



2025:DHC:3864-DB



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

*Date of decision: 15.05.2025*

+ **FAO(OS) (COMM) 87/2025**

DELHI DEVELOPMENT AUTHORITY .....Appellant

Through: Mr.Kailash Vasdev, Sr. Adv.  
with Mr.Rajeev Lochan  
Mahunta, Mr.Pratyush Mishra,  
Ms.Neoma Vasdev, Mr.Umrao  
Singh Rawat and Ms.Ashtha  
Bhardwaj, Advs.

versus

GAMMON ENGINEERS AND CONTRACTORS PVT LTD

.....Respondent

Through: None

**CORAM:**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**HON'BLE MS. JUSTICE RENU BHATNAGAR**

**NAVIN CHAWLA, J. (ORAL)**

**FAO(OS) (COMM) 87/2025 & CM APPL. 27543/2025**

1. This appeal has been filed by the appellant under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as, 'the Act'), challenging the order dated 26.07.2024 passed by the learned Single Judge of this Court in O.M.P.(COMM)128/2023, titled *Delhi Development Authority v. Gammon Engineers and Contractors Private Limited (Gammon)*, dismissing the said



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application, filed under Section 34 of the Act, on the ground of limitation.

2. It is not denied that the Award impugned before the learned Single Judge in form of the above application was passed on 15.11.2021. A copy of the same was received by the appellant on 22.11.2021, whereafter the appellant filed the above-mentioned application under Section 34 of the Act, on 14.03.2022. The same was, however, filed without a copy of the Impugned Award. There were other defects also in the application so filed. The copy of the Award in the above application was finally filed by the appellant only on 28.02.2023. The learned Single Judge, therefore, opined that the filing of the application on 14.03.2022 was *non-est* and the application, at best, can be considered to have been filed on 28.02.2023, that is, beyond the period of limitation, and the maximum condonable period thereof, prescribed under Section 34 (3) of the Act.

3. Though the learned senior counsel for the appellant has sought to contend that the non-filing of the Arbitral Award would not render the filing to be *non-est*, we do not find any merit in the same, especially in light of the Full Bench decision of this Court in ***Pragati Construction Consultants v. Union of India & Anr.***, 2025:DHC:717-FB, wherein this Court summarised the principles applicable to Section 34 (3) of the Act as under:

*“97. We summarise our answer to the Reference, as under:*

*a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would make the said*



application liable to be treated and declared as non-est, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;

b) Mere non-filing of the Statement of Truth or a defect in Statement of Truth being filed, that is, including with blanks or without attestation, would not ipso facto, make the filing to be non-est. However, if accompanied with other defects, the Court may form an opinion, based on a cumulative list of such defects, that the filing was non-est;

c) Similarly, non-filing or filing of a defective Vakalatnama; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as non-est. However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, is liable to be declared non-est.”

***(Emphasis supplied)***

4. As it has been declared by this Court that non-filing of the Arbitral Award along with the application under Section 34 of the Act, would make the said application liable to be treated and declared as *non-est*, the learned Single Judge has rightly found that the application filed by the appellant was filed beyond the maximum condonable period of delay and rightly dismissed the said application as being barred by limitation.

5. The appeal and the pending application, are accordingly



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dismissed. We, however, make it clear that we have not expressed any opinion on the merits of the challenge to the Arbitral Award.

6. We have also not, therefore, gone into the issue of delay in re-filing of the appeal, which itself is substantiated.

**NAVIN CHAWLA, J**

**RENU BHATNAGAR, J**

**MAY 15, 2025/sg/ik**

*Click here to check corrigendum, if any*