Consultants v. Union of India* is answered accordingly by holding that filing of the Arbitral Award under challenge, is an essential pre-requisite for filing the application under Section 34 of



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the A&C Act, and in absence thereof, the filing of the said application will be treated as “non-est”.

(emphasis added)

16. The very fact that the filing in September 2024 by the petitioner was not accompanied by the award (nor was this denied by the counsel for the petitioner) concludes the issue as relating to *non-est* filing in favour of the respondent and against the petitioner.

Court vacation and limitation

17. However, some other submissions were raised by counsel for petitioner. *Firstly*, it was contended that the period of Court vacations in June 2024 would effectively shift the starting point of limitation from 8th June 2024 to 1st July 2024. For this, reliance was placed upon **Notification No.51/Estt./EI-I/DHC** dated 22nd May 2024, which provided for the arrangement of mentioning and hearing urgent matters during summer vacations 2024. *Clause 5* of the said Notification stated:

“5. Limitation will not run during the vacation period for purposes of institution of Civil and Criminal cases.”

18. Counsel for the applicant further relied upon Clause 6 and Clause 7 of the said Notification, which are extracted as under:

“6. All complaints, appeals, petitions or other matters as may require to be immediately or promptly dealt with, can be filed with the Joint Registrar/Deputy Registrar on duty between 10.00 A.M. and 12 Noon on all days except Second Saturday, Fourth Saturday, Sundays and other holidays, if any.

7. Suits, Appeals, Applications or other proceedings, which are to be filed on the re-opening day, may also be instituted/preferred or made in regular course between



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10.00 A.M. and 4.00 P.M. from Monday, the 24th June, 2024, to Saturday, the 29th June, 2024 as per convenience of the parties though for the purpose of limitation the Court re-opens only on 01 .07.2024.”

19. He, therefore, contended that limitation would run from 1st July 2024, and the 90-day period would expire on 28th September 2024, placing him within limitation since the petition was filed on 6th September 2024. Further, time was taken to file the award, within the extended period of 30 days, followed by another 14 days for getting the petition cleared for listing.

20. It is further stated that the Court was closed for ten days on account of *Mahatma Gandhi Jayanti, Maharishi Valmiki Jayanti, Dussehra and Diwali*, along with long weekends in October and December. Due to these closures, there was a delay in re-filing as the entire office of counsel was unavailable, due to holidays and festivities, and the re-typed pages could not be made available.

21. The delay in re-filing was, therefore, calculated from 29th October 2024, with the petition being re-filed on 4th November 2024, 7th November 2024 and 11th November 2024, before being listed for hearing on 14th November 2024.

22. Heavy reliance was placed by *Mr. S.S. Ahluwalia*, Counsel for petitioner, on the decision of a Co-ordinate Bench of this Court in *Bliss Habitat Pvt. Ltd And Ors v Indiabulls Housing Finance Limited & Anr.* 2023 SCC OnLine Del 7871. The Single Bench of this Court, while dealing with a petition under Section 34 of the A & C Act and considering the issue of condonation of delay, noted that the award in question was dated 28th February 2023, while the petitions were filed on 27th June 2023 and 28th June 2023. The defects were



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finally cleared on 4th August 2023 and subsequent dates. Since the initial filing was within the period of ‘120 days’, there was a delay in re-filing of varying durations, petitioners relied upon a similar Notification for the 2023 Court vacations [which stated that the period from 3rd June 2023 to 30th June 2023 shall be excluded for the purpose of limitation since the Court was on summer vacation and the limitation shall not run in the said period]. It was contended that 30 days period within the summer vacations would be taken benefit of by petitioner and that the limitation would not run. In these circumstances, the Court stated as under with regard to original filing being barred by limitation. Relevant paragraphs are extracted under:

“56. The said Notification dated 17.05.2023 also observes that this court was shut for summer vacation from 03.06.2023 till 30.06.2023 and that for the purpose of limitation, this court re-opened on 01.07.2023. The said Notification dated 17.05.2023, read with Section 4 of the Limitation Act, 1963 clearly leads to the conclusion that the present petition was filed within the period of 3 months and 30 days as contemplated in Section 34 (3) of the A&C Act.

