$~

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

\+ O.M.P. (COMM) 377/2018

MINISTRY OF YOUTH AFFAIRS AND SPORTS, DEPT. OF PORTS, GOVT. OF INDIA ..... Petitioner

Through: Mr. Neeraj Choudhary, Advocate (Ph. 9810974548, e-mail: neeraj.lawyer@gmail.com)

versus

ERNST and YOUNG PVT. LTD(NOW KNOWN AS ERNST and YOUNG LLP) and ANR. ..... Respondents

Through: Mr. Koshy John, Mr. Prateek Khanna and Ms. Ravneet Kaur, Advocates for R-1 (Ph. 8056176766/ 9971586998, e-mail: info@jvkassociates.com)

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T
23.08.2023

MINI PUSHKARNA, J.

Introduction

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act") has been filed challenging the Award dated 11th December, 2017 passed by the Arbitral Tribunal consisting of three retired Judges of this Court. It is the case of petitioner that though the Arbitral Tribunal has passed the Award in its favour by upholding the submissions made by it in respect of its claims, however, the Arbitral Tribunal

erred in not reflecting in the concluding para of the Award, the relief/amount with regard to one of the claims raised by the petitioner for Rs. 2.82 crores.

2. Perusal of the record in the present case shows that though the present petition was listed before the Court for the first time on 05th September, 2018, however, substantive hearing took place for the first time only on 13th February, 2019. On the said date, preliminary objection was raised on behalf of respondents with regard to maintainability of the present petition on the ground of limitation. Thus, matter has been heard by this Court only on the preliminary objection as regards maintainability of the present petition. It is further to be noted that on account of preliminary objection raised by the respondents, no notice has been issued in the present case.

Factual Matrix

3. Facts in brief are that the Organising Committee Commonwealth Games 2010 ("OC CWG"), now Ministry of Youth Affairs and Sports, Government of India ("MoYAS"), and the consortium of Ernst & Young Pvt. Ltd., now known as Ernst & Young LLP ("EY") and M/s Event Knowledge Services ("EKS"), Switzerland, had entered into agreement dated 24th March, 2008 ("Agreement") for providing games planning, project management and work force services. On 01st June, 2009, all rights, duties and obligations of EKS, Switzerland stood transferred to EKS Mauritius by way of a Deed of Assignment.

4. Since disputes arose between the parties, OC CWG, invoked Clause 46 of the Agreement, vide Notice dated 20.11.2012 for

adjudication of disputes between the parties by arbitration. Accordingly, the Arbitral Tribunal comprising of three retired Judges of this Court was constituted.

5. OC CWG (now MoYAS) filed its Statement of Claim dated 24th October, 2013, claiming the following reliefs:

i. Pass an award for a sum of Rs.2.82 Crores along with interest @ 18% per annum till filing of the aforesaid statement of claim in favour of the claimant and jointly and severally against the respondents.

ii. Pass an award for a sum of Rs.3.07 Crores along with interest @ 18% per annum till filing of the aforesaid statement of claim in favour of the claimant and jointly and severally against the respondents.

iii. Award pendent-lite and future interest on the aforesaid amount.

iv. Award cost of proceedings.

6. Respondent No.1 filed its Statement of Defence on 01st January, 2014, disputing the claims and raised the following counter claims:

i. Award a sum of Rs.1,17,66,131.17/- in favour of the counter claimant and against the Organising Committee.

ii. Award interest @ 4% compounded annually on Rs.1,17,66,131.17/- w.e.f. 07.07.2010 till date of actual payment.

7. The Arbitral Tribunal vide Award dated 11th December, 2017 passed the following Award:

i. Sum of Rs.25,04,259/- was awarded in favour of the petitioner/claimant - OC CWG, against the respondents jointly and severally with Simple Interest @8% per annum from the date of filing of claim to the date of passing of the Award along with interest @18% from the date of Award

till the payment of awarded sum to the claimant.

ii. All the counter claims of respondents were rejected.

iii. Petitioner/Claimant was held entitled to cost of Rs.20 Lakhs payable by the respondents.

8. On 10th January, 2018, petitioner filed a request under Section 33(1) of the Arbitration Act requesting the Arbitral Tribunal to reflect in its concluding paragraph, the relief regarding its claim for a sum of Rs.2.82 Crores along with interest, claiming that the Award contained clear findings in its favour. Vide the said request, petitioner also sought correction of clerical errors in paras 96 and 112 of the Award.

9. The Arbitral Tribunal vide its email dated 31st January, 2018, called upon the respondents to file their response. Thereafter, respondent No.1 filed its reply to the said application on 12th February, 2018.

10. In the meantime, respondent No.1 impugned the Arbitral Award dated 11th December, 2017 by filing petition under Section 34 of the Arbitration Act before this Court. The respondent No.1 sought setting aside of the Arbitral Award on various grounds as mentioned therein. The said petition filed on behalf of respondent No.1 was ultimately dismissed by this Court vide order dated 20th March, 2018.

