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

+ **FAO (COMM) 136/2024, CM APPL. 40508/2024**

**IRRIGATION AND FLOOD CONTROL DEPARTMENT, GOVT
OF NCT OF DELHI**Appellant

Through: Mr. Sameer Vashisht, Standing
Counsel (Civil), GNCTD with Mr.
Vedansh Vashisht & Mr. Swapan
Singhal, Advocates.

versus

INTEGRATED TECHNO SYSTEMS PVT. LTD.....Respondent
Through: Mr. Suman kumar Thakur, Adv.

CORAM:

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

% **06.05.2025**

1. The present appeal has been filed challenging the Order dated 07.06.2024, passed by the learned District Judge (Commercial Court-01), Karkardooma Courts, in OMP (COMM) 1/24, by which the learned District Judge has dismissed the Petition filed by the Appellant herein under Section 34 of the Arbitration and Conciliation Act 1996 challenging the Arbitral Award dated 31.08.2023, passed by the learned Sole Arbitrator in arbitration proceedings between the Appellant and the Respondent herein.

2. This Court, at this juncture, is not going into the disputes between the parties as the same is not relevant for adjudication of the present appeal. Undisputedly, the award was passed on 31.08.2023. Section 34(3) of the



Arbitration Act, which prescribes limitation within which a challenge to an award can be made, reads as under:

“34 (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 period of thirty days, but not thereafter.”

3. A perusal of the said Section shows that a challenge to an arbitral award can be made within three months from the date of passing of the award or from the date of receiving a copy of the award. A grace period of 30 days can be provided on the condition that the delay is properly explained as to why the petition under Section 34 of the Arbitration Act was not filed within three months. There is no dispute that the period of limitation is to be calculated from 31.08.2023 itself. Therefore, the challenge to the arbitral award ought to have been made on or before 01.12.2023. In the present case, the petition under Section 34 of the Arbitration Act was filed on 16.12.2023. Material on record indicates that the petition had been filed with the following defects:

S. No.	E-Filing No.	Parties	Reasons for Rejection	Case E-filed	Rejected on
34	ADL20230010122C20300002	Integrated Techno Systems Pvt Ltd. Vs Irrigation & Flood Control Department, Govt of NCTD	Please file in OCR Bookmark Format, Mention Page no. in Index, Enclose Case Information Form, Vakalatnama, Affidavit, Court Fees, Documentsetc.	16.12.2023 12.49.17	18.12.2023 14.40.39



4. A perusal of the defects shows that neither the *Vakalatnama* nor the affidavit had been filed. The defects were, thereafter, cured on 13.02.2024 which is well beyond the last permissible date i.e., 31.01.2024.

5. The Full Bench of this Court in Pragati Construction Consultants v. Union of India, **2025 SCC OnLine Del 636**, has elaborately considered the issue as to what is non-est filing. Relevant paragraph of the said Judgment reads as under:

“97. We summarise our answer to the reference, as under:

(a) Non-filing of the arbitral award along with an application under the Section 34 of the A&C Act would make the said application liable to be treated and declared as non est, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing.

(b) Mere non-filing of the statement of truth or a defect in statement of truth being filed, that is, including with blanks or without attestation, would not ipso facto, make the filing to be non est. However, if accompanied with other defects, the court may form an opinion, based on a cumulative list of such defects, that the filing was non est.

(c) Similarly, non-filing or filing of a defective vakalatnama; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court-fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as non est. However, presence of more than one of such defects may, in the given set of



facts involved in a case, justify the conclusion of the court that filing of the application was never intended to be final and therefore, is liable to be declared non est.”

6. In the present case neither the *Vakalatnama* nor the affidavit had been filed at the first instance. Since neither the *Vakalatnama* nor the affidavit had been filed at the first instance and applying the law laid down by the Full Bench of this Court in Pragati Construction Consultants (supra), it can be safely said that the filing was a *non-est* filing.

7. In view of the above, this Court is not inclined to interfere with the Order of the learned District Judge.

8. The facts of the case reveal that case record is not available with the learned Counsel appearing for the Appellant. In case records are made available to the learned Counsel it is found that a proper *Vakalatnama* was filed with the Petition under Section 34, it is open for the State to file a Review Petition in accordance with law.

9. With these observations, the present appeal is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

HARISH VAIDYANATHAN SHANKAR, J

MAY 6, 2025

Rahul