



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 07th October, 2023
Pronounced on: 19th December, 2023

+ **FAO(OS) (COMM) 81/2020, CM APPL. 14933/2020, CM APPL. 14934/2020, CM APPL. 32611/2020**

UNION OF INDIA

..... Appellant

Through: Mr. Kirti Man Singh, CGSC with Ms. Manmeet Kaur Sareen , Mr. Varun Rajawat, Mr. Taha Yasin, Mr. Bhagwan Swaroop Shukla, CGSC, Mr. Rajesh Ranjan, Sr. Panel Counsel, Mr. Saran Kumar, Mr. Archit Chauhan, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advocates.

versus

M/S PANACEA BIOTEC LIMITED

..... Respondent

Through: Mr. Sandeep Sethi, Sr. Advocate along with Mr. Kawal Nain, Mr. Rohit Dadwal, Ms. Kavita Sharma and Ms. Riya Kumar, Advocates.

+ **FAO(OS) (COMM) 82/2020, CM APPL. 14938/2020, CM APPL. 14939/2020, CM APPL. 32610/2020**

UNION OF INDIA

..... Appellant

Through: Mr. Kirti Man Singh, CGSC with Ms. Manmeet Kaur Sareen , Mr. Varun Rajawat, Mr. Taha Yasin, Mr. Bhagwan Swaroop Shukla, CGSC, Mr. Rajesh Ranjan, Sr. Panel Counsel, Mr. Saran Kumar, Mr. Archit Chauhan, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advocates.



versus

M/S BHARAT BIOTECH INTERNATIONAL LTD. Respondent

Through: Mr. Sughosh Subramanyam and Mr. Shashank Chaturvedi, Advocates.

+ **FAO(OS) (COMM) 83/2020, CM APPL. 15008/2020, CM APPL. 15009/2020, CM APPL. 32612/2020**

UNION OF INDIA Appellant

Through: Mr. Kirti Man Singh, CGSC with Ms. Manmeet Kaur Sareen, Mr. Varun Rajawat, Mr. Taha Yasin, Mr. Bhagwan Swaroop Shukla, CGSC, Mr. Rajesh Ranjan, Sr. Panel Counsel, Mr. Saran Kumar, Mr. Archit Chauhan, Mr. Aman Kapoor and Mr. Adil Vasudeva, Advocates.

versus

M/S SERUM INSTITUTE OF INDIA LIMITED Respondent

Through: Mr. Abhinav Vashisht, Sr. Advocate with Mr. Vikram Dhokalia and Ms. Akshita Sachdeva Jaitly, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. *Appeal under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "Act, 1996")* read with Section 13(1A) of the Commercial Courts Act, 2015 has been filed in the aforementioned three cases wherein vide judgment dated 18.03.2020 I.A 13334/2019, I.A 13544/2019, I.A 13547/2019 seeking condonation of



delay in filing/refilling the petition under Section 34 of the Act, 1996 beyond the stipulated period of 3 months and 30 days, were dismissed and the petitions were also resultantly dismissed.

2. The facts involved in the aforementioned three matters are identical; the **Award was made by learned Arbitrator on 14.03.2019** against which the petitions under Section 34 of the Act, 1996 were filed. The condonation of delay of 50 days each in *OMP.(COMM) 399/2019* [FAO(OS)(COMM) 82/2020] & *OMP (COMM) 408/2019* [FAO(OS)(COMM) 81/2020] and 55 days in *OMP (COMM) 407/2019* [FAO(OS)(COMM) 83/2020] was sought in the filing/ re-filing applications, which was denied by the Ld. Single Judge by observing that the valid filing was beyond the prescribed period of 3 months and 30 days under Section 34(3) of the Act, 1996.

