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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 13.01.2026
Judgment pronounced on: 03.02.2026

+ O.M.P. (COMM) 46/2024, CAV 27/2024, I.A. 1594/2024 (Stay), I.A. 1595/2024 (Ex. From filing complete record of arbitration proceedings), I.A. 1596/2024 (Delay of 59 days in re-filing the petition) & I.A. 45151/2024 (Delay of 29 days in filing petition)

EMPLOYEES STATE INSURANCE CORPORATION

.....Petitioner

Through: Ms. Geeta Luthra, Senior Advocate with Mr. Tamim Qadri, Mr. Rishabh Dahiya and Ms. Shivani Luthra Lohiya, Advocates and Mr. Bhaskar Kumar, SSO, ESIC in person.

versus

M/S MUKESH ASSOCIATES

.....Respondent

Through: Mr. S. Santanam Swaminadhan, Ms. Abhilasha Shrawat, Ms. Shivani Choudhary and Ms. Prerna, Advocates.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T**HARISH VAIDYANATHAN SHANKAR, J.**

1. The present petition filed under Section 34 of the **Arbitration and Conciliation Act, 1996¹**, read with Section 151 of the **Code of Civil Procedure, 1908²**, challenges the **Arbitral Award dated**

¹ A&C Act

² CPC



2026:DHC:829



02.06.2023³ passed by the learned Sole Arbitrator in Case Ref. No. DAC/897/03-15.

2. Before adverting to the merits of the challenge laid under Section 34 of the A&C Act, this Court deems it appropriate to first examine the aspect of condonation of delay and the plea of *non-est* filing raised in the present proceedings. The determination of these preliminary issues goes to the very root of the matter and would decide whether the present petition survives for consideration on merits.

3. Before proceeding further, it would be apposite to briefly set out the necessary and undisputed facts, insofar as they are relevant for the adjudication of the preliminary issue concerning limitation, which are delineated hereunder:

- (i) The Petitioner is a statutory corporation constituted under the Employees' State Insurance Act, 1948. The Respondent is a partnership firm engaged in architectural and engineering consultancy services. The parties entered into a Contract dated 03.06.2009 for providing consultancy services in relation to the proposed construction of an ESI Medical College and Hospital at Bhubaneswar, Odisha.
- (ii) Disputes arose between the parties with respect to payments claimed under various stages of the contract. The Respondent invoked arbitration, which culminated in the Arbitral Award passed by the learned Sole Arbitrator, whereby the claims of the Respondent were partly allowed and the counterclaims of the Petitioner were dismissed.

³ Arbitral Award



2026:DHC:829



- (iii) The Petitioner has sought to assail the aforesaid Arbitral Award by instituting the present petition under Section 34 of the A&C Act. Along with the said petition, the Petitioner had initially filed an application being ***I.A. No. 1596/2024*** under Section 151 of the CPC, seeking condonation of a delay of 59 days in re-filing the petition.
- (iv) Subsequently, upon a request made on behalf of the Petitioner, this Court granted liberty to file an appropriate application seeking condonation of delay in the filing of the main petition. Pursuant thereto, the Petitioner filed an application being ***I.A. No. 45151/2024*** under Section 5 of the **Limitation Act, 1963**⁴ read with Section 151 of the CPC, seeking condonation of a delay of 29 days in filing the petition. In support thereof, the Petitioner, *inter alia*, contended that the signed copy of the Arbitral Award was received only on 05.09.2023, in accordance with Section 31(5) of the A&C Act; therefore, the limitation for filing this petition would begin from that day.
- (v) The Respondent opposed the application seeking condonation of delay as well as the petition under Section 34 of the A&C Act, contending that the initial filing dated 02.10.2023 was *non est* in the eyes of law on account of fundamental defects and non-compliance with mandatory statutory requirements. It was further contended that the first valid filing of the petition was effected only on 20.01.2024, which was beyond the outer limit prescribed under Section 34(3) of the A&C Act, and consequently, the present petition is barred by limitation.

⁴ Limitation Act



2026:DHC:829



CONTENTIONS ON BEHALF OF THE PETITIONER

4. Learned senior counsel appearing on behalf of the Petitioner would contend that the delay in filing the petition under Section 34 of the A & C Act was neither wilful nor deliberate, but occasioned due to circumstances beyond the control of the Petitioner. It would be submitted that the limitation period could commence only upon receipt of a signed copy of the arbitral award in terms of Section 31(5) of the Act, which, according to the Petitioner, was received for the first time on 05.09.2023.

5. It would further be contended that mere receipt of a scanned or unsigned copy of the arbitral award by the Petitioner's counsel does not amount to valid delivery under Section 31(5) of the A & C Act, and consequently cannot trigger the period of limitation under Section A & C 34(3) of the Act. In support of this submission, reliance is placed on the decisions of the Hon'ble Supreme Court in *Union of India v. Tecco Trichy Engineers & Contractors*⁵, *State of Maharashtra v. ARK Builders Pvt. Ltd.*⁶, *Benarsi Krishna Committee v. Karmyogi Shelters Pvt. Ltd.*⁷, and *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies Pvt. Ltd.*⁸.

