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

% *Date of decision: 15.05.2025.*

+ FAO(OS)(COMM) 91/2025, CM APPL. 29706/2025 (For Exemption), CM APPL. 29707/2025 (For Exemption) & CM APPL. 29708/2025 (For Stay)

NHPC LTD.Appellant
Through: Mr. Gauhar Mirza, Advocate.

versus

V3S INFRATRECH LTD.Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR

J U D G M E N T (O R A L)

HARISH VAIDYANATHAN SHANKAR, J.

1. The present appeal under Section 37 of the **Arbitration and Conciliation Act, 1996**¹ is preferred against the **judgment dated 24.03.2025**² in O.M.P. (COMM) 483/2024 titled as *NHPC Ltd. vs. V3S Infratech Ltd.* passed by the Ld. Single Judge. By the said Judgment, the Ld. Single Judge has held that the initial filing under Section 34 of the A&C Act was *non-est*, as the same was filed without even the Arbitral Award being a part of the papers that were filed.

2. While so rendering the impugned Judgment, the Ld. Single Judge has referred to and relied upon the relevant paragraphs of the full-bench

¹A&C Act

²Impugned Judgment



Judgment of this Court in the case of *Pragati Construction v. Union of India*³.

3. Learned Counsel for the Appellant, though has raised numerous grounds in the appeal, the oral arguments were limited to the aspect of whether a mistake on the part of the counsel could be held against the Appellant, leading to the dismissal of its challenge to the Arbitral Award.

4. The grounds as articulated in the arguments are set out at page no. 46 of the present appeal, which are reproduced as follows:-

“A Party Ought Not to Suffer for the Inaction or Omission of its Advocate

- M. THAT the delay and lapses in the present matter are neither deliberate nor attributable to the Appellant but are solely due to the inadvertence and inaction on the part of the erstwhile counsel of the Appellant in the Section 34 proceedings. The Appellant had duly provided all requisite documents and instructions well within time, and had diligently pursued the matter. It is a settled principle of law that a litigant ought not to suffer for the mistakes or omissions of their advocate.
- N. THAT the erstwhile counsel for the Appellant in the Section 34 Petition filed a detailed affidavit explaining the delays in filing of the Section 34 Petition on 11 December 2024. Pertinently, none of these delays can be attributed to the Appellant itself who provided all documents and assistance to its erstwhile counsel in a timely manner. In such a situation, the Appellant ought not to suffer for the lapses of its erstwhile counsel.
- O. That the Appellant issued the Engagement Letter along with all the relevant documents of the matter including arbitral award, contract agreement etc. to the erstwhile counsel on 27 August 2024, for taking necessary action for filing the Section 34 Petition within the statutory limitation period. In the Engagement Letter, the Appellant instructed its erstwhile counsel to take required action within the statutory period and stated “Necessary documents related to the matter have already been sent to you through email. It is requested to take necessary action in pursuance of filing the objection

³2025 SCC OnLine Del 636



petition within the prescribed statutory limitation period.”
Therefore, the necessary instructions and documentation had been provided by the Petitioner in a timely manner, well within the period of limitation, with an express direction to file within the statutory timeline.

- P. THAT as per the affidavit of the erstwhile counsel of the Appellant in the Section 34 proceedings filed on 11 December 2024, it is an admitted position that authorised signatory signed the documents for filing and gave its erstwhile counsel the direction to proceed with filing Section 34 Petition in a timely manner. The said date falls within the statutory period of three months from the date of the corrected award, i.e., 8 June 2024, and is also well within the additional condonable period of 30 days as provided under Section 34(3) of the Act. Therefore, there is no delay attributable to the Appellant, who took timely steps, and cannot be saddled with the consequences of the subsequent lapse on the part of the erstwhile counsel.”

(Emphasis supplied)

5. The Appellant clearly admits that the Arbitral Award, which was under challenge in the petition under Section 34 of the A&C Act, was, in fact, filed beyond the 120-day, as the maximum period prescribed by Section 34(3) of the A&C Act. The said admission is set out at Ground H as follows:-

- “H. In the present case, while the initial filing of the Section 34 petition occurred within the initial limitation period, the arbitral award itself was filed with a minimal delay beyond the 120-day period prescribed by Section 34(3) of the Act. Specifically, the 120-day period expired on 7 October 2024, and the award was filed on 9 October 2024. Therefore, the crucial question is not whether there was a complete non-filing, as dealt in *Pragati Construction*, but whether the Ld. Single Judge exercised its discretion properly in refusing to condone the minimal delay of two days in filing the award, under the proviso to Section 34(3) which allows for a 30-day extension “if the Court is satisfied that the applicant was prevented by sufficient cause.”

(Emphasis supplied)

6. The full-bench of this Court has already rendered a finding in the



case of *Pragati Construction v. Union of India* (*supra*) in the following terms:-

“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 *Pragati Construction Consultants v. Union of India* [*Pragati Construction Consultants v. Union of India*, FAO (OS) (COMM)No.70/2024, dated 09.05.2024 (Delhi)] is answered accordingly by holding that filing of the arbitral award under challenge, is an essential prerequisite for filing the application under Section 34 of the A&C Act, and in absence thereof, the filing of the said application will be treated as “non est”.”

(Emphasis supplied)

7. It would be apposite to note that the present ground sought to be urged by the Appellant herein, *namely*, that the mistake of the counsel should not prejudice the Appellant, was not even a ground raised by the Appellant in the petition under Section 34 of the A&C Act.