3. The **learned Single Judge in the impugned judgement dated 18.03.2020 observed as under:**

“18. The aforesaid principles, when applied to the facts of the present case, would provide an answer to the first question arising for my consideration – should the petition, as filed on 31.05.2019, be regarded as a ‘valid’ filing or as non est? It remains undisputed inter alia that the impugned award was not placed on record till 31.07.2019, by which date the extended period of limitation had already expired and that the petition, as originally filed, had been substantially altered at the time of re-filing. In fact at the time of re-filing, not only were documents spanning over 350 pages added to the petition, but even the framework of the petition was changed, yet the last page of the re-filed petition continued to reflect the date of filing as 31.05.2019; which is patently untrue, in the light of the petitioner’s



admission that it had made changes in the body of the petition at the time of re-filing. This, in my considered opinion, is an entirely unacceptable practice. Even the fact that when the petition was initially filed no court fees was affixed, the vakalatnama was undated, the accompanying statement of truth was incomplete and lacked critical information, and the supporting affidavit made reference to documents which were not even annexed to the petition remains undisputed. However, the most glaring defect at the time of the initial filing as also the only re-filing done prior to 14.07.2019 was that even a copy of the award which the petitioner sought to assail, was not annexed with the petition. I am unable to comprehend as to how a petition seeking to assail an order, an award in this case, without even annexing a copy thereof can be claimed as a valid filing and that too without even moving an application seeking exemption from filing a copy of the impugned award.

19. It is obvious that the original petition, as filed on 31.05.2019, and only running into 83 pages was a careless and deliberate attempt on the petitioner's part to somehow stop the clock on limitation amounting to a clever manoeuvre to buy time. In fact even after the original petition was received back by the petitioner's counsel on 01.07.2019 with defects being pointed by the Registry, the petitioner did not take any steps to file a copy of the impugned award while re-filing the petition on 11.07.2019, i.e., within the extended period of limitation of 3 months and 30 days which expired on 14.07.2019. In fact, even as per the petitioner's admission, the impugned award was filed for the first time, belatedly, on 31.07.2019. I am of the view that the petitioner's failure to file the impugned award along with the petition at the time of filing on 31.05.2019 or at the time of its re-filing on 11.07.2019, both falling within the period of limitation, cannot be underplayed as a 'trivial' defect but is a defect of such gravity that it would render the original filing as a mere dummy filing.



26. Returning to the facts of the present petition, I find that regrettably, the petitioner has failed to provide any justifiable reason, much less a sufficient reason to seek condonation of delay. The petitioner's explanation in the application as also the additional affidavit is wholly perfunctory, vague and demonstrate the alarmingly lackadaisical approach of the petitioner in complying with general filing practice and the statutory requirements under Section 34 of the Act. In fact the petitioner has merely made a bald averment that the delay had been caused due to repeated objections being raised on the petition by the Registry, which took time to cure. On the contrary the logbook maintained by the Registry shows that most of the defects raised by the Registry at the very first instance of filing on 04.06.2019 were not rectified till as late as 18.09.2019, which indicates that the petitioner was at fault for not removing the objections in a timely manner and the reasons sought to be advanced by it are not at all bonafide. Thus, even if the delay in question were to be treated as a 'delay in re-filing', the petitioner's explanation for the delay being vague, unsubstantiated, insufficient and contrary to the record is liable to be rejected."

4. Aggrieved by the dismissal of the Petitions under Section 34 Act, 1996 on the threshold without considering the merits, the present Appeal has been preferred.

5. **Learned counsels for the Appellants** have submitted that the Petition was filed on 31.05.2019, which was within the limitation of three months as prescribed under Section 34 of the Act, 1996. However, there was a delay in re-filing the petition after curing the defects pointed out by the Registry, the condonation of which is not subject to the inelastic rigors of Section 34(3) Act, 1996. Reliance has been placed on



Northern Railway vs. Pioneer Publicity Corporation Private Limited (2017) SCC 11 SCC 234, M/s Himachal Futuristic vs. I.T.I Limited 2017 SCC OnLine Del 8522 and Indian Statistical Institute vs. M/s Associated Builders and Others (1978) 1 SCC 483.

6. It is further submitted that there is no statutory requirement to file the impugned Award along with a petition under Section 34 of the Act, 1996. Thus, the learned Single Judge ought to have considered the application for condonation as one for re-filing the petition. Further, the Practice Directions issued by the Hon'ble High Court dated 30.08.2010 show that the record of arbitral proceedings as well as the Award would be called from the Arbitrator once Notice is issued on a petition under Section 34 of the Act, 1996. It is their assertion that the Award was thus, never envisaged to be a necessary part of the Petition. Even the subsequent Practice Direction dated 28.04.2016 only require that a copy of the Award has to be served to the opposite party in advance and nothing more.