6. Learned senior counsel would submit that the delay, if any, deserves to be condoned as the Petitioner had acted with due diligence by initiating steps for legal consultation, engagement of counsel, and procurement of the signed copy of the award from the arbitral institution immediately upon realising that the same had not been formally served.

⁵ (2005) 4 SCC 239.

⁶ (2011) 4 SCC 616

⁷ (2012) 9 SCC 496

⁸ (2021) 7 SCC 657



2026:DHC:829



7. Learned senior counsel for the Petitioner would contend that the statutory requirement under Section 31(5) of the A & C Act mandates delivery of a signed copy of the arbitral award to the party itself. It would be submitted that, in the present case, the award was merely emailed to the Petitioner's counsel and that the **Delhi International Arbitration Centre**⁹, which was obligated to dispatch and formally serve the signed copy of the award upon the parties, failed to do so.

8. It would be further urged that neither the Petitioner was informed nor was the signed award dispatched to it in accordance with law, and therefore, mere receipt of a soft copy of the award by the counsel representing ESIC cannot be treated as valid service so as to trigger the limitation period under Section 34(3) of the Act.

9. It would also be contended by the learned senior counsel that the expression "*sufficient cause*" occurring in Section 5 of the Limitation Act is required to be construed liberally to advance the cause of justice, particularly where refusal to condone delay would result in a meritorious challenge being shut out at the threshold. In this regard, reliance would be placed on the Hon'ble Supreme Court's judgments in *Collector, Land Acquisition, Anantnag v. Katiji*¹⁰ and *Arun Ganguly v. Amaresh Ganguly*¹¹.

10. On merits of the award, learned senior counsel would contend that the arbitral award suffers from patent illegality, non-application of mind, and is contrary to the express terms of the contract. It would thus be urged that the learned Arbitrator ignored material evidence, exceeded the scope of reference, and granted claims for stages of work

⁹ DIAC

¹⁰ AIR 1987 SC 1353

¹¹ AIR 1987 SC 1353



2026:DHC:829



which were never executed, thereby rendering the award vulnerable to interference under Section 34 of the A & C Act.

CONTENTIONS ON BEHALF OF THE RESPONDENT

11. Learned counsel appearing on behalf of the Respondent would contend that the present petition under Section 34 of the A&C Act, is hopelessly barred by limitation and is liable to be dismissed *in limine*. It would be submitted that the initial filing purportedly made on 02.10.2023 was *non-est* in the eyes of law, as it suffered from fundamental and incurable defects, including the absence of a Statement of Truth, supporting affidavit, signatures on pleadings, vakalatnama, requisite court fee, and service upon the caveator.

12. It would further be contended that the first valid filing of the Petition was effected only on 20.01.2024, which is 107 days beyond the maximum outer limit of three months and thirty days prescribed under Section 34(3) of the Act. Consequently, no application for condonation of delay is maintainable in law, as the Court lacks jurisdiction to entertain a petition filed beyond the statutory period.

13. Learned counsel would submit that the Petitioner's explanation for delay is wholly vague, perfunctory, and bereft of particulars, reflecting a casual and lackadaisical approach to a statute which mandates strict adherence to timelines. It would be urged that administrative inefficiencies, internal approvals, or change of counsel do not constitute "*sufficient cause*" within the meaning of Section 5 of the Limitation Act.

14. It would be contended that the Petitioner, in its Additional Affidavit dated 21.08.2024, has categorically admitted receipt of the soft copy of the arbitral award on 05.06.2023 through its Senior



2026:DHC:829



Counsel and that steps were immediately initiated for engaging counsel to challenge the award. This admission, according to the Respondent, demolishes the Petitioner's plea that the limitation commenced only upon receipt of the signed hard copy on 05.09.2023.

15. Learned counsel would further argue that the initial filing on 02.10.2023 was a mere "*dummy filing*", intended only to create an illusion of compliance with the limitation and to obstruct the Respondent's enforcement proceedings under Section 36 of the A&C Act. Reliance would be placed on the email dated 23.11.2023 sent by the Petitioner's erstwhile counsel, which, according to the Respondent, clearly evidences that the petition was knowingly filed in a defective form and was not intended to be prosecuted diligently.

16. In support of the plea that a defective and incomplete filing cannot arrest limitation, learned counsel would place reliance on the judgment of this Court in **DDA v. Durga Construction Co.**¹², wherein it was held that a filing which lacks essential and foundational requirements is *non-est* and meaningless in law. Further reliance would be placed on the Division Bench's judgment of this Court in **ONGC v. Planetcast Technologies Ltd.**¹³, which authoritatively holds that non-filing of a Statement of Truth, absence of signatures, non-filing of vakalatnama, and substantially altered re-filings render the initial filing *non-est* and incapable of saving limitation.

17. It would also be contended that the Petitioner has failed to demonstrate "*sufficient cause*" arising within the period of limitation, as required in law. In this regard, reliance would be placed on the decision of the Hon'ble Supreme Court in **State of Madhya Pradesh**

¹² 2013 SCC OnLine Del 4451

¹³ 2023 SCC OnLine Del 8490



2026:DHC:829



*v. Ramkumar Choudhary*¹⁴, which clarifies that sufficient cause must be traceable to events occurring within the limitation period and not beyond it.

