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

+ O.M.P. (COMM) 208/2024, I.A.10382/2024, I.A.10384/2024 & I.A.20652/2025

Date of Decision: **27.11.2025**

IN THE MATTER OF:

EBIXCASH PVT. LTD & ANR.

.....Petitioners

Through: Mr. Manish Vashisht, Sr. Adv with
Mr. Harsh Sethi, Mr. Sukhrpeet
Maan, Mr. Sankalp Mishra, Mr.
Anant Nigam and Mr. Raghav, Advs.

versus

HARSH AZAD & ANR.

.....Respondents

Through: Mr. Uttam Datt, Sr. Advocate with
Ms. Sonakshi Singh, Mr. Kumar
Bhaskar and Mr. Naman Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G E M E N T

PURUSHAINDRA KUMAR KAURAV, J. (ORAL)

This application under Section 34 of the Arbitration and Conciliation Act, 1996 ("A&C Act"), assails the arbitral award dated 30.08.2023 ("the Award") passed by the learned Sole Arbitrator. Along with the petition, an application bearing no. I.A. 10384/2024 has also been filed seeking condonation of the delay of 170 days in re-filing the petition.

2. The initial filing of this petition had taken place on 18.10.2023 *vide* Diary No.1941248, which was within the overall statutory limitation.

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Signed By:AMIT KUMAR
SHARMA
Signing Date:06.12.2025
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Signed
By:PURUSHAINDRA
KUMAR KAURAV



3. The defects were pointed out by the Registry on 19.10.2023 and the same remained unrectified for more than six months. The petitioner re-filed the petition only on 23.04.2024, thereafter on 01.05.2024, 04.05.2024, and finally on 06.05.2024. It is, thereafter, the petition was registered. The final filing comprises of 3,973 pages.

4. The initial filing contained only 126 pages, and there were several defects such as:

- (i) *The index and memo of parties were left blank and unsigned.*
- (ii) *The statement of truth and affidavits were unsigned and undated.*
- (iii) *No vakalatnama was filed.*
- (iv) *No Court fee was filed.*
- (v) *No process fee was filed.*
- (vi) *No pagination, no bookmark and no caveat report were placed on record.*
- (vii) *In the synopsis it has been mentioned and highlighted in yellow 'to be finalised at the time of approval of the draft'.*

5. It, thus, appears that a set of rough papers without any memo of parties have been dumped with the Registry, with the copy of the arbitral award. These cumulative deficiencies render the first filing *non-est* in the eyes of law.

6. The full Bench of the Court in the case of ***Pragati Construction Consultants v. Union of India***¹ observed that, where, a filing suffers from multiple, substantial defects, such defects may indicate that the filing was never intended to be a complete or final presentation, thereby rendering it liable to be treated as *non est*. Relying upon the said principle, this Court in



*Union of India v. GR-GAWA R (JV)*² determined that when essential corrections and material additions are carried out after expiry of the limitation period, the so-called initial filing amounts to nothing more than an attempt to arrest the running of limitation, and does not constitute a bona fide invocation of Section 34 of the A&C Act. The said view now stands affirmed by the Division Bench *vide* judgment dated 30.10.2025 in FAO(OS) COMM 107/2025.

7. Mr. Manish Vashisht, learned senior counsel appearing for the applicant, however, seeks to distinguish the applicability of ***Pragati Construction*** to the facts of the present case. He contends that, unlike in the precedents relied upon by the opposite side, the initial filing in the present matter had already incorporated the substantive grounds of challenge and the final draft did not materially deviate from what was originally filed. He further submits that even a copy of the impugned award had been enclosed with the initial filing. Therefore, the foundational deficiencies that were found to be fatal in ***Pragati Construction*** and in subsequent decisions are conspicuously absent herein, and the principles laid down therein cannot be mechanically applied to the present case.

8. On a careful examination of the application initially filed, it is evident that the same does not contain even a basic memo of parties indicating the identity of the applicant and the respondent(s) against whom the challenge under Section 34 of the A&C Act is sought to be mounted. The mere enclosure of a copy of the arbitral award cannot, by any stretch, be regarded as sufficient compliance so as to treat other defects as curable. When viewed

¹ 2025 SCC OnLine Del 636

² O.M.P. (COMM) 38/2025



cumulatively, the omissions in the initial filing are fundamental and go to the very root of the matter, thereby rendering the filing *non est* in the eyes of law. There has to be clear intention of the party demonstrated by corresponding action to challenge an arbitral award. In the instant case, who had filed the award along with a proposed draft of the application is not discernible from the initial memo of parties. The full names and details of the applicant and respondents are conspicuously absent. There is no memo of parties at all, only a format is filed.

9. Furthermore, the explanation furnished by the petitioner for the delay in re-filing, namely, that time was required for scanning the documents, is equally untenable. The arbitral proceedings were conducted entirely in a virtual format, and the documents relied upon by the Petitioner are already in digital form. The PDF metadata clearly indicates that the petition and annexures were not printed and subsequently scanned. In any case the aforesaid aspect would have no relevance when the Court has found that the initial filing was *non est* in the eyes of law.

10. In light of the above discussion, this Court finds no merit in the application seeking condonation of the delay in refiling as the initial filing was a *non est*. The same is accordingly dismissed.

11. All pending applications are also disposed of.

PURUSHAINDR KUMAR KAURAV, J

NOVEMBER 27, 2025

aks/tr/mj.