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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P. (COMM) 15/2020, I.As. 434-35/2020
COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH
..... Petitioner

Through: Mr.Abhinav Hansaria, advt.
versus

ECOCARE BIOLUBE INDAI PVT LTD Respondent

Through: Mr.Abhishek Kaushik and
Mr.B.Rajunath, Advts.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
23.02.2024

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1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act for setting aside the award dated 25.04.2019. Learned counsel for the petitioner by way of an affidavit dated 28.04.2023 has submitted that the petitioner was served with the arbitral award only on 16.06.2019.
2. Learned counsel submits that the additional pages that were filed later on were the documents including the arbitral award, as he received the same later in time. Learned counsel has placed reliance on the order dated 07.08.2019 in *Council of Scientific and Industrial Research vs. Sharma Kalypso Pvt. Ltd.*, O.M.P. (Comm) 401/2018 wherein it has *inter alia* been held that even if the award is not filed, it cannot be held as a non-est filing.
3. Be that as it may be. The log sheet placed on record indicates that the



present case was filed on 05.09.2019. The primary objections as recorded and raised on 16.09.2019 are as under:

Description of any other Defects:

~ Total 33 pages filed without bookmarking without pagination.

~ Court fee be paid. Please file in the correct category.

~ Please mention the specific value of the pecuniary jurisdiction.

~ Affidavit not attested.

~ No documents filed.

~ No award 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.

~ Date of award=25/04/2019 & Date of filing=05/09/2019; 133-90=43 days delay in filing.

4. Further on 16.09.2019, it was also noted that the following common defects were found:

<i>Defect Code</i>	<i>Defect name</i>
201	<i>Caveat report be obtained and at the time of each subsequent refiling and proof of service be filed.</i>
202	<i>Fresh Notice of Motion upon Counsel for concerned respondent be filed if 3 days have elapsed since the date of last service. Any amendments done in the petition should also be informed/served to the opposite/concerned party.</i>
207	<i>..</i>
209	<i>Petition/ applications/ annexures/order/power of attorney should be stamped / court fees short or missing</i>
210	<i>Petition/ applications/ mop/ index/ power of attorney be signed and dated by petitioners and advocate</i>



212	<i>Affidavit be filed in support of petition/appeal/application and attested/identified. Parental details/Age/complete address be given. Necessary averments be given since the affidavit has been signed in Vernacular. No modification is allowed. It should be re-typed and attested.</i>
227	<i>Petition/application be properly classified/correct nomenclature be given / how is the application is maintainable</i>
230	<i>Application for condonation of delay in filing/refiling be filed along with affidavit.</i>
237	<i>Vakalatnama be filed / dated and signed by the counsel and all petitioners. each advocate must mention their name/ address/ enrolment no. mobile number in vakalatnama. title on the vakalatnama be checked. welfare stamp be affixed. signature of the client be identified.</i>
253	<i>One-time pf to be filed by the plaintiff at the time of filing of the plaint/suit/petition and by the defendant at the time of filing of the written statement. CH-I, R-13 -VI, R-2 -2018</i>
260	<i>Pecuniary and territorial jurisdiction be given CPC -2018</i>
265	<i>Full name parentage and other particulars including email id address mobile no.describing each party be given in memo of parties. CH-III R-C ORDER OF DB IN WPC</i>
278	<i>It be specified in the index, in whose custody, power, control and possession the document(s) is/are and the basis on which such statement is made. CH-IV, R-1(D) -2018</i>
293	<i>A specific averment with regard to commercial dispute as per commercial court act be given before the pecuniary valuation para of the plaint.</i>



	<i>correct category code be given and verified practice direction no. IX DT. 17.11.2015 Commercial Courts Act, 2015 -2018</i>
294	<i>Statement of truth be filed as per Commercial Courts Act, 2015. entire pleadings be signed by the plaintiff/petitioner O XI- R-1(3) OF CPC (amended) BY Commercial Courts Act, 2015 -2018</i>
304	<i>Advance copy of petition/application filed u/s – 9, 11, 14, 15, 27, 34, 37 of arbitration and conciliation act. 1996 be served upon opposite party CH-III R-6 -2018</i>
305	<i>Advance copy of petition/application filed u/s – 9, 11, 14, 15, 27, 34, 37 of arbitration and conciliation act, 1996 be served upon on nominated counsel/empanelled advocates of Union of India/state government/statutory authority/ public sector undertakings and not directly on such authorities CH-III R-6 -2018</i>
318	<i>List of documents be filed as per order xi of CPC amended by the Commercial Courts Act, 2015 Order XI, Rule 1(2) of CPC (amended) by Commercial Courts Act, 2015 -2018</i>
336	<i>Should be typed in 1.5 line spacing with 14 font size in PDF/OCR format. CH-III, R-1(II) -2018.</i>

5. It is also to be noted that initially only 33 pages were filed and subsequently on 23.11.2019, 292 pages were filed.
6. 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 later followed in the judgment dated 19.12.2023 ***Union of India vs. Panacea Biotech Limited***, FAO (OS) (Comm) 81/2020, has *inter alia* held 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."

7. In ***Brahmaputra Cracker and Polymer Ltd v. Rajshekhar Construction Pvt Ltd***, 2023 SCC OnLine Del 516, the co-ordinate bench of this Court *inter-alia* 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.”

8. Therefore, it has been repeatedly decided by this court in a catena of cases that failing to file the Award with the petition in accordance with Section 34 of the A&C Act, 1996, constitutes a fatal flaw and renders the filing *non-est*. The objections under Section 34 must be based on justiciable reasons as specified by Section 34(2), since these grounds can only be determined by examining the learned arbitrator’s Award. The filing of an Award is not a pointless procedural requirement since, in the absence of the Award, the Court is unable to understand the arguments raised in the objection Petition and, consequently, cannot determine whether the Petition should be granted notice or rejected outright. It is also pertinent to mention that the Court is required to see the cumulative effect of the objections raised by the registry.
9. In the case under consideration, the present petition had been filed without being accompanied by the Award and various other documents,



which have been belatedly filed only on re-filing dated 23.11.2019, which is beyond the period of three months and thirty days. It is a defect which is fatal and makes the initial filing on 05.09.2019 and subsequent dates of re-filing till 13.01.2020, as *non-est*.

10. Hence the petition along with the pending applications is dismissed.

DINESH KUMAR SHARMA, J

FEBRUARY 23, 2024

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