



2024:DHC:6600



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

+ O.M.P. (COMM) 397/2023, I.A. 18946/2023, I.A. 18947/2023
& I.A. 18948/2023

GOOD HEALTH AGRO TECH PVT LTDPetitioner

Through: Mr. Dhruv Gupta, Ms. Yagya
Singh and Mr. Indrajith Prabhakaran, Advs.

versus

HALDIRAM SNACKS PVT LTDRespondent

Through: Mr. Varun Goswami, Mr. Sahil
Agarwal, Mr. Hritik Chaudhary, Ms.
Shourya Mehra and Ms. Arpita Mishra,
Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

% **29.08.2024**

1. Mr. Varun Goswami, learned Counsel for the respondent raised a preliminary objection to the maintainability of this petition, on the ground that it was filed beyond 120 days from the date of receipt of the arbitral award under challenge.

2. I have heard the learned Counsel for both sides on this aspect.

3. Undisputedly, the impugned arbitral award was received by the petitioner on 31 March 2023. The present petition under Section 34 of the Arbitration and Conciliation Act 1996¹ first came to be filed on 25

¹ "the 1996 Act", hereinafter



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July 2023. It was returned with defects, where after it was re-filed on 19 September 2023 (though Mr Goswami, learned Counsel for the respondent, contends that it was refiled on 25 September 2023).

4. Mr. Dhruv Gupta, learned Counsel for the petitioner, has drawn attention to a Notification dated 17 May 2023, issued by this Court while making arrangements for the summer vacations in 2023. Note 5 in the said notification read thus:

“5. Limitation will not run during the vacation period for purposes of institution of Civil and Criminal cases.”

Mr. Dhruv Gupta's contention is that, if one were to reckon limitation from 31 March 2023, and if limitation were come to a halt during the summer vacation, the petition, as first filed on 25 July 2023, was within the normal period of 90 days contemplated by Section 34(3)² of the 1996 Act.

5. Though Mr. Goswami has sought to submit that the stipulation regarding the limitation not running during vacations, as contained in note 5 in the notification dated 17 May 2023 would apply only to cases in which limitation for filing the proceeding expires during vacations, and is intended to enable the party to, in such a case, file the proceedings on the first day of re-opening. Note 5 of the notification does not explicitly so state, though that is the normal understanding of the legal position.

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



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6. For the purposes of the present order, therefore, I proceed on the premise that 25 July 2023, on which date, the petition is stated to have been first filed, was within the normal period of 90 days available under Section 34(3) of the 1996 Act.

7. Mr. Goswami submits that, even if this were the position, the filing of this petition on 25 July 2023 is a *non est* filing and, therefore, the petition has to be taken as first having been filed in September 2023 whether it is on the 19th or the 25th. In either event, he submits that, as 120 days from the date of the receipt of the award had expired by then, the petition cannot be entertained.

8. The fate of the petition, therefore, turns on whether the filing of the petition on 25 July 2023 was a *non est* filing or a valid filing.

9. In the present case, the filing of the petition on 25 July 2023 was admittedly unaccompanied by any document, including the impugned arbitral award. All documents, including the impugned arbitral award, came to be first filed in September 2023.

10. Mr. Dhruv Gupta places reliance on the decision of the Coordinate Bench of this Court in *Ambrosia Corner House Pvt Ltd v Hangro S Foods*³.

11. On facts, there can be no gainsaying the similarity between the

period of thirty days, but not thereafter.

³ 2023 SCC OnLine Del 517



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position which obtained before the Coordinate Bench in *Ambrosia Corner House* and that which obtains in the present case. In that case, too, the initial petition was filed without any documents and the documents, including the impugned arbitral award, came to be filed separately in Part IV of the paper book after 120 days from the date of receipt of the arbitral award had expired.