7. It has been stated that according to *Rule 3, Chapter 4 of the Delhi High Court Original Side Rules, 2018* the court can only consider the filing at the end of the consolidated 30 day period granted for curing defects. Thus, the court cannot consider the deficiencies in every filing/re-filing made before these 30 days. The petition comprised of 374 pages at the end of the stipulated 30 days of the filing and underwent minimal changes thereafter by way of addition of 8 more pages when the petition was cleared by the Registry.

8. The filing of the Award was just a basic requirement, which could not have formed the basis for dismissing the petitions outrightly without



the merits being considered. Reliance has been placed on Ambrosia Corner House Private vs. Hangro S Foods 2023 SCC OnLine Delhi 517

9. **Learned counsel for the respondents** have vehemently contended that the initial filing of the petition under Section 34 of the Act, 1996 that was made on 31.05.2019 was *non-est* and void as it did not comply with the minimum requisites for filing a valid petition. The date asserted to be the date for re-filing in fact is the date of first filing which is beyond the period prescribed under Section 34(3) of the Act. Therefore, the Objections have been rightly dismissed by the learned Single Judge as being beyond the period prescribed under Section 34(3) of the Act.

10. Reliance has been placed on Vidya Drolia and Ors. vs. Durga Trading Corporation (2021) 2 SCC 1; Brahmaputra Cracker and Polymer Ltd v. Rajshekhar Construction Pvt Ltd, 2023 SCC OnLine Del 516; P. Radha Bai and ors vs Ashok Kumar, (2019) 12 SCC 445; Chintels India Limited vs Builders Private Limited, (2021) 4 SCC 602; Bhimashankar Sahakari Sakkare Karkhane Niyamita vs Walchandnagar Industries Ltd. (WIL), 2023 SCC OnLine SC 382.

11. **Submissions heard and the record perused.**

12. Before evaluating the filings in the present case, it would be pertinent to reproduce Section 34(3) of the Act which reads as under :

“Section 34

...

(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.”*

Period of Filing and Re-Filing:

13. A plain reading of Section 34(3) of the Act, 1996 shows that the statutory period of limitation for filing the Objections under Section 34 of the Act, 1996 against the Award is three months. As per the Proviso to the Section, an extended period of 30 days is available and the Court has powers to condone the delay provided, sufficient cause is shown for not filing the petition within the statutory period.

14. The Apex Court in Union of India vs. Popular Construction, (2001) 8 SCC 470 observed that the legislative intent of providing a strict and non-flexible limitation period should not be defeated by condoning the delay without sufficient cause. One of the main objectives as stated in the Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act, was the need to minimize the supervisory role of Courts in the arbitral process. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in the following terms:

“5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”

15. It was concluded by the Apex Court that the scheme and history of the 1996 Act supports the conclusion that the Time-Limit prescribed under



Section 34 is absolute and unextendible by Court under Section 5 of the Limitation Act, 1963 in view of the expression language of Section 34 (3) of the Act.

16. In Simplex Infrastructure Ltd. vs. Union of India 2019 (2) SCC 455, the Apex Court interpreted the words “*but not thereafter*” in Section 34 (3) of the Act, 1996 and held that not a day beyond 120 days from the day of receipt of the Award, can be condoned by the Court.

17. The Limitation Period of 3 months plus 30 days is inelastic and inflexible, and any delay of even one day beyond this period cannot be condoned by the Court as has been held by the Hon’ble Supreme Court of India in the Union of India vs. Popular Construction (supra) and Simplex Infrastructure Limited (supra).

18. From an analysis of the limitation period for filing an Appeal under Section 34 of the Act, the question for consideration is in the present Appeals is: **when can the filings be considered as validly made for the purpose of calculation of the prescribed period of 3 months and 30 days.**

Difference between a non-est filing and re-filing:

19. **Section 34 (3) of the Act, 1996 only prescribes limitation with regard to filing an application to challenge the Award.** However, for ascertaining the date of first filing, the nature of defects noted in the Petition plays a significant role.