18. Learned counsel would further submit that the Petitioner, being a government body, is not entitled to any special indulgence in matters governed by the A&C Act and the Commercial Courts statute, where expedition and finality are the governing principles. It would be urged that condonation of delay in such cases is an exception and not the rule.

19. On these grounds, learned counsel for the Respondent would contend that the application for condonation of delay as well as the Section 34 petition are an abuse of the process of law and deserve to be dismissed at the threshold with exemplary costs.

ANALYSIS

20. This Court has heard learned counsel for the parties at length and, with their able assistance, perused the pleadings, documents placed on record, and the applicable statutory provisions.

I.A. NO. 45151/2024 (Application for seeking condonation of delay in filing the petition under Section 34 of the A&C Act)

21. At the outset, this Court is required to examine whether the Petitioner has made out any “*sufficient cause*” for condonation of delay in filing the petition under Section 34 of the A&C Act, and whether the initial filing made by the Petitioner can be treated as a valid filing in the eyes of law or is liable to be regarded as *non-est*. These issues are foundational and would determine the very maintainability of the present petition.

¹⁴ 2024 SCC OnLine SC 3612



2026:DHC:829



22. For the sake of convenience, the relevant chronology from the date of passing of the arbitral award till the date of the listing of the Petition before this Court is set out hereunder:

Date	Event	Statutory / Legal Consequence
02.06.2023	Arbitral Award passed	Award made
05.06.2023	Copy of the Award received by Petitioner through its Senior Counsel (<i>as admitted in the affidavit dated 21.08.2024 filed by the Petitioner</i>)	Limitation commences
05.09.2023	Completion of three (3) months period	Limitation under Section 34(3) expires
05.10.2023	Completion of a further 30-day period	The outer limit under the proviso to Section 34(3) expires
02.10.2023	Petition initially filed	Defective filing
03.10.2023	Registry defects notified	Foundational defects
09.10.2023	First re-filing	Defects not cured
30.10.2023	Second re-filing	Major objections remain
08.01.2024	Third re-filing	Major objections still remain
19.01.2024	Fourth re-filing	Still defective
20.01.2024	Petition validly re-filed and registered	Total Delay = 107 Days beyond 3 months and 30 days

23. At this juncture, this Court finds it apposite to reproduce the bare provision of Section 34 of the A&C Act, as the same is necessary for the proper adjudication of the present case:

“34. Application for setting aside arbitral award. -

(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

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O.M.P. (COMM) 46/2024

Page 9 of 25



2026:DHC:829



within a further period of thirty days, but not thereafter.

....”

24. A plain reading of Section 34(3) of the A & C Act makes it abundantly clear that the period prescribed therein is mandatory and inflexible. An application for setting aside an arbitral award must be filed within three months from the date of receipt of the award, extendable by a further period of thirty days, but not thereafter. The law in this regard has been succinctly laid down by the Hon’ble Supreme Court in *Chintels India Ltd. v. Bhayana Builders Pvt. Ltd.*¹⁵, which reads as follows:

“10. Sections 34(2) and (2-A) then sets out the grounds on which an arbitral award may be set aside. Section 34(3), which again is material for decision of the question raised in this appeal, reads as follows:

“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.”

11. A reading of Section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2-A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that Section 5 of the Limitation Act, 1963 does not

¹⁵ 2021 SCC Online SC 80



2026:DHC:829



apply and that any delay beyond 120 days cannot be condoned —
see *State of H.P. v. Himachal Techno Engineers* at para 5.”

(emphasis added)

25. The statutory timeline prescribed under Section 34 of the A & C Act has also been succinctly elucidated by the Gujarat High Court in *Manbhupinder Singh Atwal v. Neeraj Kumarpal Shah*¹⁶, wherein it has been held as under:

“30. Reliance is placed on the decisions of the High Court of Delhi in *Delhi Development Authority v. Durga Construction Co. and Union of India v. Bharat Biotech International Ltd.* to argue that in both the matters, the Delhi High Court has taken note of the decisions rendered by the Apex Court in dealing with the question as to whether the High Court have jurisdiction to condone the delay under Section 34(3) of the Arbitration Act, 1996 after a period of 3 months plus 30 days. It was placed before us that the purpose of specifying an inelastic period of limitation under Section 34(3) of the Act would have to be borne in mind, which means that no application under Section 34 can be permitted to be instituted beyond 3 months plus a further period of 30 days, which extension is permissible subject to showing sufficient cause.

31. It was further submitted that the question before the Delhi High Court in *Durga Construction* was for condonation of delay of 166 days in re-filing the application under Section 34 of the Act' 1996. In the said case, on the application filed under Section 34 on 24.07.2009, initially with the delay of 17 days, the registry of the Court raised certain objections and papers were returned under objections on the same date. The said application under Section 34 was then refiled on 24.08.2009 when it was again returned due to certain objections. Upon re-filing, on 22.12.2009 again, the registry raised certain office objections and returned the same. Ultimately, the application under Section 34 was finally re-filed on 06.01.2010 after removing all office objections. Thus, the question of condonation of the period of 166 days in re-filing of the application under Section 34 was the subject matter of consideration before the Delhi High Court, which was beyond the inelastic limitation period prescribed in Section 34(3) of the Act' 1996.

