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

+ O.M.P. (COMM) 11/2024 & I.As. 210-212/2024

UNION OF INDIA

..... Petitioner

Through: Mr. Mukul Singh, CGSC with Ms.
Ira Singh & Mr. Majjari Umesh,
Advocates.

versus

M/S GANDHARV INFRASTRUCTURE
AND PROJECTS PRVT. LTD

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER
12.02.2024

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1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"] is directed against an arbitral award dated 14.08.2022, and an additional award dated 28.09.2022.
2. It is accompanied by an application for condonation of 189 days delay in refiling [I.A. 212/2024]. The application states that the petition was originally filed on 03.01.2023, but could not be refiled until 22.04.2023. Subsequent marking of defects and refiling dates have also been mentioned. The petition was finally cured of all defects sometime in December, 2023.
3. It is evident from the record that the court fees were deposited on 21.12.2023, the affidavit in support of the petition was attested on



01.06.2023, and the statement of truth was attested on 02.12.2023.

4. By an order dated 05.01.2024, Mr. Mukul Singh, learned Central Government Standing Counsel for the petitioner, was given time to file an additional affidavit placing on record the petition and the accompanying documents in exactly the form in which they were filed on 03.01.2023, to enable the Court to take a view as whether the original filing is sufficient so as to constitute a proper filing or was entirely *non-est*. Mr. Singh submits that the affidavit has not been filed as the original filing could not be reconstructed.

5. However, he has handed over the log details showing the defects marked during the scrutiny. The same is taken on record. The defects marked by the Registry on 04.01.2023, record that the filing was of 41 pages, the affidavit was not attested and the award was not filed. The award available on the record of this Court now is of approximately 182 pages. Mr. Singh accepts that the award was not filed when the petition was originally filed. This is also apparent from the fact that only 41 pages were then filed, which are far less than the volume of the award.

6. Several judgments of this Court have considered the question of *non-est* filing of the petition under Section 34 of the Act, including two recent judgments of the Division Bench. The fact that filing of the award itself is an essential pre-requisite for the exercise of Section 34 jurisdiction is clear from the judgement in *ONGC v. Sai Rama Engineering Enterprises* [2023 SCC OnLine Del 63] and the judgement dated 19.12.2023 in *Union of India v. M/s Panacea Biotec Limited* [FAO (OS) (COMM) 81/2020] and connected matters. In *Panacea Biotec* [*supra*], the Court regarded the non-filing of the award *per se* as a fatal



defect rendering the original filing *non-est*.

7. In the present case, it is evident from the application for condonation of delay itself that the defects marked on 04.01.2023 were cured, at the earliest, on 22.04.2023. Computing the period of limitation even from the date of the additional award i.e., 28.09.2022, the limitation period of three months under Section 34(3) of the Act would expire on 27.12.2022, and the maximum condonable period of 30 days, under the *proviso* of Section 34(3) would expire on 26.01.2023. As the original filing on 03.01.2023 was *non-est*, and the petition was refiled only on 22.04.2023, the limitation must be reckoned keeping 22.04.2023 as the original date of filing. Such filing was barred by limitation by more than 30 days, which is not condonable under the Act.

8. The petition is, therefore, barred by time and rejected for these reasons. All pending applications also stand disposed of.

PRATEEK JALAN, J

FEBRUARY 12, 2024

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