20. In this regard, what assumes importance to adjudicate the date of commencement of three months, is the nature of defects. The Single



Judge of this Court in Ashok Kumar Parmar v. D.C. Sankhla, 1995 RLR 85, held that the emphasis should be on the nature of defects found in the plaint. **If the defects are formal or ancillary in nature not affecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.** On the other hand, if the defects are of such character that would render a plaint a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. The Division Bench upheld this view in D.C Sankhla v. Ashok Kumar, 1995 (1) AD (New Delhi) 753

21. In Durga Construction Company (supra), the Division Bench of this Court explained the distinction between *non-est* filing and re-filing. It was observed that the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be re-typed. In such a case where the initial filing is within the period of 120 days as specified in **Section 34 (3) of the Act, 1996** but the re-filing is beyond this period it cannot be said **that the Court lacks jurisdiction to condone the delay in re-filing.**

22. It was further held in DDA vs Durga Construction (supra), in some situations, **where a party's petition or application is so blatantly insufficient or flawed and they contain flaws that are essential to the institution of the proceedings, their filing would be deemed *non-est* and meaningless.**

23. In order to have a correct perspective of the Objections taken to



the filing of the Petition under Section 34 of the Act, 1996 in the three cases, the defects in filing pointed out by the Registry have to be examined to discern if they are ancillary or fatal in nature.

24. It would be pertinent to refer to the log information of all the three Petitions. Apart from the number of pages filed, the same objections were raised in all three Petitions by the Registry. The Log Information has been reproduced as under:

Filing	FAO(OS)(COMM) 81/2020	FAO(OS) (COMM) 82/2020 (No of Pages)	FAO(OS) (COMM) 83/2020 (No of Pages)
First filing Dated 31.05.2019	<i>(i)Total 84 pages filed without bookmarking without pagination. (ii)Award not filed. No documents filed. (iii)Court fee be paid. (iv)Prayer is missing in the petition. (v)Tribunal should not be made a party. (vi)In addition to the e-filing, it is mandatory to file hard copies of the fresh matters filed under Sections 9, 11 and 34 of the ARB. ACT 1996 with effect from 22.10.2018 but the same was not filed along with the e-filing. The petition was accordingly returned for re-filing on 04th June, 2019.</i>	83 pages -do-	87 pages -do-



First re-filing 11.07.2019	<i>Total 84 pages filed without removing all previous objections. Please remove all previous objections. Hard file be submitted.</i>	83 pages -do-	87 pages -do-
Second re-filing 31.07.2019	<i>Total 374 pages filed. Caveat Report be obtained. Four parts format be allowed strictly. Tribunal should not be made a party. Delay in re-filing. 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.</i>	430 pages -do-	334 pages -do-
Third re-filing 12.09.2019	<i>Total 382 pages filed. Caveat Report be obtained. Please correct the parties name at the time of filing. Hard file be submitted.</i>	441 pages -do-	347 pages -do-
Fourth re-filing 18.09.2019	Refiling accepted and case sent before the Single Bench of this Court	Refiling accepted	348 pages
Fifth re-filing 23.09.2019	—	—	Refiling accepted

Non-filing of the Copy of the Award:

25. The first deficiency in the filing of the Objections under Section 34 of the Act, 1996 was that the Award was not filed along with the Petitions. A question arises if an application filed under Section 34 of the Act, 1996 which is not accompanied by a certified copy of the Award despite having



received the Award, should be considered as a formal or a fatal defect.

26. The significance of filing of the Award along with the Section 34 Petition can be understood by referring to Section 39 of the Arbitration Act, 1940 which provides for an Appeal against an Order setting aside or refusing to set aside an Award. Section 41 of the Arbitration Act, 1940 requires the form and contents of an appeal under Section 39 to be in accordance to the provisions of the CPC i.e. Order XLI Rule 1 CPC as held in Superintending Engineer and ors vs B Subba Reddy, (1999) 4 SCC 423.

