



2024:DHC:5618



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **O.M.P. (COMM) 128/2023****DELHI DEVELOPMENT AUTHORITY**PetitionerThrough: Mr. Dayan Krishnan, Sr. Adv.
with Mr. Sanjay Katyal, Ms. Chand Chopra,
Standing Counsel with Mr. Sukrit Seth, Mr.
Shreedhar Kale, Ms. Neha Bhupathiraju,
Advs.

versus

**GAMMON ENGINEERS AND CONTRACTORS PRIVATE
LIMITED (GAMMON)**RespondentThrough: Mr. Abhay Raj Varma, Mr.
Arjun Rekhi and Mr. Anshay Dhatwalia,
Advs.**CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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26.07.2024**IA 6578/2023 & IA 6579/2023**

1. These are applications by the Delhi Development Authority, as a Section 34¹ petitioner in these proceedings, and seek condonation of

¹ 34. **Application for setting aside arbitral award.—**

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application establishes on the basis of the record of the arbitral tribunal that—

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

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delay in filing and re-filing of the present petition.

2. Mr. Abhay Raj Verma, learned Counsel for the respondent, raised an objection that the initial filing of this petition was *non est* and that, therefore, the petition has not been filed within the maximum period of 120 days permissible under Section 34(3) of the 1996 Act read with the proviso thereto².

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or
(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

² (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

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3. This Court, therefore, called for the filing record of this matter. It is seen from the record that all that was filed on 15 March 2022 were 59 pages with no documents whatsoever attached. It is a conceded position that even the award under challenge was not filed on 15 March 2022.

4. Mr. Verma also points out that, apart from being unaccompanied by the any document, the petition contained no ground, adverted to the facts of some other case and was not signed by the petitioner.

5. Applying the principles laid down in *U.O.I. v. Panacea Biotech Ltd.*³ the filing on 15 March 2022 cannot be treated as a proper filing at all. It is, in fact, a *non est* filing, to use a term coined by this Court as explained in *Boston Scientific India Pvt. Ltd. v. Advanced Medtech Solutions Pvt. Ltd.*⁴

6. This Court has repeatedly held that, while technical defects may not render a filing *non est*, where the petition is filed unaccompanied by any documents and, particularly, when a Section 34 petition is filed unaccompanied even by the award under challenge, the filing has to be treated as no filing at all in the eyes of law; in other words, *non est*.

7. Apart from the individual defects that the Registry has pointed out in the present case, the following entries to be found under the head “other defects information”:

thirty days, but not thereafter.

³ Order dt. 19 December 2023 in FAO (OS) (Comm) 81/2020

⁴ 2023 SCC OnLine Del 4656

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“Description of any other Defects: total 59 pages filed, no bookmarking done, no master index filed, no affidavit attested, no documents filed, no bookmarking done, nothing filed properly, cannot raise proper objections be filed properly for proper scrutiny and listing of the petition.”

8. The petition, as re-filed on 28 February 2023, contains as many as 350 pages. Only 59 pages were filed originally on 14 March 2022, with no documents accompanying the petition whatsoever.

9. 14 March 2022 was the last date on which the petition could have been filed even if one were to permit condonation of delay of 30 days as is permissible under the proviso of Section 34(3) of 1996 Act.

10. Inasmuch as the time periods contemplated by Section 34(3) are mandatory and non-negotiable, it is not possible for this Court to entertain the present petition as it has been effectively filed beyond 120 days from the date of receipt of the award under challenge.

11. For the aforesaid reasons, therefore, these applications are dismissed.

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12. This petition is also, therefore, dismissed on the ground of delay.

C. HARI SHANKAR, J

JULY 26, 2024

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Click here to check corrigendum, if any

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