11. As per the case of petitioner, since it did not hear anything from the Tribunal with regard to its request under Section 33 (1) of the Arbitration Act, it requested the Arbitral Tribunal to fix a date for oral submissions vide its email dated 07th May, 2018. The said email dated 07th May, 2018 as written on behalf of petitioner to the learned Arbitral Tribunal is reproduced as under:-

Re: Arbitration between UOI (Claimant earlier impleaded as OC CWG) And E&Y & Anr. - Application on behalf of the Claimant u/s 33(1) of the Arbitration & Conciliation Act, 1996

Neeraj Choudhary <neeraj.lawyer@gmail.com> Mon, May 7, 2018 at 1:42 PM
To: Anildev Singh <jusads@hotmail.com>, JUSTICE DEVINDER GUPTA <justicegupta43@gmail.com>, Mukul Mudgal <mudgalmukul@gmail.com>, DEEPAK PANT <deep6313@hotmail.co.uk>, akthakur_advocate@yahoo.com, Sandeep.Fakun@cimglobalbusiness.com

Dear Sir,

Kindly refer to my trailing e-mail whereby I had submitted an application seeking correction of clerical errors/ errors of similar nature occurring in the award dated 11.12.2017 passed by the Hon'ble Tribunal and requested the Hon'ble Tribunal to fix a date for oral submissions. The Respondent No.1 (E&Y) has already filed its reply vide e-mail dated 12.02.2018.

May I request the Hon'ble Tribunal to kindly fix the date for oral submissions on the said application.

Thanks and regards,

Neeraj Choudhary

[Quoted text hidden]

Thanks & Regards,
Neeraj Choudhary

12. In response, the Arbitral Tribunal sent email dated 17th May, 2018, wherein it attached scanned copy of the Addendum to Award dated 17th May, 2018. As per petitioner, it was on receipt of the said Addendum dated 17th May, 2018 that it came to know that the Arbitral Tribunal vide its order dated 07th March, 2018 had corrected the typographical errors in paras 96 and 112 of the Award pursuant to its application under Section 33 (1) of the Arbitration Act. By the said Addendum dated 17th May, 2018, the Arbitral Tribunal, on its own accord, corrected another typographical error which had crept in the order dated 07th March, 2018, while making correction in para 112 of the award. Addendum to the Award dated 17th May, 2018 issued by the Arbitral Tribunal is reproduced as under:

> *"**BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF MR. JUSTICE ANIL DEV SINGH (RETD.), MR. JUSTICE DEVINDER GUPTA (RETD.) AND MR. JUSTICE MUKUL MUDGAL (RETD.)***

Date: May 17, 2018

RE. ARBITRATION BETWEEN:

UNION OF INDIA
(THROUGH SECRETARY,
DEPARTMENT OF SPORTS,
MINISTRY OF YOUTH AFFAIRS & SPORTS,
GOVERNMENT OF INDIA)

AND

M/S ERNST & YOUNG PVT. LTD.

O R D E R
(Addendum to the Award)

1. On March 07, 2018 an order was passed on the Application of the Claimant u/s 33 of the Arbitration and Conciliation Act 1996. In para 2 of the Order dated March 07, 2018, it was recorded as under:
"On going through the award we find that there are typographical errors in the last line of para 96 and second line of para 112."

2. In regard to correction of para no. 96 of the award dated December 11, 2017, we recorded in the order dated March 07, 2018 as follows:
"Accordingly, the last line of para 96 is corrected and reads as under:

> *' As a sequitur we hold that Respondent no. 2 is not entitled to the payment of 9th and 10th instalments."*

3. In regard to correction of para 112 of the award it was recorded in the order dated March 07, 2018 as follows:

> *"In the circumstance, therefore the OC CWG was justified in withholding and adjusting the last instalment of Respondent not against advance tax payable by Respondent no. 2'*

As is evident, again a typographical error has crept in the aforesaid recording in as much as in the second line after the word 'Respondent', the corrected word ought to have been 'no. 1' instead of the word 'not'. Therefore, necessary and intended correction was not made in the aforesaid para 112.

4. In the circumstances, since the desired correction was not made we consider it necessary and appropriate to extend the period u/s 33 (6) of the Arbitration and Conciliation Act, 1996, to make the correction till May 17, 2018. Accordingly, para 112 of the award is corrected to read as under:
"In the circumstance, therefore the OC CWG was justified in withholding and adjusting the last instalment of Respondent no. 1 against advance tax payable by Respondent no. 2."

5. This order shall be read alongwith the order dated March 07, 2018. The said corrections shall always be deemed to have been incorporated in the award."

