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

+ **ARB. A. (COMM.) 53/2024 & I.A. 44755-44757/2024**

**M/S. MSD TELEMATICS PVT. LTD. & ANR. ....Appellants**

Through: Mr. Murari Kumar, Ms. Pragya Verma and Mr. Mayank Kumar Verma, Advocates.

versus

**MR. ASHMEET SINGH .....Respondent**

Through: Mr. Arvind K. Gupta, Mr. Prateek Solanki, Mr. Abhiesumat Gupta and Mr. Nikhil Malhotra, Advocates.

**CORAM:**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

% **14.07.2025**

**ARB. A. (COMM.) 53/2024**

1. This appeal under Section 37(2b) of the Arbitration and Conciliation Act, 1996 has been filed by the Appellants, thereby challenging the order dated 28.10.2023 ['impugned order'] passed by the learned Sole Arbitrator in arbitral proceedings bearing REF. NO. DIAC/4209/05-22. By the said impugned order, the learned Sole Arbitrator while allowing the interim reliefs sought by the Respondent herein, directed the Appellants herein to deposit a sum of Rs. 3 Crores in a fixed deposit with a nationalised bank and thereafter to deposit the fixed deposit receipt with Delhi International Arbitration Centre ['DIAC'].

2. Learned counsel for the Appellants states that I.A. 44757/2024 has been filed by the Appellants seeking condonation of delay of 283 days in re-



filing the captioned appeal.

2.1. He states that the delay in re-filing the captioned appeal has occurred as the documents to be filed in support of the appeal required time for coalition. He states, however, the time taken is bonafide and ought to be condoned.

2.2. He submits that on the merits of the challenge to the impugned order dated 28.10.2023, he would like to submit that the learned Sole Arbitrator has failed to appreciate that there was no prima facie case made out by the Respondent. He states that the apprehension of the Respondent that there would be no funds available with the Appellants, in case the final award is passed in Respondent's favour, was also without any basis.

2.3. He states that the subject matter of the arbitration is the Founder Exit and Settlement Agreement ['Buyout Agreement'] dated 31.12.2019, wherein under the Appellants has undertaken to purchase the shares of the Respondent. He states that the said shares are still in the custody of the Respondent.

2.4. He states that in these facts there was no occasion for the learned Sole Arbitrator to pass a direction for securing the amount. He states that as per the Appellants nothing is due and payable to the Respondent.

2.5. He states that the matter before the learned Sole Arbitrator is at the stage of final arguments and evidence has been concluded.

2.6. He submits that it is a matter of record that in OMP(ENF.)(COMM.) 60/2024, filed by Respondents for execution of the impugned order, the Appellants herein have taken a stand that the Appellants does not have money to satisfy the order. He states, however, that should not be relevant while deciding this appeal.



3. In reply, learned counsel for the Respondent states that the initial filing in this appeal was *non-est* as even the impugned order was not filed with the captioned appeal. He states that the details of the *non-est* filing of the appeal had been recorded by this Court in order dated 06.02.2025.

3.1. He states that the affidavit filed by the Appellants in OMP(ENF.)(COMM.) No. 60/2024 shows that the apprehension of the Respondent that the Appellants will frustrate the award is duly borne out. He states that there are no assets forthcoming for complying with the impugned order.

3.2. He states that the finding of the learned Sole Arbitrator at Paragraph Nos. 15, 16, 17, 24, 25 & 27 records sufficient reasons for passing the impugned order dated 28.10.2023.

3.3. He states that the Buyout Agreement dated 31.12.2019 was implemented and the Respondent has already resigned from the Board of Directors of the Appellant No. 1 Company.

3.4. He therefore submits that the captioned appeal is liable to be dismissed both on limitation and on merits.

4. This Court has heard the learned counsel for the parties.

5. With respect to the issue of condonation of delay in filing/re-filing the captioned appeal, the facts have already been set out in details in the order dated 06.02.2025 passed by the predecessor bench of this Court. The Appellants have not disputed the said facts. The appeal was initially filed on 28.11.2023 and marked by the registry for re-filing on 30.11.2023. However, the Appellants re-filed it only on 06.08.2024 and clear the defects by 07.11.2024.

The appeal was initially filed on 28.11.2023 within the statutory



period of limitation; however, the appeal was admittedly filed without the impugned order. In this regard it would be apposite to refer to the judgment dated 07.02.2025, passed by the Full Bench of this Court in the matter of **Pragati Construction Consultants v. Union of India and Anr<sup>1</sup>**, wherein it has been held that in case of objections filed under Section 34 of the Act of 1996, non-filing of the impugned arbitral award is a fatal defect and such a defect would make the filing *non-est*. The legal principle laid down in the said judgment would also be applicable to this appeal inasmuch as the initial filing on 28.11.2023 was done without the impugned order.