27. Pertinently, such a specification has been excluded in the Act, 1996; in fact, the applicability of CPC has been specifically excluded under Section 19(1) of the Act, 1996. The Act, 1996 does not specify any such procedure or the documents to be accompanied while filing objections against an Award . However, the rules for a proper and valid filing have been applied as general principles of law over the years. Thus, defects in filing must not be of such nature that makes the filing hopelessly inadequate that it fails to hold the character of an application/petition under Section 34 of the Act, 1996.

28. In the case of Vidya Drolia (supra), the Supreme Court explained that the intention of legislators to provide Section 34 of the Act, 1996 in its present form was to have a limited review of the Award instead of a full-fledged appeal process. The limitation prescribed under Section 34(3) is bound with the right to file objections itself. The objections must be relatable to the limited grounds provided under Section 34(2) of the Act. *A party intending to object to an award, is first required to file an application under Section 34 (1) indicating the objections along with the copy of an award and other necessary documents, which are*



required as proof to satisfy grounds provided under Section 34(2)(a) and (b) of the Act. Such complete petition is required to be filed within the time period prescribed under Section 34 (3) of the Act, failing which the appeal is rendered nugatory.

29. Further, it was the legislative intent to provide fixed time frame for filing the petition under Section 34 which was required to be strictly adhered to so as to make the arbitration time bound and commercially prudent.

30. It is pertinent to note that the Apex Court in Chintels India Limited vs Builders Private Limited, (supra) observed that an application under Section 34 of the Act, 1996 must not only be within the time prescribed under Clause 3 of Section 34, **but must also be in compliance with Section 34(2) & (2A) by setting out the grounds on which the application is made.**

31. The pre-requisite of filing a copy of the impugned Award along with the Petition under Section 34 of the Act, 1996 has been emphasised by this Court in Executive Engineer vs Shree Ram Construction, (2010) 120 DRJ 615(DB) and SKS Power Generation (Chhattisgarh) Ltd. vs ISC Projects Private Limited, 2019 SCC OnLine Del 8006.

32. The Division Bench of this Court in Oil and Natural Gas Corporation Ltd vs Joint Venture of Sai Rama Engineering Enterprises & Megha Engineering and Infrastructure Limited, (2023) SCC OnLine Del 63 had observed that though Section 34 of the Act, 1996 does not prescribe any particular procedure for filing an application to set aside an award, it definitely has to set out the grounds on which the application is made. It was also held that **the application has to be accompanied by the impugned Award as it would otherwise be impossible to appreciate the grounds**



upon which the Award is challenged. It was observed as under:

*"42. We may also add that in given cases there may be a multitude of defects. Each of the defects considered separately may be insufficient to render the filing as non est. However, if these defects are considered cumulatively, it may lead to the conclusion that the filing is non est. In order to consider the question whether a filing is non est, the court must address the question whether **the application, as filed, is intelligible**, its filing has been authorised; **it is accompanied by an award**; and the contents set out the material particulars including the names of the parties and the grounds for impugning the award."*

33. Further, in Brahmaputra Cracker and Polymer Ltd v. Rajshekhar Construction Pvt Ltd, 2023 SCC OnLine Del 516, the single bench of this Court held as under:

*"15. A petition under Section 34 represents a challenge to the award rendered by the Arbitral Tribunal. A petition which is not accompanied by a copy thereof cannot possibly be understood or recognised as a valid challenge presented under Section 34. **The non-filing of the award would clearly amount to a fundamental defect. This since the award would constitute an essential element of the filing and be liable to be viewed as an inviolable prerequisite. A petition purporting to be under Section 34 of the Act which neither carries the grounds on which the award is assailed or one which fails to annex a copy of the same cannot possibly be construed or accepted as an action validly initiated under Section 34 of the Act.** It becomes pertinent to note that non-filing of an arbitral award was recognised to be a fundamental defect and one which would clearly render the filing to be non est both in **Bharat Biotech** as well as in **Oil and Natural Gas Corporation Ltd.** The basic precept of a non est filing was succinctly explained by the Division Bench in **Durga Construction Co.** to be a petition*



or an application filed by a party which is so hopelessly inadequate or suffering from defects which are clearly fundamental to the institution of the proceedings. Clearly therefore and if the aforesaid basic precepts are borne in mind, it is manifest that a petition which purports to be under Section 34 of the Act cannot possibly be countenanced or accepted as such unless it is accompanied by a copy of the award.