13. Subsequently, petitioner vide email dated 21st May, 2018 requested the Arbitral Tribunal to provide copy of order dated 07th March, 2018 claiming that it was unaware of the order dated 07th March, 2018 till the communication of Addendum to Award dated 17th May, 2018. In response thereof, the Arbitral Tribunal vide email dated 22nd May, 2018, supplied a copy of order dated 07th March, 2018 to the petitioner. In the said email, the Arbitral Tribunal noted that its office had already sent a signed copy of the said order to both the parties by registered post. The email dated 22nd May, 2018 sent by the Arbitral Tribunal to the petitioner is reproduced as hereunder :

Fwd: Arbitration between Union of Indian, Department of Sports, Ministry of Youth and Affairs & Sports, Government of India and M/s Ernst & Young Pvt. Ltd. & Anr.

Neeraj Choudhary <neeraj.lawyer@gmail.com>
To: "legalfa.cwg@gmail.com" <legalfa.cwg@gmail.com> Tue, May 22, 2018 at 2:45 PM

---------- Forwarded message ---------
From: MANJU KARGETI <deep6313@hotmail.co.uk>
Date: Tue, 22 May 2018 at 1:33 PM
Subject: Arbitration between Union of Indian, Department of Sports, Ministry of Youth and Affairs & Sports, Government of India and M/s Ernst & Young Pvt. Ltd. & Anr.
To: neeraj.lawyer@gmail.com <neeraj.lawyer@gmail.com>

Dear Sir,

In response to you email dated May 21, 2018, I am attaching herewith the scanned copy of the order dated 7.03.2018 in the aforesaid matter. This office had already sent signed copies of the said order to the parties, including your client, by Registered post.

Regards.

Manju
P.A. to Mr. Justice Anil Dev Singh
[Quoted text hidden]

14. Thereafter, petitioner sent an email dated 04th June, 2018 to the Arbitral Tribunal thereby submitting that the Arbitral Tribunal had not dealt with its request of reflecting in concluding para of the Award, the relief regarding its claim of Rs.2.82 Crores along with interest on the ground that the Award contained clear findings in its favour. The petitioner also requested the Arbitral Tribunal for fixing a date for making oral submissions regarding its prayer. The respondent No.1 submitted its objections to the aforesaid request of petitioner by its email dated 12th June, 2018, on the ground that as the request filed by petitioner had already been disposed of by the Arbitral Tribunal, any request by petitioner to seek oral hearing was not maintainable.

15. By its email dated 13th June, 2018, the Arbitral Tribunal informed the petitioner that no further order could be passed in the request of the petitioner under Section 33 of the Arbitration Act, as the Arbitral Tribunal had become *functus officio*.

16. Hence, being aggrieved by the Award dated 11th December, 2017 passed by the Arbitral Tribunal on the ground that no relief was granted in favour of the petitioner in respect of its claim regarding Rs.2.82 Crores despite clear findings in its favour, the present petition has been filed.

Contentions of Petitioner

17. On behalf of the petitioner, it is contended that the present petition has been filed within limitation. It is submitted that the learned Arbitral Tribunal on its own accord vide its Addendum dated 17th May, 2018 had apparently extended the limitation period till 17th May, 2018. The present petition has originally been filed on 14th August, 2018, which period is within the limitation period. Though there were some defects of curable nature at the time of filing, the same were removed at the earliest and the petition was re-filed on 24th August, 2018, 31st August, 2018 and finally on 01st September, 2018.

18. It is contended that in case the filing done by petitioner on 14th August, 2018 is viewed as not properly filed and that even if the present petition is treated as properly filed on 31st August, 2018 for the purposes of limitation, after removal of defects, still, the petition is within limitation on the ground that the signed copy of Addendum to Award dated 17th May, 2018 was provided to the petitioner only on 01st June, 2018.

19. It is further submitted that the orders dated 07th March, 2018, 17th May, 2018 and 13th June, 2018 passed by the Arbitral Tribunal upon the application of the petitioner under Section 33 of the Arbitration Act, have to be read in conjunction to each other.

Considering the fact that the petitioner's request with regard to its claim of Rs.2.82 Crores was not even dealt with by the Tribunal, the limitation period has to be counted from 13th June, 2018, on which date the Tribunal expressed itself as '*functus officio*'.

20. It is contended that the Arbitral Tribunal has nowhere stated that it has dealt with the request of the petitioner pertaining to Rs.2.82 Crores. Thus, in the eyes of law, the said request remained alive even on the passing of said orders dated 07th March, 2018 and 17th May, 2018. It is only when the Tribunal expressed itself as *functus officio* that the limitation period can be said to have started running.

21. By referring to Section 34(3) of the Arbitration Act, it is submitted that the legislature has used the word 'request' and not 'application'. Therefore, the argument of the respondent that the limitation period has to be counted from the date of disposal of the said 'application', is misconceived.

22. It is further submitted on behalf of the petitioner that the order dated 07th March, 2018 passed by the Arbitral Tribunal deciding the application of the petitioner under Section 33 of the Arbitration Act, came to the knowledge of the petitioner only when the Addendum to Award dated 17th May, 2018 was served upon it. Thus, it was upon the request of the petitioner that order dated 07th March, 2018 was supplied to it on 22nd May, 2018. It was only then the petitioner noticed that its request regarding claim of Rs.2.82 Crore had not been dealt by the Tribunal and also that no opportunity had been afforded to the petitioner. Therefore, the petitioner requested the Tribunal vide email dated 04th June, 2018 to grant an opportunity to it to make oral

submission. However, the Tribunal vide its email dated 13th June, 2018 expressed that it had become *functus officio* and that no orders can be passed thereon.