32. The Delhi High Court upon reading of the Delhi High Court Rules has opined that in absence of any specific statute, although the courts would have the jurisdiction to condone the delay, but the

¹⁶ 2025 SCC OnLine Guj 2200



2026:DHC:829



approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of the reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. It was opined that though the Court would have jurisdiction to condone the delay in re-filing, even if the period extends beyond the time specified in sub-section (3) of Section 34 of the Act, however, this jurisdiction is not to be exercised liberally considering the object of the Arbitration and Conciliation Act, 1996 to ensure that the arbitration proceedings are concluded expeditiously. The delay caused in re-filing cannot be permitted to frustrate the object of the Arbitration Act, 1996. In any case, the applicant/petitioner would have to satisfy the Court that it had persuaded the matter diligently and the delays were beyond his control and were unavoidable.

33. In another decision in *Bharat Biotech International Ltd.*, the question before the Delhi High Court was of condonation of delay in re-filing the applications under Sections 34 of the Arbitration and Conciliation Act, 1996. In the preliminary objections raised by the respondents therein, it was contended that the application when originally filed within the statutory period of limitation was merely a bunch of papers and could not be treated as being valid institution in the eyes of law. A complete and valid application under Section 34 was filed only beyond the date when the limitation period of 3 months and 30 days as prescribed under Section 34(3) of the Act had already expired. The Delhi High Court while considering the rigours of the proviso to Section 34(3) and the decision of the Apex Court in *Union of India v. Popular Construction Co.*, wherein it has been held that the Court cannot entertain an application to set aside an arbitral award beyond the extended period under the proviso to Section 34(3) of the Act, has concluded that the application for condonation of delay in re-filing the application under Section 34 beyond the time prescribed under Section 34(3) of the Act has to be considered in light of the object and purpose of the limitation prescribed under Section 34(3).

34. Considering its previous decision in *Durga Construction* of the Division Bench of the High Court of Delhi, it was noted therein that though the Court is empowered to condone the delay beyond the extended period of limitation of 3 months and 30 days, while considering the delay condonation application in re-filing an application under Section 34, but it is required for the party seeking the condonation to show that despite his diligence, the rectification of defects and re-filing could not be carried out within the limitation period, for the *bonafide* reasons beyond his control. It was noted that it is important for the Court to bear in mind the

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O.M.P. (COMM) 46/2024

Page 12 of 25



2026:DHC:829



legislative intent for prescribing the statutory period of limitation under Section 34(3) of the Act ensuring expeditious disposal of the arbitration proceedings and preventing delay in implementation of the arbitral award by parties who would malafidely challenge the same. It was observed that a liberal approach while dealing with an application for condonation of delay in challenging the arbitral award would only endanger and frustrate the purpose for which the Arbitration Act was enacted. It was noted by the Delhi High Court that since the applicant therein had demonstrated alarmingly lackadaisical approach in complying with general filing practice and the statutory requirements under Section 34 of the Act' 1996, the delay in re-filing the petition under Section 34 could not be condoned being vague, unsubstantiated, insufficient and contrary to the records.”

26. In the present case, the Petitioner has, in its Additional Affidavit dated 21.08.2024, expressly admitted that a copy of the Arbitral award was received through its Senior Counsel on 05.06.2023 and that steps were initiated thereafter for engaging counsel to challenge the award. This admission leaves no manner of doubt that the Petitioner had knowledge of and access to the award on the said date. The relevant portions of the Affidavit are reproduced hereinunder for reference:

“4. That the impugned award dated 02.06.2023 was passed on 02.06.2023 and the same was sent to the counsel for the petitioner as well as the senior counsel who was appearing for the petitioner through e-mail on 02.06.2023. The e-mail dated 02.06.2023 sent to the counsels specifically mentioned that three signed hard copies of the award will be sent to DIAC, one for DIAC and one for each party.

5. That the Ld. Sr. Counsel who was appearing before the Ld. Arbitrator sent a legal opinion to the petitioner on 05.06.2023 along with the soft copy of the award as received by the Ld. Arbitrator.

6. That the petitioner after receiving the mail from the Ld. Sr. Counsel started the process of appointing a lawyer to handle the case and start the process. The file was sent to various departments for approval of the lawyer to be engaged to look into the matter. In the meanwhile, there were many transfers and work allocation which took place in the petitioner's organization.”

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O.M.P. (COMM) 46/2024

Page 13 of 25



2026:DHC:829

*(emphasis added)*

27. This Court is unable to accept the contention that the limitation would commence only upon receipt of a signed hard copy of the award by the Petitioner. Delivery of the award to the authorised counsel of a party constitutes valid receipt for the purposes of Section 34(3), particularly when the party acts upon such receipt. The Petitioner, having admittedly acted upon the award received through counsel, cannot now contend that such delivery was inconsequential. The law in regard with the service of the award has been extensively laid down by the Division Bench of this Court in ***Kristal Vision Projects Private Limited v. Union of India***¹⁷, which reads as follow:

“29. Section 31(5) of the Act clearly requires that the Arbitral Tribunal shall deliver, a signed copy” of the award to each party. This is a mandatory obligation on the Arbitral Tribunal to comply with as the same impacts the period of limitation for filing the application under Section 34 of the Act.