57. In view of the finding of this Court that the original filing of the present petitions on 27.06.2023/28.06.2023 was not a non-est filing and given the fact that the period from 03.06.2023 till 30.06.2023 was exempted for the purpose of limitation, the delay sought to be condoned is reasonable and not excessive. Moreover, the petitioners are justified in contending that the record of the present petitions is voluminous since 11 interconnected awards forming the subject matter of the present petitions are being challenged by the same petitioners simultaneously. Accordingly, the delay in filing the present petitions stands condoned and



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therefore, I.A. 17601/2023 in O.M.P. (COMM) 359/2023 also stands allowed.”

(emphasis added)

23. Counsel for petitioner, therefore, placed heavy reliance on the exclusion of the period from 3rd June 2023 till 30th June 2023, “*exempted for the purpose of limitation*”, and, therefore, condoned the delay in filing beyond 90 days.

24. Senior Counsel for respondent sought to distinguish this case on its facts, contending that *Bliss Habitat (supra)* dealt with a situation where the limitation period was terminating during summer vacations, rather than commencing during the vacation period. Therefore, the extension till the re-opening was permitted.

25. In the opinion of this Court, the submission of the petitioner is unmerited, and the submission made by senior counsel for respondent is correct, considering the factual distinction as noted in *Bliss Habitat (supra)*.

26. The issue in *Bliss Habitat (supra)* involved the 90-day period expiring just before the summer vacation, and 30 days extended period being counted alongside the vacation period to justify delayed filing. The Court, therefore, excluded the summer vacation period, considering that the limitation, as per the Notification, would not run during the 30-day period.

27. There is a fundamental flaw in the contention of the petitioner’s counsel regarding the summer vacation Notification. The summer vacation Notification is not intended to extend the ‘starting’ point of the limitation if it falls within the summer vacations, but rather to stop the limitation from ‘running’ during the period, benefitting those whose limitation period might expire during the vacation.



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28. In this case, the principal limitation period is *90 days* under Section 34(3) of A & C Act, which expires in September 2024 and not during the Court vacations, which arguably could have made petitioner scramble to seek benefit of the Notification.

29. The *90-day* period was available to the petitioner and counsel to prepare their petition and file it along with the award in order to avoid a *non-est* filing. However, they did not do so.

30. Quite otherwise, they filed a bare 30-page petition 2 days before their *90-day* period was to expire on 8th September 2024, obviously conscious of their filing falling within the *90-day* period of limitation.

31. If the petitioner was so sanguine about the summer vacation (one-month period) being excluded by settled law or previous interpretations of this Court, there was no rush to file a *thirty-page* bare petition just *2 days* before the *90-day* period was ending, calculated from 8th June 2024.

Re-filing

32. The second objection taken by petitioner was that the delay in re-filing could not be prevented since there were a number of Court holidays in between, and because of the festivities, the office of the petitioner's counsel could not duly deal with the objections. Such a contention is only made to be rejected.

33. In limitation, prescribed extended periods, permitting elasticity, are not meant to put parties and counsel into '*somnolence*' or '*inertia*' but rather to prescribe and mandate discipline, to ensure that the elasticity may not be misused and abused. Reasons, such as counsel not being available during festivities to work on a petition, are tantamount to an *excuse* in the true meaning of the term, and must be rejected.



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34. In fact, submissions of the petitioner in this regard (extracted below) be noted to provide an illustration of how Courts should prevent indiscipline, inertia and abuse of timelines creeping into the litigation system:

“(i) It is pertinent to mention that as the arbitral award and the entire arbitral record is mandatory to be annexed along with the petition. It took a lot of time for the Counsel of the Petitioner to assimilate the entire arbitral record and getting it retyped as per Delhi High Court Rules.