16. The Court also bears in mind that the filing of a petition or an attempted filing of a petition under Section 34 unaccompanied with a Statement of Truth or the award should not be lightly countenanced especially where the same may be merely presented in order to stall the limitation period prescribed in Section 34 from commencing. Such attempts have to be clearly discouraged and disapproved. It is to ward off that greater mischief which convinces the Court to hold that the filing of a copy of the award and the submission of the Statement of Truth must be recognised to be foundational, basic and indispensable requirements of a petition under Section 34 of the Act."

34. Learned counsel on behalf of the appellant had placed reliance on the case of Ambrosia Corner House (supra), wherein the Single Judge of this Court had held the 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 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.

35. Further, it is observed that the reliance placed by the Counsels for



the Appellants on *Practice Direction* issued by the Hon'ble High Court dated 30.08.2010 providing for the summoning of the entire Arbitral Record by the Court, is misplaced. A procedure enabling the Court to summon the Arbitral record cannot be equated with the requirement of the petitioner to file a petition accompanied by an Award. The arbitral record is of the entire proceeding which may be called subsequently, only when merit is found in the Petition under Section 34 of the Act, 1996 in the first instance, which the Court would be handicapped if Award is not filed in the first instance.

36. 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 outright 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, 1996.

37. The Award is, therefore, an absolute essential for the Court to proceed further, meaning thereby that the Court cannot proceed further until the Award is filed. The first step would commence only on filing of



the Award and therefore, effective date of filing necessarily would be the date of filing of Award in support of the Petition and till then it cannot be considered valid filing. The necessary corollary is that non- filing of the Award is a fatal defect making the filing as *non-est*.

38. In the cases under consideration, in the present Appeal, the objections had been filed without being accompanied by the Award, which has been belatedly filed only on second re-filing dated 31.07.2019, which is beyond the period of three months and thirty days. **It is a defect which is fatal and makes the initial filing on 31.05 2019 and subsequent dates of re-filing till 31.07.2019, as *non-est*.**

Non-mentioning of the Prayer:

39. Admittedly, no prayer paragraph was included in the Objections filed on 31.05.2019.

40. In this regard a reference may be made to the principle expounded in Trojan & Co. Ltd vs Rm. N. N. Nagappa Chettiar, 1953 SCR 780 wherein it was held that the prayer clause in a plaint indicates the relief that is sought by the filing party and the *court is not entitled to grant a relief that was not asked for*. Thus no relief can be granted without a corresponding prayer in the prayer paragraph. Similar observations were made in Bharat Amratlal Kothari & Anr. vs. Dosukhan Samadkhan Sindhi & Ors., (2010) 1 SCC 234.

41. Applying these principles in the present case, a Petition under Section 34 of the Act, 1996 without a prayer to set aside the impugned Award, cannot be considered as the valid petition as such petitions



would merely amount to empty submissions without a relief. Without there being any Prayer, it cannot be deciphered what relief is being sought on the basis of the averments made in the Petition. Thus, without seeking relief, the Petition at the outset is not maintainable rendering it to be *non-est*.

42. To conclude, the defects of not filing the impugned Award and specifying the prayer in the Petition were corrected only on 31.07.2019 (2nd re-filing), which would have to necessarily be considered as the first valid filing in the Court.

Number of pages filed:

43. Interestingly, at the time of first filing on 31.05.2019 OMP.(COMM) 399/2019 [FAO(OS)(COMM) 82/2020] comprised of 84 pages, 83 pages in OMP (COMM) 408/2019 [FAO(OS)(COMM) 81/2020] and 87 pages in OMP (COMM) 407/2019 [FAO(OS)(COMM) 83/2020]. The number of pages in the **first re-filing** which was done on 11.07.2019 remained the same as at the time of first filing. Interestingly, at the time of **second re-filing** on 31.07.2019 the number of pages increased to 374, 430 and 334 respectively.

