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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO(OS) (COMM) 265/2022 & CM APPL. 39049/2022 (Stay)
IRCON INTERNATIONAL LIMITEDAppellant
Through: Mr. Debarshi Bhadra, Adv.

versus

REACON ENGINEERS (INDIA) PVT. LTD.Respondent
Through: None.

CORAM:

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

ORDER

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08.05.2025

1. The instant appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 [“the Act”] read with Section 13(1A) of the Commercial Courts Act, 2015, is directed against the Judgment dated 04.07.2022 passed by the learned Single Judge dismissing the petition under Section 34 of the Act on the ground of it being barred by limitation.
2. The facts leading to the appeal are that the Arbitral Award was delivered on 10.06.2019. The Appellant claims that it received the Award on 12.06.2019. The statutory period of three months, as prescribed under Section 34(3) of the Act, for filing of the petition expired on 12.09.2019.
3. The petition was filed initially on 13.09.2019, wherein substantial defects were marked by the Registry. These defects have been summerized in paragraph 7 of the impugned Judgment as follows:-



“7. The filing log indicates that apart from listing sixteen different kinds of defects, the Registry had also commented as under:

“User Comments : Description of any other defects:

TOTAL 73 PAGES FILED WITHOUT BOOKMARKING WITHOUT PAGINATION.

STATEMENT OF TRUTH/AFFIDAVIT NOT ATTESTED. NO DOCUMENTS FILED. NO AWARD FILED. VAKALATNAMA NOT FILED.

IN ADDITION TO THE E-FILING, IT IS MANDATORY TO FILE HARD COPIES OF THE FRESH MATTERS FILED UNDER SECTION 9,11, AND 34 OF THE ARB. ACT. 1996 WITH EFFECT FROM 22.10.2018.”

(Emphasis supplied)

3. While in the initial filing the delay was merely of one day, the petition was riddled with multiple defects. The Registry noted a total of sixteen categories of defects, including the absence of material documents such as, the arbitral award, vakalatnama and properly attested statement of truth/ affidavit.

4. The Appellant rectified the defects and re-filed for the first time on 24.10.2019. Subsequent defects were addressed multiple times, and the Petition came to be listed on 21.11.2019. The relevant paragraphs of the impugned Judgement are as under:

“8. The petition was marked defective and returned for re-filing on 16.09.2019.

9. The petition was re-filed on 24.10.2019. The file log indicates that this time a total number of 1325 (one thousand three hundred and twenty-five) pages were filed. However, the petition was still defective and was returned for re-filing on 30.10.2019. It was, thereafter, re-filed on 06.11.2019 but was once again found to be defective. It was returned for re-filing on 13.11.2019. The petition was re-filed on 14.11.2019. It was marked as defective yet again and returned for re-filing on 15.11.2019. The petitioner filed the same on 18.11.2019 as certain defects were not cured. It was finally re-filed on 19.11.2019.

10. The petitioner has filed an application seeking condonation of delay of thirty-seven days in re-filing the petition, however, the



petitioner has not filed any application seeking delay in filing the petition.”

5. As is apparent, the initial filing comprised only 73 pages; however, the re-filing on 24.10.2019 was substantially voluminous, totaling 1,325 pages. Upon examination, the learned Single Judge determined that the initial filing was invalid and the re-filing on 24.10.2019 exceeded the maximum permissible period, including the 30-day grace period as stipulated under the proviso to Section 34(3) of the Act.

6. The full Bench of this Court in **Pragati Construction Consultants v. Union of India** [2025 SCC OnLine Del 636] observed as under:-

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

(a) Non-filing of the arbitral award along with 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.”

7. Applying the above law laid by the full bench of this Court, in



the instant case, the filing on 13.09.2019 cannot sustain being *non est*. The re-filing on 24.10.2019 would be in the nature of a fresh filing and beyond the period of 120 days as permissible under Section 34(3) of the Act.

8. In view of the above, the finding of the learned Single Judge does not require any interference, and therefore, the appeal, along with pending application(s), if any, stands dismissed.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MAY 8, 2025/nd