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

+ O.M.P. (COMM) 492/2024

SSN DATA SOLUTIONS PVT LTD

.....Petitioner

Through:

versus

DYNAMIC REALINFRA PVT LTD

.....Respondent

Through: Mr. Prashant Sivarajan, Mr. Justine George, Ms. Shreya Singh Thakur, Mr. T.P. Aravind, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

20.11.2024

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I.A. 45604/2024 (Exemption)

Allowed, subject to all just exceptions.

O.M.P. (COMM) 492/2024, I.A. 45605/2024

1. The Petitioner has approached this Court by filing the present Petition under Section 34 of the Arbitration & Conciliation Act challenging an Award dated 30.04.2024 passed by the Sole Arbitrator.
2. It transpires that the Petition was filed on 06.08.2024 without the copy of the award. The award was filed only on 09.11.2024. It has consistently been laid down by this Court that a challenge to an award without the award being on record is no challenge at all and the filing is *non est*. This Court in its judgment dated 29.10.2024 in O.M.P. (COMM) 419/2023, titled as Vasishta Mantena NH04 JV & Ors. v. Blacklead Infratech Pvt Ltd, has held as under:



“17. A petition under Section 34 of the Arbitration & Conciliation Act is for challenging the Award. It cannot be said that a challenge to the Award without the award itself being filed would be a valid filing. Without the Award, the challenge would become meaningless because unless the Award is perused by the Court, it cannot test or adjudicate on the correctness of the Award. An application under Section 34 of the Arbitration & Conciliation Act filed without an Award and vakalatnama can only be a bunch of papers filed only to save the limitation.

*18. A Division Bench of this Court in Oil & Natural Gas Corporation Limited v. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & M/s Megha Engineering & Infrastructure Limited (MEIL), **FAO (OS) (COMM) 324/2019**, has observed as under:-*

*"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.**"* (emphasis supplied)



19. *This Court is not going into other defects which have been pointed out for it is of the opinion that without an Award there cannot be a challenge under Section 34 of the Arbitration & Conciliation Act. It is not the case of the Petitioner that he did not have the copy of the Award which he sought to challenge by way of the present petition. The Award was with the Petitioner on 24.05.2023 and there is no reason forthcoming as to why the copy of the Award was not filed. The filing on 21.08.2023 was therefore a non-est filing.”*

3. Section 34(3) of the Arbitration and Conciliation Act prescribes the period within which a challenge to an award can be made. Section 34(3) of the Arbitration and Conciliation Act reads as under:-

“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. The filing that took place on 06.08.2024, without the copy of award is *non est*. It cannot be taken as a valid filing. The defects are cured on 09.11.2024 which is much beyond the period of limitation as prescribed under Section 34(3) of the Arbitration and Conciliation Act.

5. It is a settled law that a petition filed beyond the period prescribed under Section 34(3) of the Arbitration and Conciliation Act, cannot be



entertained.

6. In view of the above, this Court has no other alternative but to dismiss the petition on the ground that it is barred by time. Resultantly, the Petition is dismissed.

SUBRAMONIUM PRASAD, J

NOVEMBER 20, 2024

Rahul