44. It has been observed by the learned Single Judge that the petitions filed subsequently not only contained the prayer paragraph for the first time but essentially the entire framework of the Objections were changed:

“It is obvious that the original petition, as filed on 31.05.2019, an only running into 83 pages was a careless and deliberate attempt on the petitioner’s part to



somehow stop the clock on limitation amounting to a clever manoeuvre to buy time. In fact even after the original petition was received back by the petitioner's counsel on 01.07.2019 with defects being pointed by the Registry, the petitioner did not take any steps to file a copy of the impugned award while re-filing the petition on 11.07.2019, i.e., within the extended period of limitation of 3 months and 30 days which expired on 14.07.2019. In fact, even as per the petitioner's admission, the impugned award was filed for the first time, belatedly, on 31.07.2019. I am of the view that the petitioner's failure to file the impugned award along with the petition at the time of filing on 31.05.2019 or at the time of its re-filing on 11.07.2019, both falling within the period of limitation, cannot be underplayed as a 'trivial' defect but is a defect of such gravity that it would render the original filing as a mere dummy filing."

45. We concur with these findings of the learned Single Judge as the subsequent petitions that were filed on 31.07.2019 were not a copy of what was filed in the first instance, but essentially a new petition with new averments. When the entire contents of the petition itself has been changed, it cannot relate back to the first filing. **Therefore, the first date of filing has to be necessarily to be 31.07.2019.** This date is clearly beyond the period of three months and thirty days from the date of Award which is 14.03.2019 as prescribed under Section 34 of the Act, 1996, as rightly held by the learned Single Judge.

Curability of defects:

46. The requirement of filing a complete petition has been amply emphasised in the analysis above. Such incomplete Petitions without a



prayer clause which are also unaccompanied by the impugned Award cannot be accepted as a valid filing as the time limit for filing objections under Section 34 of the Act, 1996, is inelastic. Thus, it is beyond any doubt that a complete petition has to be filed within this time frame of 3 months and 30 days under Section 34(3) of the Act, 1996, which the appellant has failed to do.

47. We find it absolutely unacceptable for parties to expect incomplete filings with such fundamental defects to be kept on hold until they are lackadaisically cured by the petitioner way after the limitation period has expired. If even arbitration related proceedings are caught in the cob web of such delays, the whole purpose of choosing arbitration as an alternate dispute resolution, would be rendered otiose.

Whether the Period prescribed under Section 34(3) of the Act, 1996 can be extended on establishing Sufficient reasons for delay:

48. It is pertinent to mention that while three months is given as time for filing the objections as a matter of right, a concession of thirty more days is given but it is circumscribed by the condition that “*sufficient cause*” has to be disclosed.

49. Section 5 of the Limitation Act, 1963, though not applicable in this case, is *pari materia* to the Proviso to Section 34(3) Act, 1996 as it contains a similar pre-requisite for Condonation of Delay. The Apex Court in Sesh Nath Singh and Anr vs Baidyabati Sheoraphulli Co-operative Bank Ltd, (2021) 7 SCC 313 addressed the question of whether it is mandatory to file an application under Section 5 of the Limitation Act, 1963 for a court to



grant relief under the said Section. It was observed that had such an application been mandatory, Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the Appeal or making the application within such period. *Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. It was thus concluded, that the court has discretion to condone the delay without a formal application; however, such a relief cannot be claimed as a matter of right, by an applicant, without making out any grounds seeking condonation.*

50. Similarly, in *Proviso* to Section 34(3) of the Act, 1996 there is no mention of filing of an application seeking an extension/ condonation of the delay by 30 days. Thus, a formal application for seeking extension of time by thirty days may not be necessary but to avail the extension of time, petitioner has to establish that sufficient reasons can be made out from the petition itself.

51. The Court could have thus, given the benefit of 30 days even without an application if “*sufficient cause*” is made out from the Petition under Section 34 of the Act, 1996 or is otherwise explained. In the present case, it seems that the appellants were under the impression that the first filing on 31.05.2019 was well within the time and thus, did not seek any further extension of thirty days under proviso to Section 34(3) of the Act. Moreover, once the date of filing has been held as 31.07.2019 which is



beyond the prescribed mandatory period of 3 months and 30 days, no amount of explanation can make the petition maintainable.