23. It is further the case on behalf of the petitioner that till date the petitioner has not been supplied the signed copy of order dated 07th March, 2018. Whereas, the signed copy of the Addendum to Award dated 17th May, 2018 was given to petitioner only on 01st June, 2018. It is further contended that in terms of Section 33 of the Arbitration Act, the limitation period of three months would start from the 'date of disposal of the request'. Thus, when the Arbitral Tribunal in its communication dated 13th June, 2018 expressed its helplessness in passing any order qua the said request on becoming *functus officio*, the limitation period would commence from the said date. Thus, it is contended that the present petition under Section 34 of the Arbitration Act has been filed within the prescribed period of three months.

Contentions of Respondents

24. On the other hand, on behalf of the respondents it is contended that the present petition is barred by limitation as the same has not been filed within the time prescribed by Section 34(3) of the Arbitration Act.

25. It is submitted that since petitioner had filed a request under Section 33 of the Arbitration Act, the period of limitation for filing the petition under Section 34 must be construed from the date of disposal of the said request by the Arbitral Tribunal, i.e., 07th March, 2018. As per the case history available on the website of this Court, the present petition was filed on 01st September, 2018. Thus, it is contended that

the period of three months from the date of disposal of the request by the petitioner under Section 33 of the Arbitration Act, i.e., 07th March, 2018, expired on 07th June, 2018. Therefore, the present petition, filed on 01st September, 2018 is barred by limitation.

26. It is further contended that it is an admitted position that the petitioner had received the order dated 07th March, 2018 vide Arbitral Tribunal's email dated 22nd May, 2018. As the period of three months from 22nd May, 2018 also expired on 22nd August, 2018, the present petition would still be barred by limitation.

27. It is further contended on behalf of respondents that as per proviso to Section 34(3) of the Arbitration Act, petition may be entertained beyond the period of three months, within a further period of thirty days if sufficiency of cause is shown. It is submitted that in the present case there is no application for condonation of delay, thus, petitioner is not entitled to seek the benefit of additional period of thirty days.

28. On behalf of respondents, the following judgments have been relied upon:

I. ***Vidhur Bhardwaj Vs. Horizon Crest India Real Estate and Ors.,*** *Judgment dated 16.11.2022 of the Hon'ble Delhi High Court in O.M.P. (COMM) 436/2020*

II. ***P. Radha Bai and Others Vs. P. Ashok Kumar and Another,*** *2019 13 SCC 445*

III. ***Chintels India Limited Vs. Bhayana Builders Private Limited,*** *(2021) 4 SCC 602*

IV. ***State of Arunachal Pradesh Vs. Damani Construction Co.*** *(2007) 10 SCC 742*

V. ***IRCON International Ltd. Vs. C.R. Sons Builders and Development Pvt. Ltd. and Another,*** *Judgment dated 11.02.2020 of the Hon'ble Delhi High Court in O.M.P.353/2009*

VI. ***Dyna Technologies Private Limited Vs. Crompton Greaves Limited, (****2019) 20 SCC 1*

VII. ***South East Asia Marine Engineering and Constructions Limited (SEAMEC Ltd.) vs. Oil India Limited,*** *(2020) 5 SCC 164*

Analysis and Findings

29. I have heard ld. Counsels for the parties and have perused the record.

30. At the outset, it is to be noted that the period of limitation for challenging an Arbitral Award is prescribed in Section 34(3) of the Arbitration Act. As per the said Section, an application for setting aside an Arbitral Award shall be made before expiry of three months from the date on which the said party had received the Arbitral Award. If any request/application had been made by the said party under Section 33 of the Arbitration Act for correction and interpretation of the Award/Additional Award, then such application for setting aside the Award has to be made before the expiry of three months from the date on which the said application/request under Section 33 of the Arbitration Act, has been disposed of.

31. In the present case, the Arbitral Award was passed on 11th December, 2017. Thereafter, the petitioner filed a request under Section 33(1) of the Arbitration Act on 10th January, 2018 requesting the Arbitral Tribunal to reflect in its concluding para, the relief

regarding its claim for a sum of Rs.2.82 Crores, along with interest and also seeking correction of clerical error in paras 96 and 112 of the Award.

32. Subsequently, the Arbitral Tribunal rectified the typographical errors vide its order dated 07th March, 2018 and disposed of the request of petitioner under Section 33 (1) of the Arbitration Act in terms of the said order.

33. Thereafter, the Arbitral Tribunal issued Addendum to the Arbitral Award by its order dated 17th May, 2018, vide which the Arbitral Tribunal corrected another typographical error which had crept in para 112 of the Award. Thus, the learned Arbitral Tribunal on its own accord vide its Addendum dated 17th May, 2018 extended the limitation period till 17th May, 2018 in terms of Section 33 (6) of the Arbitration Act.