30. As per Section 34(3) of the Act, the period for filing the application challenging the award shall commence from the date of the delivery of a signed copy of the award to the party by the Arbitral Tribunal in compliance with Section 31(5) of the Act.

31. In ***Ramesh Pratap Singh (Dead) v. Vimala Singh w/o Bhalendra Kumar Singh, 2004 (2) Arb. LR 147 (MP)***, the learned Single Judge of the Madhya Pradesh High Court has interpreted Section 31(5) and Section 34(3) of the Act to take a view that photocopy of the award delivered by the arbitrator did not fulfil the requirement of Section 31(5) of the Act.

32. A Division Bench of the Allahabad High Court in ***Union of India v. Radha Krishna Seth, 2006 (2) Arb. LR 441 (All.) (DB)*** has interpreted the expression “signed copy” in Section 31(5) of the Act as an authenticated copy duly signed to certify the genuineness of the document or in other words, it may be called as the certified copy”.

33. In ***Tecco Trichy Engineers (supra)***, the Hon’ble Supreme Court in paragraph 8 has held that the delivery of an award under Section 31(5) of the Act is not a matter of mere formality but a

¹⁷ 2025:DHC:4245-DB



2026:DHC:829



matter of substance. The delivery of the award can only be effective when the party to arbitration has received the same. The importance of a valid delivery of the award cannot be undermined as it has the effect of conferring certain rights on the party, while also setting in motion the period of limitation which on its expiry, would bring to an end the right to exercise such rights.

34. In *Continental Telepower Industries Ltd. v. Union of India, 2009 SCC OnLine Del 1859*, the learned Single Judge of this Court has held that there is no requirement in Section 31(5) of the Act to deliver an ink signed copy of the award. Section 34 of the Act does not require the filing of any ink signed copy of the award along with petition, though the award would definitely be required by the Court to appreciate the contentions with respect thereto. It was further held that the photocopy of the signed award along with cover letter bearing signature in original of the arbitrator was sufficient authentication of the photocopy of the award enclosed. It was observed that Section 31(5) of the Act uses the expression “signed copy”. Copy is generally understood as something different from the original. Legislature did not use the expression “signed award”. Thus, the Arbitrator is not required to deliver to the parties award signed by the members of the Arbitral Tribunal, as mentioned in Section 31(1) of the Act, but merely a “copy” thereof. The purpose of qualifying the word “copy” with “signed” is that there must be some authentication of the “copy”. If it were to be held that the “copy” must be “ink signed” by the arbitrators, then it will not be a “copy” but be the award signed by the arbitrators. That is the only possible meaning of the words “signed” and “copy” used in conjunction.

35. In *ARK Builders (supra)* following *Tecco Trichy Engineers (supra)*, the Hon’ble Supreme Court held that the period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act. Section 31(1) of the Act obliges the members of the Arbitral Tribunal to make the award in writing and sign it. The legal requirement under Section 31(5) of the Act is the delivery of a copy of the award signed by the members of the Arbitral Tribunal/Arbitrator, and not any copy of the award. On a harmonious construction of Section 31(5) read with Section 34(3) of the Act, the period of limitation prescribed for filing objections would commence only from the date when the signed copy of the award is delivered to the party making the application for setting aside the award. If the law prescribes that a copy of the award is to be communicated, delivered, despatched, forwarded, rendered, or sent to the parties concerned in a particular way, and since the law sets a period of limitation for challenging the award in question by the aggrieved party, then the period of limitation can only

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O.M.P. (COMM) 46/2024

Page 15 of 25



2026:DHC:829



commence from the date on which the award was received by the party concerned in the manner prescribed by law.

36. In *Benarsi Krishna (supra)*, the Hon'ble Supreme Court held that mere delivery of the award to the Counsel of a party does not amount to delivery to the party itself, as contemplated under Section 31(5) of the Act. The statutory scheme envisages that each party must be provided with a signed copy of the award directly, and such service must be effected upon the party itself. Delivery to a party's counsel cannot be deemed to be sufficient compliance with the requirement of Section 31(5) of the Act.

37. In *Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel*, (2018) 15 SCC 178, the Hon'ble Supreme Court while placing its reliance on *Tecco Trichy (supra)* and *ARK Builders (supra)*, held that by a cumulative reading of Section 31(5) and Section 34(3) of the Act, it is clear that the limitation period prescribed for under Section 34(3) of the Act would only commence on the date when the signed copy of the award is delivered to the party that makes the application for setting aside of the award under Section 34 of the Act.