8. A perusal of the website of the Appellant would reveal that there is an exclusive Department termed as the “Arbitration Cell” which deals exclusively with arbitration matters. There, the Appellant enumerates the following Roles and Responsibilities of its Arbitration Cell:-

“.....

Roles & Responsibilities	
Department	Arbitration Cell , Corporate Office
	1. All arbitration matters including filing and defending cases in Arbitration proceedings, monitoring and expending the same, counsel to Corporation on arbitration matters.
	2. Empanelment of Arbitrators / Adjudicators.
	3. Engage Lawyers / Advocates for arbitration cases and finalization of terms and conditions.
	4. Coordination with Arbitrators / Lawyers for arbitral proceedings.



5. Represent NHPC in all arbitration matters.
 6. Coordinate with projects for submission of reply / written submission along with contract inputs in association with concerned contract group.
 7. Advice / recommend on the arbitral awards for payment / challenge on the award in consultation with project & concerned contract group.
 8. Coordinate settlement of claims outside the arbitral tribunal through a committee.
 9. Seeking advice from third party / expert opinion before going for arbitration / challenging the award, if required.
 10. Constitution of DAB as per provisions of Contract.
 11. Coordinate among the DAB and Concerned Project.
 12. Compliance of Right to Information Act (RTI act) /Parliamentary Question / MOP & other Govt. agencies with respect to Arbitration.
 13. Implementation of official language in the department.
 14. Implementation of Quality System requirements.
 15. Implementation of all rules / regulations / office orders / circulars of the company as & when required in true spirit.
 16. To ensure proper coordination among various divisions at Corporate Office / Projects / Power Stations / ROs etc. with defined response time.
 17. Suo Moto response to changes in the concerned sector, nationally / globally and providing necessary updates to Management with comments.
- Any other work assigned from time to time.

...”

9. The Hon’ble Supreme Court, in the judgment of ***Rajneesh Kumar v. Ved Prakash***⁴, has also deprecated the highly disturbing trend adopted by various litigants to place the blame squarely on the shoulders of the advocates representing them.

10. The provisions of Section 34 of the A&C Act have been the subject matter of multiple litigations and the sanctity and strict mandate of the timelines prescribed therein have been re-iterated in various judgments of the Hon’ble Supreme Court, *inter alia*, ***State of Himachal***

⁴2024 SCC OnLine SC 3380



Pradesh v. Himachal Techno Engineers⁵, ***Chintels (India) Limited v. Bhayana Builders Private Limited***⁶ and ***Mahindra & Mahindra Financial Services Limited v. Maheshbhai Tinabhai Rathod***⁷.

11. The attempt on the part of the Appellant, which has a separate Department with numerous officers dealing with arbitrations, to place the blame squarely on the advocates, is unacceptable. A reading of the impugned Judgment would evidence that there was a complete mis-interpretation by the Appellant on the starting period of limitation *qua* the aspects of Court vacations as well as on re-filing. Assuming, on demurrer, that the lawyer mis-interpreted the provisions, surely, the Law Department of the Appellant was well-stocked with necessary resources, either in the form of its own officers or the wherewithal, to get a second opinion. It is, after all, a Public Sector Undertaking with a “*Navratna*” status.

12. It is settled law that the proceedings under Section 37 of the A&C Act are highly limited in nature and in fact, the canvas for challenge is narrower than in a petition under Section 34 of the A&C Act. It would, therefore, not be appropriate for this Court to consider a ground which is not even urged by the Appellant herein in its petition under Section 34 of the A&C Act, in exercise of this Court’s jurisdiction under Section 37 of the A&C Act.

13. The Hon’ble Supreme Court in ***MMTC Limited v. Vedanta Limited***⁸ contemplated upon the narrow scope of appeal under Section 37 of the A&C Act and observed that:

⁵(2010) 12 SCC 210

⁶(2021) 4 SCC 602

⁷(2022) 4 SCC 162

⁸(2019) 4 SCC 163



“14. As far as interference with an order made Under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference Under Section 37 cannot travel beyond the restrictions laid down Under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court Under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court Under Section 34 and by the court in an appeal Under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”

(Emphasis supplied)

14. A three-judge Bench of the Hon’ble Supreme Court in ***UHL Power Company Limited v. State of Himachal Pradesh***⁹ observed the following:

“16. As it is, the jurisdiction conferred on courts Under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal Under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed.”

(Emphasis supplied)

15. Similarly, the Hon’ble Supreme Court in ***Punjab State Civil Supplies Corporation Limited v. Sanman Rice Mills & Ors.***¹⁰, held that:

“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal

⁹ (2022) 4 SCC 116

¹⁰ 2024 SCC OnLine SC 2632



of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.”

(Emphasis supplied)

16. As is manifest, on a conspectus of the facts and the applicable law, in the present case, since, (a) Admittedly the award was not filed within the prescribed period at the time when the petition under Section 34 of the A&C Act came to be filed, (b) Such filing without even the award, having been held to be *non-est* by the full-bench of this Court and (c) The ground of “mistake of counsel” not having been raised originally in the petition under Section 34 of the A&C Act, this Court finds no merit in the present appeal.

17. The present appeal, along with pending application(s), stands disposed of in the above terms.

18. No orders as to costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 15, 2025/nd/er