34. As regards the authority of the Arbitral Tribunal for extension of time by it on its own accord under Section 33(6) of the Arbitration Act, this Court in the case of ***National Highways Authority of India Vs. ITD Cementation India Ltd.***[1]**,** has held as follows:

> *"**10.** As far as the first of the aforesaid contentions is concerned, the literal construction of Section 33(6) does not permit inference of the Arbitral Tribunal being empowered to extend time only with the consent of the parties. Had it been the legislative intent, nothing prevented the legislature from providing so in Section 33(6) : The time provided in Section 33(1) is for making of applications by the parties. The same has been made subject to agreement of the parties. On the*

[1] ***2009 SCC OnLine Del 2369***

contrary the time provided in Section 33(6) is for the Arbitral Tribunal to decide the said applications. The Arbitral Tribunal in carrying out the correction or in making the additional award is to perform an adjudicatory function and cannot be put under any constraints of time. In this regard it may be noticed that the 1996 Act does away with the time of four months for making of the award provided under 1940 Act and unless the agreement itself between the parties provides for the award to be made within a particular time, places no restrictions whatsoever on the Arbitral Tribunal qua time for making of the award. The same is the position under Section 33(6) of the Act.

11. *Similarly, the other contention of the senior counsel for the petitioner of the arbitral tribunal being entitled to extend the time only before the expiry of the time fixed/provided under Section 33(2) or 33(5) of the Act does not find favour with me. The language of Section 33(6) does not permit any such limitation to be imposed on the Arbitral Tribunal. Section 32 also does not provide for termination of arbitration proceedings on expiry of time mentioned in Section 33(2) or Section 33(5) of the Act. Interpreting Section 33(6) as contended by petitioner would make it onerous and give rise to other contentious issues.*
xxx xxx xxx"

35. In view of the aforesaid, the period of limitation for filing petition under Section 34 of the Arbitration Act stood extended till 17th May, 2018. Section 31(5) of the Arbitration Act provides that after the Arbitral Award is made, a signed copy shall be delivered to each party. However, Section 33 of the Arbitration Act makes provision for correction and interpretation of Award and Additional Award. Thus, petitioner herein in term of Section 33(1) of the

Arbitration Act had filed a request on 10th January, 2018 before the Arbitral Tribunal, which was disposed of vide order dated 07th March, 2018, as noted above. Further, the Arbitral Tribunal by its order dated 17th May, 2018 had extended the period of time within which it shall make a correction, as the Tribunal carried out certain correction in the Award on its own by the said order. Thus, any order passed by Arbitral Tribunal under Section 33 of the Arbitration Act shall form part of the Award as passed by the Arbitral Tribunal.

36. It may be noted herein that Supreme Court in the case of ***USS Alliance Vs. State of Uttar Pradesh and ors.***[2]**,** has held that starting point for the limitation in case of *suo moto* correction of the Award, would be the date on which the correction was made and the corrected Award is received by the party. Thus, it has been held as follows:

> *"**2.** In our opinion, looking at the purpose and object behind Section 34 (3) of the Act, which is to enable the parties to study, examine and understand the award, thereupon, if the party chooses and is advised, draft and file objections within the time specified, the starting point for the limitation in case of suomoto correction of the award, would be the date on which the correction was made and the corrected award is received by the party. Once the arbitral award has been amended or corrected, it is the corrected award which has to be challenged and not the original award. The original award stands modified, and the corrected award must be challenged by filing objections.*
>
> ***3.** This interpretation would be in terms and accord with the reasoning which has been interpreted in the "Ved Prakash Mithal and Sons v. Union of India" (supra).*
>
> ***4.** In the present case, the objections/application for*

[2] ***2023 SCC Online SC 778***

setting aside the arbitral award were filed on 03.08.2018, which is within a period of ninety days from the date of the corrected award. Hence, the High Court was right in holding that the objections were filed within the limitation period. Even otherwise, the Court has the power to condone the delay for further period of thirty days. Application for condonation of delay can be filed at anytime till the proceedings are pending. Of course, exercise of discretion and whether or not the delay should be condoned is a different matter."

37. As regards the contention raised on behalf of petitioner that its request under Section 33 of the Arbitration Act was disposed of only on 13th June, 2018, when the Arbitral Tribunal informed petitioner that it had become *functus officio* and that the period of limitation ought to be construed from the said date, the same cannot be accepted. The said contention as raised on behalf of petitioner has no basis. By way of the said communication dated 13th June, 2018, the Arbitral Tribunal merely informed petitioner that it had already become *functus officio*. The said email dated 13th June, 2018 has no bearing on the validity of the order dated 07th March, 2018 of the Arbitral Tribunal, when the application of petitioner under Section 33 of the Arbitration Act was disposed of. The email dated 13th June, 2018 can in no manner be construed as deciding the application of the petitioner under Section 33 of the Arbitration Act.