12. The Coordinate Bench gave an expansive interpretation to the earlier decision of the Division Bench of this Court in *ONGC v Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd (Meil)*⁴ and held that, even if no documents were filed with the petition, that would not inexorably render the filing *non est*. Paragraph 19 of the decision in *Ambrosia Corner House* sets out the conclusion of the Coordinate Bench thus:

“19. In the present case, the learned counsel for the petitioner has submitted that the petition filed on 26.07.2022 was the same as the petition filed on 04.07.2022. The petition as filed on 04.07.2022 was duly signed by the Director of the petitioner Company on all pages of the petition, and even by the counsel for the petitioner, whose vakalatnama was also filed with the petition. From the perusal of the index of the petition filed on 04.07.2022, as supplied by the learned counsel for the petitioner during the course of the hearing, it appears that the petitioner also was to file the documents, including copy of the Impugned Award, in a separate e-folder, that is, part IV as prescribed in the Delhi High Court (Original Side) Rules, 2018. The same appears to have not been filed. The petitioner has thereafter re-filed the petition after removing the defects on 26.07.2022, wherein all documents, including the Impugned Award was filed. In my opinion, therefore, the first filing on 04.07.2022 cannot be treated as ‘non-est’ filing. At best, the petitioner committed an error in not filing the documents in a separate folder as prescribed in the Delhi High Court (Original Side) Rules, 2018.”

⁴ 2023 SCC OnLine Del 63



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13. I must confess that I have my reservations regarding the correctness of paragraph 19 of the decision of the Coordinate Bench in *Ambrosia Corner House*, *vis-à-vis* the decision in *ONGC*. Paragraph 41 of the decision of the Division Bench in *ONGC* specifically concludes thus:

“41. 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.”

(Emphasis supplied)

14. The tenure of the judgment of the Division Bench in *ONGC*, therefore, appears to be that a bare petition unaccompanied by any documents, including the impugned arbitral award, cannot be treated as a filing at all, but has to be regarded as *non est*. Therefore, it may be questionable whether it is possible to interpret *ONGC* as regularising the filing of a petition which is unaccompanied by any documents.

15. It is not necessary, however, to travel into that terrain, as another Division Bench of this Court has spoken on the issue in *UOI v Panacea Biotec Ltd*⁵. After considering several decisions of this Court on the point, the Division Bench has clearly held that a Section 34 petition, *unaccompanied by a copy of the award under challenge, has to be treated as non-est*. Paragraphs 36 to 38 of the decision in *Panacea Biotec* read thus:

⁵ (2024) 2 RCR (Civil) 14: 2023 SCC OnLine Del 8491



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“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.”

(Emphasis supplied)

16. Mr. Dhruv Gupta sought to distinguish the decision in ***Panacea Biotec*** by pointing out that the initial filing in that case was beyond the normal period of 90 days available under Section 34(3) of the 1996 Act. That, in my view, is irrelevant to the issue. The question of whether the initial filing is within 90 days or beyond 120 days from date of the receipt of the impugned arbitral award assumes any



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significance only if the initial filing is valid. If the initial filing is *non est*, it is no filing at all in the eyes of law.

17. The aforesaid extracted paragraphs from ***Panacea Biotec*** clearly hold that a Section 34 petition unaccompanied by the impugned arbitral award cannot be treated to have been filed at all and that the filing of such a petition has to be regarded as *non est*.

18. The decision in ***Panacea Biotec***, rendered as it is by a Division Bench, has clearly to be accorded precedence over ***Ambrosia Corner House***.

19. In the present case, not only was the petition, as filed on 25 July 2023, unaccompanied by the impugned arbitral award; it was unaccompanied by any document whatsoever. All documents which were required to accompany the petition were filed only in September 2023.

20. In that view of the matter, it is not possible to regard the filing of the petition on 25 July 2023 as a valid filing in the eyes of law. It is, to reiterate the phrase coined by this Court in such cases, a *non est* filing. The first filing has, therefore, to be treated as having been effected in September 2023, which is beyond 120 days from the date of receipt of the impugned arbitral award.

21. The Court cannot condone the delay in filing of a Section 34 petition beyond 120 days from the receipt of the impugned arbitral



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award.

22. Resultantly, the petition is dismissed as barred by time.

C.HARI SHANKAR, J

AUGUST 29, 2024/aky

Click here to check corrigendum, if any