38. In *Ministry of Health & Family Welfare v. Hosmac Projects Division of Hosmac India (P) Ltd.*, 2023 SCC OnLine Del 8296, a Coordinate Bench of this Court while relying on *Benarsi Krishna (supra)* and *Tecco Trichy (supra)*, held that a conjoint reading of Section 2(1)(h) and Section 31(5) of the Act makes it clear that the term "party" only means the party itself and not their agent or advocate. Therefore, only service on the party itself would constitute proper compliance of the requirement of delivery of the arbitral award.

39. In *Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.* (2021) 7 SCC 657, the Hon'ble Supreme Court has held that that Section 31(5) of the Act enjoins upon the Arbitrator/Arbitral Tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a signed copy of the award is the date from which the period of limitation for filing objections under Section 34 of the Act would commence. There is only one date recognised by law i.e., the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award. The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Act.

40. In *National Agricultural Co-operative Marketing Federation of India Ltd. v. R. Piyarelall Import and Export Ltd.* AIR 2016 Cal 160, a Division Bench of the High Court of Calcutta upheld the decision of the Single Judge rejecting the petition under Section

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O.M.P. (COMM) 46/2024

Page 16 of 25



2026:DHC:829



34 of the Act for setting aside an award on the ground of limitation, where the award was duly signed by all the three arbitrators and a certified copy of the award was forwarded to each of the parties by the Registrar of the Indian Council of Arbitration, but the photocopy of the signed award was not signed in original by the arbitrators.

41. In *Delhi Urban Shelter Improvement Board v. Lakhvinder Singh* 2017 SCC OnLine Del 9810, the Division Bench of this Court has held that the expression „signed copy“ in Section 31(5) of the Act indicates the legislative intent that a copy authenticated by the Arbitrator is served on each party. It was held that authenticity of correspondence in the technologically advanced times of today does not necessarily pertain to only signatures in writing, and it would be adverse to read the expression „signed copy“ of the award/order in a restrictive manner so as to connote a copy bearing the original signatures of the Arbitrator in handwriting.

42. In *Ministry of Youth Affairs & Sports v. Ernst & Young (P) Ltd.*, 2023 SCC OnLine Del 5182, the Single Judge Bench of this Court held that the limitation period for filing a petition under Section 34 of the Act commenced when a scanned signed copy of the award was received via email and that the same would constitute a valid delivery under Section 31(5) of the Act. This Court held that a subsequent physical collection of the signed copy would not extend the limitation period. This Court emphasized that technological advancements allow for authenticated digital copies to be considered valid for all legal purposes.

43. In *Dwarika Projects Limited v. Director of Civil Aviation & Anr.*, FAO(OS)(COMM) 103/2024, the Division Bench of this Court has held that the delivery of a scanned signed copy of the award via e-mail would constitute a valid delivery under Section 31(5) of the Act and the limitation period for filing a petition under Section 34 of the Act would commence when the same is received by the concerned party. It was held that a copy of the award can also be delivered electronically and there was no justification to hold or declare that the only mode or manner in which the Act contemplates the delivery of award is in the physical format. Technological advancements allow for authenticated digital copies to be considered valid for all legal purposes.

44. In view of the above, the law on the mode and manner of “delivery” of the “signed copy” of the award under Section 31(5) of the Act is summarized as under:

- a) Mandatory Requirement:** Section 31(5) of the Act requires a signed copy to be delivered to the party and the same has to be strictly complied with as the period of limitation to file application under Section 34 of the Act shall commence only



2026:DHC:829



upon delivery of the signed copy of the award to the parties.

- b) **Signed Copy:** The term “signed copy” means either copy of the award bearing original signature or a duly authenticated/certified copy of the signed copy of the award by the Arbitral Tribunal or the Arbitral Institution administering the arbitration.
- c) **Delivery of the Award:** It is the obligation of the Arbitral Tribunal to ensure delivery of the signed copy to the parties. In case the Arbitral Tribunal has pronounced the award at a virtual hearing and directed the parties to collect the award, it is the responsibility of the Arbitral Tribunal to dispatch the signed copy of the award, if any party fails to collect the same.
- d) **Delivery to the Parties:** The Arbitral Tribunal has to ensure that the signed copy of the award is delivered to the parties. A delivery of the signed copy of the award to the counsel of the parties will constitute a valid delivery in cases where the parties have duly authorized the counsel to collect or provided the address of the counsel for service of communication to parties.
- e) **Electronic Delivery:** A signed copy of the award can be delivered electronically in accordance with Section 31(5) of the Act provided that the signed copy of the award attached to the electronic communication is duly authenticated by the Arbitral Tribunal or Arbitral Institution.
- f) **Delivery by Arbitral Institution:** Delivery of the signed copy of the award by Arbitral Institution on behalf of the Tribunal to the parties and / or their authorized counsel shall be a valid service under Section 31(5) of the Act in Institutional Arbitrations.

50. It is clear from the factors mentioned above that a valid delivery of the signed copy of the Award was made to the Authorized Representative of the Appellant, which is acknowledged by way of an e-mail addressed to the Arbitral Tribunal and copied to the Managing Director of the Appellant. Therefore, the Award was delivered to the Appellant as envisaged under Section 31(5) of the Act.”

