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

+ O.M.P. (COMM) 77/2024 & I.A. 3150/2024

PRAGATI CONSTRUCTION CONSULTANTS ..... Petitioner  
Through: Mr. S.S. Sastry, Mr. Priyank Goel,  
Mr. Umesh Kumar, Advocates.

versus

UNION OF INDIA ..... Respondent  
Through: Mr. Shashank Garg, CGSC with  
Ms. Nishtha Jain, Ms. Aradhya  
Chaturvedi, Mr. Deepak Tanwar,  
Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE PRATEEK JALAN**

% **ORDER**  
**23.02.2024**

1. On the last date of hearing i.e. 09.02.2024, an objection was raised by Mr. Shashank Garg, learned Central Government Standing Counsel, that the petition is barred by limitation.
2. The admitted position is that the impugned award was made on 02.08.2023 and received on 04.08.2023. The first filing of the petition was on 01.11.2023, within the period of 3 months provided under Section 34(3) of the Arbitration and Conciliation Act, 1996 ["the Act"]. However, Mr. Garg raised the contention that the filing was *non est, inter alia* on account of non-filing of the impugned award and *vakalatnama* in favour of learned counsel for the petitioner.



3. The filing details and details of the defects marked were called from the Registry. It is clear therefrom that the original filing was of 111 pages (as opposed to the 2151 pages on record) and amongst other defects, the award and *vakalatnama* were not filed. This defect is recorded on several subsequent dates of marking of defects.

4. Mr. S.S. Sastry, learned counsel for the petitioner, upon review of the e-log information and verification at his end, confirms that the award and *vakalatnama* were not filed until after the maximum condonable period of 30 days, under the proviso to Section 34(3) of the Act, had already lapsed.

5. Judgments of the Division Bench of this Court on this point do not admit of any ambiguity – a petition filed without a copy of the award is a *non est* filing. In *Oil and Natural Gas Corporation Ltd. vs. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & Ors.* [FAO(OS)(COMM) 324/2019, judgment dated 09.01.2023], a Division Bench of this Court observed as follows:

*“32. It is material to note that Section 34 of the A&C Act does not specify any particular procedure for filing an application to set aside the arbitral award. However, it does set out the grounds on which such an application can be made. Thus, the first and foremost requirement for an application under Section 34 of the A&C Act is that it should set out the grounds on which the applicant seeks setting aside of the arbitral award. It is also necessary that the application be accompanied by a copy of the award as without a copy of the award, which is challenged, it would be impossible to appreciate the grounds to set aside the award. In addition to the above, the application must state the name of the parties and the bare facts in the context of which the applicants seek setting aside of the arbitral award.”*

6. This position has been reiterated in another judgment of a Division Bench of this Court in *Union of India vs. M/s Panacea Biotech Limited* [FAO(OS)(COMM) 81/2020, dated 19.12.2023] beyond the pale of



doubt:

*“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.”*

7. It is Mr. Sastry’s submission, however, that the contents of the petitions were not amended. In my view, this submission is of little significance in a case where the award was itself missing.

8. The conclusion that the petition in the present case is barred by limitation is therefore unavoidable. The petition is therefore dismissed and all pending applications stand disposed of.

**PRATEEK JALAN, J**

**FEBRUARY 23, 2024**  
**‘Bhupi’/**