38. When the application under Section 33 of the Arbitration Act had already been disposed of by the Arbitral Tribunal, any subsequent reply by the Arbitral Tribunal pursuant to mail by petitioner in that regard, cannot be taken to mean as any order by the Arbitral Tribunal under Section 33 of the Arbitration Act. Thus, in the case of ***State of***

Arunachal Pradesh Vs. Damani Construction Company[3] wherein a party had moved an application before the learned Arbitrator, Supreme Court held that the said application being not within the purview of Section 33 of the Arbitration Act, any communication by the learned Arbitrator would not be construed as a fresh cause of action taking the same as the starting point of limitation. Accordingly, Supreme Court held as follows:

> ***"8.*** *Firstly, the letter had been designed not strictly under Section 33 of the Act because under Section 33 of the Act a party can seek certain correction in computation of errors, or clerical or typographical errors or any other errors of a similar nature occurring in the award with notice to the other party or if agreed between the parties, a party may request the Arbitral Tribunal to give an interpretation of a specific point or part of the award. This application which was moved by the appellant does not come within any of the criteria falling under Section 33(1) of the Act. It was designed as if the appellant was seeking review of the award. Since the Tribunal had no power of review on merit, therefore, the application moved by the appellant was wholly misconceived. Secondly, it was prayed whether the payment was to be made directly to the respondent or through the court or that the respondent might be asked to furnish bank guarantee from a nationalised bank as it was an interim award, till final verdict was awaited. Both these prayers in this case were not within the scope of Section 33. Neither review was maintainable nor the prayer which had been made in the application had anything to do with Section 33 of the Act. The prayer was with regard to the mode of payment. When this application does not come within the purview of*

[3] ***(2007) 10 SCC 742***

Section 33 of the Act, the application was totally misconceived and accordingly the arbitrator by communication dated 10-4-2004 replied to the following effect:

"However, for your benefit I may mention here that as per the scheme of the Act of 1996, the issues/claims that have been adjudicated by the interim award dated 12-10-2003 are final and the same issues cannot be gone into once again at the time of passing the final award."

9. *Therefore, the reply given by the arbitrator does not give any fresh cause of action to the appellant so as to move an application under Section 34(3) of the Act. In fact, when the award dated 12-10-2003 was passed the only option with the appellant was either to have moved an application under Section 34 within three months as required under sub-section (3) of Section 34 or within the extended period of another 30 days. But instead of that a totally misconceived application was filed and there too the prayer was for review and with regard to mode of payment. The question of review was totally misconceived as there is no such provision in the Act for review of the award by the arbitrator and the clarification sought for as to the mode of payment is not contemplated under Section 33 of the Act. Therefore, in this background, the application was totally misconceived and the reply sent by the arbitrator does not entitle the appellant a fresh cause of action so as to file an application under Section 34(3) of the Act, taking it as the starting point of limitation from the date of reply given by the arbitrator i.e. 10-4-2004.*

10. *Thus, in this background, the view taken by the learned Single Judge appears to be justified and there is no ground to interfere in this appeal. Consequently, there is no merit in both the appeals and the same are dismissed with no order as to costs.*

xxx xxx xxx"

39. Considering the aforesaid facts, the crucial dates in the present case for the purposes of calculating the limitation period for filing petition under Section 34 of the Arbitration Act would be when the petitioner received signed copy of order dated 07th March, 2018, by which the request of the petitioner under Section 33 of the Arbitration Act, was disposed of by the Arbitral Tribunal; and the date on which the petitioner received signed copy of order dated 17th May, 2018, by which the Addendum to the Award was issued by the Arbitral Tribunal.

40. Period of limitation for filing an application under Section 34 of the Arbitration Act would commence only after valid delivery of the Award under Section 31(5) of the Arbitration Act. It may be noted that making and delivery of the Award are two different stages of an arbitration proceeding. Therefore, in order to adjudicate the issue whether or not the present petition is barred by limitation, the dates on which the aforesaid orders dated 07th March, 2018 and 17th May, 2018 were received by the petitioner in terms of Section 31(5) of the Arbitration Act, would be pertinent. In this regard, Supreme Court in the case of ***Dakshin Haryana Bijli Vitran Nigam Limited Vs. Navigant Technologies Pvt. Ltd.***[4]**,** held as follows:

> ***"28.*** *In Union of India v. Tecco Trichy Engineers & Contractors [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239] , a three-Judge Bench of this Court held that the period of limitation for filing an application under Section 34 would*

[4] ***2021 SCC OnLine SC 157***

commence only after a valid delivery of the award takes place under Section 31(5) of the Act. In para 8, it was held as under : (SCC p. 243, para 8)

"8.The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."