(emphasis added)

28. It is an undisputed position on record that the petition came to be validly re-filed and registered only on 20.01.2024. By that date, not only had the initial statutory period of three months prescribed under Section 34(3) of the A & C Act expired, but even the additional period of thirty days, contemplated by the proviso thereto, had elapsed on

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O.M.P. (COMM) 46/2024

Page 18 of 25



2026:DHC:829



05.10.2023. The timeline is inexorable and admits of no ambiguity. Once the outer boundary of limitation stood crossed, the jurisdiction of this Court to entertain the challenge stood completely extinguished. The legislative command contained in the phrase “*but not thereafter*” is absolute, categorical, and admits of no judicial discretion.

29. The record further reveals that what was presented before this Court on 02.10.2023 was not a petition in the eye of the law, but a skeletal and fundamentally defective set of papers, bereft of the basic and indispensable attributes of a valid institution. The initial filing was marred by the absence of a Statement of Truth, supporting affidavits, signatures on pleadings, vakalatnama, proper court fee, and proof of service upon the caveator. These defects were not cosmetic or procedural irregularities capable of routine cure; rather, they went to the very root of the institution and rendered the filing *non-est*, devoid of legal existence.

30. The repeated re-filings, without curing foundational defects, further compound the inference that there was no *bona fide* attempt at instituting a legally cognizable challenge within the limitation. The legal position governing *non-est* filings on account of the absence of material and foundational particulars in the petition has been succinctly enunciated by the Division Bench of this Court in **ONGC v. Planetcast Technologies Ltd.**¹⁸, wherein it has been held as follows:

“Non filing of Statement of Truth:

.....

46. Suffice is it to say, without the Statement of Truth, the filing of the petitions under Section 34 of the Act, 1996 by the petitioners becomes non-est and is reduced to a sheer futile attempt to pause the limitation period from running out. The appellant cannot claim

¹⁸ 2023 SCC OnLine Del 8490



2026:DHC:829



the benefit of a non-est filing though made within the period of limitation, when the proper filing of the petition was only made after the expiry of the stipulated period of three months and thirty days.

Pleadings filed without signatures:

.....

51. Thus, the significance of the petitioner affixing their signature in the pleadings cannot be over emphasised as without it, the filing would not hold the character of a petition which has been bonafidely filed on behalf of the petitioner. This defect in the Petition of the appellant, again reflect that the initial filing was non-est.

Non-filing of Vakalatnama:

.....

53. In *Sravanthi Infratech Pvt. Ltd. v. Greens Power Equipment (China) Co. Ltd.*, it was held that defects such as not filing the Vakalatnama or Affidavit are fatal defects and a filing without these documents cannot be considered as a valid filing.

Number of pages filed:

.....

55. Such exponential increase in number of pages leads to only one conclusion that the subsequent Petition which was filed was not only signed but had been substantially changed.

56. It is the only irresistible conclusion that can be drawn is that the initial Petition had lacked all the requisites of being a valid Petition to be considered by the Court and therefore, it has to be held that the first filing was non-est.”

31. The chronology of re-filings on 09.10.2023, 30.10.2023, 08.01.2024, and 19.01.2024 demonstrates a pattern of persistent non-compliance rather than prosecutorial diligence. Significantly, even after the expiry of the maximum condonable period under Section 34(3), the Petitioner continued to re-file without rectifying essential defects, thereby reinforcing the conclusion that the initial filing was a mere *illusory filing*, incapable of stopping the clock of limitation. It is only on 20.01.2024, long after the Court had become *functus officio*, that a petition conforming to statutory and procedural requirements

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O.M.P. (COMM) 46/2024

Page 20 of 25



2026:DHC:829



was placed on record.

32. This Court is of the considered view that the reliance placed by the Petitioner on the decisions of the Hon'ble Supreme Court in *Benarsi Krishna Committee (supra)*, *Tecco Trichy Engineers (supra)*, and the allied line of authorities, is wholly misplaced and proceeds on an erroneous application of principle divorced from context.

33. In each of the aforesaid decisions, the arbitral award had been delivered to an officer or person who was either peripheral to the arbitral proceedings or wholly unconnected therewith, and who neither possessed the requisite knowledge of the arbitration proceedings nor the authority to take a considered decision on further legal recourse. It was in that limited factual milieu that the Hon'ble Supreme Court underscored the requirement that service of the award must be effected upon a person competent to appreciate its import and act thereon.

34. The present case stands on a fundamentally different footing. Here, the arbitral award was admittedly received by the Petitioner through its authorised counsel, who had actively represented the Petitioner throughout the arbitral proceedings, was fully seized of the factual matrix, and was legally equipped to comprehend the consequences flowing from the award. Indeed, the receipt of the award by such counsel was not an empty formality but was immediately acted upon, as evidenced by the steps initiated by the Petitioner to assail the award.

35. Even assuming, *arguendo*, that the ideal mode of delivery contemplated under Section 31(5) of the A&C Act is service upon the party itself, the undeniable fact remains that the knowledge of the

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O.M.P. (COMM) 46/2024

Page 21 of 25



2026:DHC:829



award stood effectively communicated to the Petitioner through its counsel, thereby achieving the very object which the law seeks to secure.