Application for Delay in Re-filing:

52. It has been argued by the counsels for the Appellants that the date of first filing ought to be considered as the date of filing for the purposes of limitation and not the subsequent re-filings made after the removal of defects. It had been agitated that in the present case, the delay was not in filing the objections which was within the time period prescribed under Section 34(3) of the Act, but the delay was in re-filing. The question of whether the court should in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevented re-filing the petition/ application within time. The rules for condonation of delay in re-filing is not circumscribed by Section 34 of the Act, 1996. Moreover, the stringent rules for considering the reasons for delay under Section 34 of the Act, 1996 are not strictly applicable while considering the explanation for re-filing. Also, there is no time frame prescribed for re-filing once the filing has been done within the given time frame.

53. It was also held in Durga Construction Company (supra) that the cases of delay in re-filing are different from the cases in delay in filing in the first instance in as much as the party has already evinced its intention to take recourse to the remedies available in the Courts and also taken steps in this regard. It cannot be thus, assumed at the stage of re-filing that the party has given up its rights to avail the legal remedies. In the absence of any specific statute that limits the jurisdiction of the Court in considering the question of



delay in re-filing, it cannot be accepted that the Courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing of the application.

54. As we have observed above, the date which the petitioner is claiming to be the date of filing is erroneous since the initial filing was *non-est* and the date of filing in fact has been held as 31.07.2019 i.e. the second re-filing, which is beyond the prescribed period under Section 34 of the Act, 1996. Any amount of explanation for condoning the delay thereafter is strictly barred under Section 34 of the Act, 1996. The Application of the petitioner seeking condonation for delay in re-filing before the learned Single Judge, was untenable since the filing itself is held as beyond the prescribed period. Undoubtedly, the Rules for delay in re-filing are not as stringent and limited by any time frame but even for re-filing, there has to first be a filing. In the present case, when the first filing itself is beyond the prescribed time and not maintainable, there was no occasion to consider an Application for condonation of delay in re-filing.

55. For the academic purpose, we may consider the reasons given in the condonation Application explaining the delay. It reads as under:

“3. It is respectfully submitted on account of several defects point out by registry in voluminous appeal filed it took long time to came the defect and some extra days wore in getting file approved for Union of India. One of the defects pointed out by registry was to give email address the respondents which against took same extra days to objection removed.”

56. From the reading of the entire petition including the reasons provided in the application for condonation of delay in re-filing, no cogent reason has been disclosed by the appellants for their inability to



file a complete petition with a period of three months. Be that as it may, even if this court were to condone the delay to the extent of granting thirty days beyond the period of three months, then too it would be of no avail to the appellants as the first valid filing was on 31.07.2019, which is beyond the inelastic period of three months and thirty days i.e. beyond 120 days from the date of receipt of a copy of the Award from the learned Arbitrator.

Conclusion:

57. From the above discussion, it is amply established that the law has been crystallised that the requirement of the strict timeline provided in Section 34 of the Act, 1996 has to be abided by filing a complete Petition. The limitation period under Section 34 cannot be stretched by parties through dummy filings which cannot be construed as valid as they are *non-est*. The object of providing a narrow limitation period under Section 34 was to ensure the expeditious enforcement of Arbitral Awards. If such dummy filings are legitimised, then the whole object of providing a strict limitation period is defeated.

58. **We thus, conclude** that Learned Single Judge has rightly concluded that the initial filing on 31.05.2019 was *non-est* for the reasons of being without Award, filing of unsigned Petition, subsequent substantial increase in number of pages and, Petition not supported by Statement of Truth. **The first valid filing has been done only on 31.07.2019, which is beyond the time frame prescribed under Section 34(3) of the Act, 1996 i.e. 120 days from receipt of a copy of the Award from the learned Arbitrator, which is not extendable under any**



circumstances.

59. We find no merit in the appeals, which are hereby dismissed with pending applications, if any.

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 19, 2023

Ek/va