

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 4th July, 2022

+ **O.M.P. (COMM) 488/2019 & I.A. No. 16261/2019,
16263/2019**

**IRCON INTERNATIONAL
LTD.**

....Petitioner

Versus

**REACON ENGINEERS
(INDIA) PVT. LTD.**

....Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Debarshi Bhadra, Advocate.

For the Respondent : Mr M.K. Ghosh, Mr Tina Garg, Mr Amit
Mohanty, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter '**the A&C Act**') impugning an arbitral award dated 10.06.2019 (hereinafter '**the impugned award**') delivered by an Arbitral Tribunal comprising of a Sole Arbitrator (hereinafter '**the Arbitral Tribunal**').

2. The impugned award was rendered in the context of the disputes that have arisen between the parties in connection with an agreement dated 16.06.2010 (hereinafter '**the Agreement**').

3. The respondent has opposed the present petition on the ground that it is barred by limitation. The respondent submits that the above-petition has been filed after the expiry of a period of three months from the date of receipt of the impugned award. Further, the petitioner has not filed any application seeking condonation of delay. It is further submitted on behalf of the respondent that the petition as initially filed was not accompanied by the impugned award; *vakalatnama*; and the attested statement of truth. The petition as filed was also not signed. He submits that initial filing was *non-est*. The petitioner had refiled the petition on 24.10.2019; however, that was beyond the period of delay that could be condoned by this Court.

4. Mr Ghosh, learned counsel appearing for the respondent referred to the decision of a Coordinate Bench of this Court in *Union of India v. Bharat Biotech International Ltd: (2020) SCC OnLine Del 483*, in support of his contention. He also referred to the decision of this Court in *INX News Pvt. Ltd. v. Pier One Construction Pvt. Ltd.: O.M.P. No. 673 of 2013, decided on 11.11.2013*, and contended that the petition as filed on 24.10.2019 could not be considered as the same petition that was filed on 13.09.2019.

5. The impugned award was delivered on 10.06.2019. The petitioner claims that it had received the impugned award on 12.06.2019. In terms of Section 34(3) of the Arbitration and Conciliation Act, 1996, a petition under Section 34 may not be filed after three months have elapsed from the date of receipt of the arbitral award. Thus, 12.09.2019 was the last date on which the petitioner could have filed the above-captioned petition.

6. The petitioner had filed the petition on 13.09.2019, that is, after the delay of one day after expiry of a period of three months. It is material to note that in all, seventy-three pages were filed.

7. The filing log indicates that apart from listing sixteen different kinds of defects, the Registry had also commented as under:

“User Comments : Description of any other defects:
TOTAL 73 PAGES FILED WITHOUT
BOOKMARKING WITHOUT PAGINATION.
STATEMENT OF TRUTH/AFFIDAVIT NOT
ATTESTED. NO DOCUMENTS FILED. NO
AWARD FILED. VAKALATNAMA NOT FILED.
IN ADDITION TO THE E-FILING, IT IS
MANDATORY TO FILE HARD COPIES OF THE
FRESH MATTERS FILED UNDER SECTION 9,11,
AND 34 OF THE ARB. ACT. 1996 WITH EFFECT
FROM 22.10.2018.”

8. The petition was marked defective and returned for re-filing on 16.09.2019.

9. The petition was re-filed on 24.10.2019. The file log indicates that this time a total number of 1325 (one thousand three hundred and twenty-five) pages were filed. However, the petition was still

defective and was returned for re-filing on 30.10.2019. It was, thereafter, re-filed on 06.11.2019 but was once again found to be defective. It was returned for re-filing on 13.11.2019. The petition was re-filed on 14.11.2019. It was marked as defective yet again and returned for re-filing on 15.11.2019. The petitioner filed the same on 18.11.2019 as certain defects were not cured. It was finally re-filed on 19.11.2019.

10. The petitioner has filed an application seeking condonation of delay of thirty-seven days in re-filing the petition, however, the petitioner has not filed any application seeking delay in filing the petition.

11. If it is accepted that the filing done on 13.09.2019 was a valid filing, the delay of one day may not be material as this Court would readily condone the same. Although the delay in re-filing is significant, this Court is of the view that the petitioner has submitted an explanation for the same. It is stated that the counsel had met with an accident and could not attend to his work for a period of three week. This Court is inclined to accept the said explanation. The stated circumstances prevented the petitioner from re-filing within the prescribed time.

12. In view of the above, the only question to be determined is whether the initial filing was valid.

13. As noted above, the initial filing was only seventy-three pages. The petition was not accompanied by a copy of the award or any other document. It was also not accompanied by a statement of truth which is mandatorily required.

14. As noted above, the petition as subsequently filed on 24.10.2019 spanned over 1325 (one thousand three hundred and twenty-five) pages including documents. It is, thus, apparent that the entire framework of the petition was changed.

15. There is merit in the respondent's contention that the petition as filed on 24.10.2019 cannot be considered as the same petition that was filed on 13.09.2019. It is also material to note that the petition as filed on 13.09.2019 was not accompanied by the impugned award or the *vakalatnama*. The decision of the Coordinate Bench of this Court in *Union of India v. Bharat Biotech International Limited* (*supra*) is squarely applicable in the facts of this case and, therefore, the filing as on 13.09.2019 cannot be considered as a valid filing. In the circumstances, 24.10.2019 is required to be considered as the first date of filing of the present petition. The delay in filing the petition is, thus, beyond the period that can be condoned by this Court.

16. The petition is, accordingly, dismissed as barred by limitation.

17. All pending applications are also disposed of.

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VIBHU BAKHRU, J

JULY 04, 2022

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