36. The jurisprudence in *Benarsi Krishna Committee (supra)* and *Tecco Trichy Engineers (supra)* does not elevate form over substance, nor does it sanctify ignorance where knowledge is demonstrably established. To extend the ratio of those decisions to a case where the party has admittedly acquired full knowledge of the award through its authorised legal representative would be to stretch the doctrine beyond its legitimate contours. Consequently, the precedents relied upon by the Petitioner do not come to its aid, and the receipt of the arbitral award through authorised counsel must be held to constitute valid delivery for the purposes of computing limitation under Section 34(3) of the A&C Act.

37. Learned counsel for the Petitioner has also laid considerable emphasis on the absence of delivery of a signed hard copy of the arbitral award. This submission, however, cannot be accepted.

38. The law is now well settled that with the advent of technological advancement and the increasing digitisation of judicial and quasi-judicial processes, the concept of “delivery” is no longer confined to physical transmission alone. Electronic communication, when effected in a manner that ensures authenticity, accessibility, and actual knowledge of the award, constitutes valid delivery in the eyes of the law.

39. To insist upon a rigid, antiquated insistence on physical service, even where the party has demonstrably acquired full knowledge of the award and acted thereupon, would be to ignore the contemporary realities of dispute resolution and undermine the objective of

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O.M.P. (COMM) 46/2024

Page 22 of 25



2026:DHC:829



expeditious finality that underpins the A&C Act. The law in this regard has been succinctly laid by the Co-ordinate Bench of this Court in *Ministry of Youth Affairs and Sports, Dept. of Ports, Govt. of India v. Ernst and Young Pvt. Ltd (Now Known As Ernst And Young LLP) and Anr.*¹⁹, which reads as follows:

47.The law has to keep its pace in tandem with the developing technology. When service by email is an accepted mode of service, then sending scanned signed copy of the award/order of the Arbitral Tribunal to the parties would be a valid delivery as envisaged under Section 31(5) of the Arbitration Act.

40. The explanation advanced by the Petitioner for the delay - namely, internal administrative approvals, inter-departmental correspondence, and successive change of counsel - cannot, by any stretch of judicial reasoning, be elevated to the status of “*sufficient cause*” within the meaning of Section 5 of the Limitation Act. It is no longer *res integra* that administrative inefficiencies and bureaucratic indecision are not legally cognizable grounds to dilute a statute that is designed to ensure finality, expedition, and certainty in arbitral proceedings. To accept such explanations would be to reintroduce, through the backdoor, the very delays and uncertainties that the A&C Act was enacted to eradicate.

41. This Court is conscious that refusal to condone delay may, in a given case, result in the foreclosure of a challenge on merits. However, in matters governed by Section 34 of the A&C Act, the Court does not sit as a court of equity, but as a court of limited statutory jurisdiction. The balance between fairness and finality has already been struck by the legislature. Once the statutory outer limit is

¹⁹ 2023:DHC:6055



2026:DHC:829



crossed, considerations of hardship or perceived injustice cannot confer jurisdiction where none exists. Judicial sympathy cannot be permitted to supplant legislative mandate.

42. Permitting a petition, which is *ex facie* barred by limitation and founded upon a *non-est* filing, to be entertained would not only run contrary to the express language of Section 34(3) but would also undermine the sanctity of arbitral finality and open the floodgates to speculative and dilatory challenges. Such an approach would erode discipline in commercial litigation and defeat the very object of the Commercial Courts regime, which places a premium on procedural rigour and temporal certainty.

43. This Court, therefore, holds that once the statutory period of three months and thirty days prescribed under Section 34(3) of the A&C Act expired on 05.10.2023, the Petitioner's right to question the Arbitral Award stood irrevocably extinguished.

44. In the present case, the delay in filing the petition beyond the outer limit is 107 days. Even otherwise, assuming *arguendo* that the initial filing was defective and not *non-est*, the Petitioner, in terms of Chapter IV, Rule 3 of the Delhi High Court (Original Side) Rules, was granted thirty days by the Registry to cure the defects, which period expired on 02.11.2023. The defects, however, remained uncured and the petition was validly re-filed and registered only on 20.01.2024, resulting in a further delay of 80 days in re-filing. Any filing beyond the statutory outer limit is legally inconsequential. The petition, therefore, having been instituted beyond the period prescribed in law, is barred by limitation and liable to be dismissed at the threshold.

CONCLUSION

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O.M.P. (COMM) 46/2024

Page 24 of 25



2026:DHC:829



45. In view of the foregoing discussion and findings, this Court holds that the present petition challenging the Arbitral award dated 02.06.2023, is barred by limitation and is founded upon a *non-est* filing incapable of saving limitation under Section 34(3) of the A&C Act.

46. The application seeking condonation of delay, being ***I.A. No. 45151 of 2024*** is devoid of merit and is accordingly dismissed. Accordingly, the petition under Section 34 of the A&C Act stands dismissed.

47. All pending applications, if any, are disposed of accordingly.

48. No Order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 03, 2026/kr

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O.M.P. (COMM) 46/2024

Page 25 of 25