(emphasis supplied)

29. *The judgment in Tecco Trichy Engineers [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239] was followed in State of Maharashtra v. ARK Builders (P) Ltd. [State of Maharashtra v. ARK Builders (P) Ltd., (2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413] , wherein this Court held that Section 31(1) obliges the members of the Arbitral Tribunal to make the award in writing and sign it. The legal requirement under sub-section (5) of Section 31 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), 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 commence from the date on which the award was received by the party concerned in the manner prescribed by law. The judgment in Tecco Trichy [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239] has been recently followed in Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141] .*
>
> *xxx xxx xxx"*

41. In the present case, it has been contended on behalf of petitioner that it received copy of order dated 07th March, 2018 disposing of its request under Section 33(1) of the Arbitration Act only by way of email dated 22nd May, 2018. The petitioner itself has admitted to the said position in para (xliv) of the petition, wherein it has been stated as follows:

> *"(xliv) That in reference to the above communication of the Petitioner, the Tribunal supplied the copy of order dated 07.03.2018 to the Petitioner on 22.05.2018."*

42. In the email dated 22nd May, 2018, the Arbitral Tribunal has

stated that the copy of order dated 07th March, 2018 was sent to the parties by registered post. This Court has perused the Arbitral record. However, from perusal of the Arbitral record it is not possible to conclude that copy of order dated 07th March, 2018 was received by the petitioner by registered post. In view thereof, this Court accepts the plea of petitioner that it received copy of order dated 07th March, 2018 from the Arbitral Tribunal on 22nd May, 2018, upon request in this regard to the Arbitral Tribunal.

43. As regards the Addendum to Award dated 17th May, 2018 passed by Arbitral Tribunal, the documents on record clearly show that the said Addendum to Award was received by petitioner by email sent on behalf of the Arbitral Tribunal on the same day, i.e., 17th May, 2018. By email dated 17th May, 2018, scanned copy of Addendum to Award dated 17th May, 2018 was mailed to the counsel for petitioner, who in turn forwarded the same to the petitioner on its official mail. The said email dated 17th May, 2018 has been filed on behalf of the petitioner itself, which clearly shows receipt of the scanned copy of the Addendum to Award dated 17th May, 2018 by petitioner as well as its lawyer.

44. The contention on behalf of the petitioner that signed copy of the Addendum to Award dated 17th May, 2018 was provided to the petitioner only on 01st June, 2018, is found to be without any merit. Email dated 17th May, 2018 sent on behalf of the Arbitral Tribunal to the counsel for the petitioner clearly shows that the Addendum to the Award dated 17th May, 2018 was attached with the said email dated 17th May, 2018. Additionally, later signed copy of the Addendum to

the Award was also collected physically on behalf of petitioner on 01st June, 2018 from the office of Arbitral Tribunal. Email dated 14th August, 2018 sent by the Arbitral Tribunal to petitioner is reproduced as under:

> *"Arbitration between Ministry of Youth Affairs & Sports and E&Y/EKS*
>
> *MANJU KARGETI*
> *Tue 8/14/2018 4:15 PM*
> *To: Neeraj Choudhary neeraj.lawyer@gmail.com:*
>
> *Dear Sir,*
>
> *1. A Scanned copy of the award dated 11/12/2017 was transmitted to you on 11/12/2017 itself by email, while signed copy of the award was sent to the Department of Sports, Ministry of Youth Affairs & Sports, Govt. of India on 13/12/2017 by Registered AD Post. A copy of the postal receipt is attached herewith. Please note that a signed copy of the award was also collected by Mr. Jyoti Kumar Mangalam from this office on 21.01.2018.*
>
> *2. I may also point out that a scanned copy of addendum to the award dated 17.05.2018 was sent to you on the same day by email. In this regard please refer to my email dated 17.05.2018, addressed to you and others. A signed copy of addendum to the award was also collected by Mr. Jyoti Kumar Mangalam on 01.06.2018 from this office.*
> *Regards*
>
> *Manju*
> *P.A. to Mr. Justice Anil Dev Singh "*

45. It may be noted that along with the email dated 17th May, 2018 sent on behalf of the Arbitral Tribunal to the counsel for petitioner and other parties, scanned copy of the Addendum to the Award dated 17th

May, 2018 was also mailed, which was a duly signed copy. Once a duly scanned signed copy of the Addendum to Award dated 17th May, 2018, had been received by petitioner, the period of limitation for the purposes of filing petition under Section 34 of the Arbitration Act for challenging the Award commenced. Subsequent act on behalf of petitioner of physically collecting signed copy of the said Addendum on 01st June, 2018 will not in any manner extend the limitation period to 01st June, 2018.