(ii) The Petitioner submits that from September 2024 the festive seasons started due to which there were paucity to engage the typist considering the volumes of the arbitral award it was very difficult to persuade the typist to complete retyping of the entire arbitral record in the shortest time.

(iii) Since the record was dim and very bulky it took lot of time for the typist to share the typed copies of the Arbitral Record. Also, during this process in the month of September the typist fell sick again due to which the retyping work got delayed.

(iv) In the months of October and November 2024, there were lot of official holidays. On account of this reason, the retyping of the arbitral award was slow by the typist.”

Application of Pragati Construction (supra)

35. The third submission made by petitioner’s counsel was that the decision in *Pragati Construction (supra)* was delivered only on 7th February 2025, before which there were different views relating to the issue of *non-est* filing, in particular, filing without arbitral award. Yet again, this submission is to be rejected since it is not based on a correct estimation of the law. For this purpose,



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the Court does not need to go beyond what is stated by the Full Bench of this Court in ***Pragati Construction*** (*supra*).

36. As noted above in *paragraph 10*, the Full Bench assessed the previous opinions in this regard in *paragraphs 60, 61 and 62* of ***Pragati Construction*** (*supra*) and, in fact, reinforced the position that almost all of the twenty-one decisions referred to held that non-filing of the arbitral award would make the petition *non-est*. There was only one isolated opinion dispensing with the requirement of the filing of the award but was also distinguished by the Division Bench in ***Planetcast Technologies*** (*supra*). The opinion of the Court was also based on a provision of Section 34 of the A & C Act, requiring the Court to assess the arbitral award before permitting the petition under Section 34 of the A & C Act for consideration.

Other Defects

37. The assessment of other decisions adverted to by the petitioner and respondent with regard to other defects in filing may not be necessary for the purposes of this adjudication, considering that the Court has rejected the contention of the petitioner that the summer vacation of 2024 permitted him an allowance of another *24 days* till 1st July 2024 for the commencement of limitation, and also that the non-filing of the award along with the petition within the *90-day* period would render it *non-est*.

38. It is also noted that the advance copy of the petition was, for the first time, served on the respondent on 7th November 2024 and then on 12th November 2024, which would, therefore, be deemed to be a proper filing. The initial filing in September 2024 consisted of *thirty pages*, whereas the effective



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filing done on 7th November 2024 and 12th November 2024 comprised *two thousand pages*.

39. It is also to be noted that in the filing of 24th September 2024, no statement of truth was filed, the pleadings were not signed by the petitioner, no list of dates was filed, no Interlocutory Applications were filed, no documents were filed, petitions/applications and Power of Attorney were not signed or dated by the petitioner and advocate, and no mention of pecuniary and territorial jurisdiction was given.

40. The filing on 9th October 2024 (even after the extended *120-day* period had expired) did not have signatures on the petition by counsel, no statement of truth, no proof of service, no signatures on the pages of the petition by the petitioner and other defects. On 9th October 2024, 688 pages were filed.

41. On 2nd November 2024, even though re-filing was done for the objections, previous objections still persisted.

42. On 7th November 2024, 1979 pages were filed, previous objections still persisted.

43. On 12th November 2024, 1983 pages were filed when advance service was done on the respondent.

44. In these circumstances, the Court finds that the condonation for delay of *21 days* in re-filing the petition cannot be permitted and, therefore, the petition is rejected on account of not being filed in the statutory period of limitation under Section 34(3) of the A & C Act.

45. Petitioner, as other parties, may find this remark by a character in *David Copperfield* by *Charles Dickens*, apposite and instructive:



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*“My advice is, never do tomorrow what you can do today.
Procrastination is the thief of time.”*

46. Accordingly, the application stands dismissed.

O.M.P. (COMM) 483/2024

1. Date already fixed i.e. 19th May 2025, stands cancelled.
2. Accordingly, the petition is disposed of. Pending applications are rendered infructuous.
3. Judgement be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

MARCH 24, 2025/ak/tk