Additionally, in the facts of this case, while the appeal filed on 28.11.2023 was lying in defects, in the interregnum the Respondent filed enforcement petition i.e., OMP(ENF.)(COMM) No. 60/2024 and attachment order was issued on 10.05.2024. This triggered the Appellants to pursue the filing of the captioned appeal after a hiatus of eight (8) months on 06.08.2024. This is evident from their list of dates as well as paragraph 49 of this appeal, which pleads the order dated 10.05.2024 passed in OMP(ENF.)(COMM.) No. 60/2024. These facts admittedly could not have found mention in the memorandum of appeal purportedly filed initially on 28.11.2023.

The appeal paper-book on record is supported by an affidavit dated 15.01.2024, it however contains averments of facts that transpired on 10.05.2024. The statement of truth in support of the appeal is dated 07.08.2024. The dates of the affidavit and of the statement of truth as well as the contents of the memorandum of appeal [referring to order dated 10.05.2024] prove beyond doubt that this is not the memorandum of appeal

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<sup>1</sup> 2025:DHC:717-FB [at paragraph 63]



which was filed on 28.11.2023. The memorandum of appeal available before this Court is the one which was filed after 07.08.2024.

The facility afforded to a party and its counsel to file an appeal, remove defects marked by the registry does not entitle it to change and/or modify the contents of the memorandum of appeal. If the contents of the memorandum of appeal have been changed than the date of filing would have to be reckoned from the date when the modified memorandum of appeal is filed.

Therefore, in the facts of this case, the filing done on 28.11.2023 is held to be *non-est* and it is only when the appeal was re-filed after 07.08.2024 would be reckoned as the date of filing.

Admittedly, as on 07.08.2024, the appeal would be barred by limitation having been filed beyond statutory permissible period of 60 days.

6. Notwithstanding above, even if it is assumed that the initial filing was done validly on 28.11.2023, after the objections were marked by the registry on 28.11.2023, admittedly the Appellants failed to rectify the defects within the time granted and carried out the first re-filing on 06.08.2024. The Appellants did not take any steps between 28.11.2023 until 06.08.2024 to rectify the defects and for all purposes forgot about the appeal. The Appellants further re-filed the appeal on 12.08.2024 and last re-filed it on 06.11.2024 after removing the objections.

The Appellants reckoning the period of re-filing delay from 28.11.2023 and has sought condonation of delay of 283 days in I.A. no. 44757/2024. The reasons for this delay are set out in paragraph nos. 3 and 4 of I.A. no. 44757/2024, which are neither cogent nor persuasive. The reasons are absolutely vague and so general that they cannot even be



deliberated upon.

7. This Court is therefore satisfied that no sufficient cause has been shown for the delay in re-filing of the captioned appeal and therefore I.A. no. 44757/2024 is dismissed and the delay of 283 days in re-filing is not condoned.

8. In these facts the appeal is deemed to have been filed on 06.11.2024. Since an appeal under Section 37(2)(b) of the Act of 1996 has to be filed within 60 days after the passing of the impugned order on 28.10.2023, this appeal is clearly time barred.

9. Notwithstanding the aforesaid finding on limitation, this Court has also perused the impugned order dated 28.10.2023 and finds that the learned Sole Arbitrator has given a detailed finding on the prima facie case in favour of the Respondent herein [i.e., the claimant in the arbitration proceedings]. The findings returned on the prima facie case are set out in detail at paragraph nos. 14 to 22 of impugned order dated 28.10.2023. The counsel for the Appellants has not addressed any arguments on any error in the facts noted or the findings returned in the impugned order. The submission of the learned counsel for the Appellants that the impugned order does not record a prima facie finding in favour of the Respondent is incorrect.

10. The only other oral submission made by the learned counsel for the Appellants was that there was no occasion or material before the Sole Arbitrator to hold that the Appellants do not have sufficient funds to satisfy the records. This is also a ground in the appeal.

11. The submission of the learned counsel for the Appellants that the finding of the learned Sole Arbitrator at paragraph nos. 27 and 29 of the impugned order dated 28.10.2023, that Appellants do not have funds to



satisfy the final award, if it is passed in favour of the Respondent [i.e., the claimant] is without any basis, in the considered opinion is misconceived and incorrect.

12. The Respondent has filed an enforcement i.e., OMP(ENF.)(COMM.) 60/2024. The Appellants herein have filed its affidavit dated 16.12.2024 disclosing that it does not have any funds to comply with the directions of the learned Sole Arbitrator passed in the impugned order to make a fixed deposit of Rs. 3 crores. The said affidavit falsifies the pleas raised in this appeal and shows that the assessment of the learned Sole Arbitrator about the Appellants financial unworthiness was correct.

13. Learned counsel for the Respondent has submitted that Appellants are withholding details of bank accounts from this Court and the affidavit of assets filed in the enforcement petition is false. This aspect will be considered while deciding OMP(ENF.)(COMM.) 60/2024.

14. The Registry is directed to place a copy of the Appellant's affidavit dated 16.12.2024 filed vide e-diary no. 2579618/2025 on the record of OMP(ENF.)(COMM.) 60/2024.

15. In view of the aforesaid, this appeal is therefore dismissed both on merits and bared by limitation. Pending applications, if any, stands disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**JULY 14, 2025/mr/MG**