46. Even receipt of photocopy of a signed Award from an Arbitral Tribunal has been held to be receipt of Arbitral Award in terms of Section 31(5) of the Arbitration Act. It has categorically been held that there is no requirement in Section 34 of the Arbitration Act for filing ink signed copy of the Award. Thus, in the case of ***Continental Telepower Industries Ltd. Vs. Union of India and Ors.***[5]**,** it has been held as follows:

> ***"14.*** *I also find that the legislature has while re-enacting the arbitration law made a conscious change in the provision as existing in 1940 Act. Section 14(1) of 1940 Act merely required the arbitrators to make and sign the award and to give notice in writing to parties of the making and signing thereof. There was no requirement therein as in Section 31(5) of the Act, that upon making of the award, deliver a signed copy thereof to each party to arbitration as in Section 31(5). Under Section 14(2) of 1940 Act, a party to arbitration was required to request to the arbitrator to cause the award or a signed copy of it together with the arbitration record to be filed in the court, and whereafter the court was required to give notice to*

[5] ***2009 SCC OnLine Del 1859***

parties of filing of award. The award was required to be made rule of the court before being executable. However, under the 1996 Act, the award is executable as such, after limitation for filing objections with respect thereto has expired. The grounds of challenge have been considerably restricted. The law, with a view to limit the time whereafter the award becomes executable as a decree of court, has done away with the application of Section 5 of Limitation Act qua the petition for filing of award in the court. Rather by use of the expression "but not thereafter" in proviso to Section 34(3), intent is clear, not to permit the execution of an award to remain in a state of suspended animation. In my view, if it is to be held that a photocopy of a signed award delivered by the arbitrator under cover of letter signed by him in evidence of authentication thereof is not sufficient compliance of Section 31(5), it will lead to indefinite delays in execution and in filing of petition under Section 34(3) and till when the award is inexecutable. Such an interpretation will be an impediment in expediency in arbitration matters, the purpose behind bringing about change in law.

15. *I have recently in Aktiebolaget Volvo v. R. Venkata Chalam, 160 (2009) DLT 100 on an interpretation of various provisions of CPC held that Order 7 Rule 14 and Order 8 Rule 1A requiring filing of documents do not mean the original document and it is open to the parties to, in compliance thereof, file copies/photocopies of the documents. The requirement to "produce" as distinct from "file" the original document for inspection is only at the stage of admission/denial or tendering documents into evidence. In that context the definition of a document in Section 3 of Indian Evidence Act was also noted as including words printed, lithographed or photographed.*

16. *The Apex Court has been extending the meaning of primary as well as secondary evidence. It has been held in Prithi Chand v. State of Himachal Pradesh, (1989) 1 SCC 432 : AIR 1989 SC 702 that the carbon copy of the medical certificate bearing also the carbon copy of the signatures appended by the doctor on the original is primary evidence within the meaning of Section 62 of the Evidence Act and the judgments of the courts below holding otherwise were set aside. Similarly, in Y.N. Rao v. Y.V. Lakshmi, 1991 Raj. LR 367 (SC) a photocopy of document has been held to be a secondary evidence within the meaning of Section 63 of the Indian Evidence Act. The judgment of the High Court refusing to see a foreign judgment and decree for the reason of copy provided being a photocopy was set aside.*

17. *In the absence of there being any words in the Act to indicate the requirement of furnishing award in the form of primary evidence to the parties, the law if laid down so to require an 'ink signed' award would, in my opinion, lead to delays and also give a handle to the unscrupulous litigants to indefinitely delay the execution of the award by contending that the signed copies of the award had not been delivered.*

18. *Law has to evolve with changing technologies. In today's time it would be unfair to require the arbitrator to sign each and every copy of the award, especially when photocopy has become common place and is the accepted mode.*

xxx xxx xxx

21. *I am also not inclined to believe the contention that the letter dated 31st December, 2001 of the arbitrator, copy whereof is on the arbitral record and vide which the arbitrator complied with the request of the petitioner in its letter dated 24th December, 2001, had not been received by the petitioner. The said letter*

> *appears to have been issued in the normal course and cannot be disputed. The petitioner, also in its letter dated 24th December, 2001, only indicated an intention to execute the award and did not indicate any intention to file objections to the award. The petitioner appears to have decided to file objections after dismissal of the objections of the respondents-Union of India/BSNL to the award. As noticed above, there is no requirement in Section 34 of filing ink signed copy of the award therewith or of award being duly stamped before such petition can be preferred. In view of the pre-emptive language of proviso to Section 34(3), the petition under Section 34(1) ought to have been filed within three months of receipt of photocopy of the award. If the limitation for filing the petition under Section 34 of the Act is to be counted from say after a week of 26th November, 2001, then the petition is definitely barred by time and no application for condonation of delay is entertainable.*
>
> *xxx xxx xxx"*

47. When scanned signed copy of order dated 07th March, 2018 was received by petitioner by email dated 22nd May, 2018 and scanned signed copy of Addendum to Award dated 17th May, 2018 was received by the petitioner on 17th May, 2018 itself, the same was valid delivery in terms of Section 31(5) of the Arbitration Act. 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.

48. A Division Bench of this Court in the case of ***Delhi Urban***

Shelter Improvement Board Vs. Lakhvinder Singh[6] has held that the expression 'signed copy' in Section 31(5) of the Arbitration 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 his hand writing. Thus, it was held as follows:

> ***"15.*** *The reference to the case of ARK Builders Private Limited (supra) where there was a dispute as to the delivery of a copy of the award by the arbitrator, by the Appellant would be inapplicable since, in the present case, the delivery of the copy of the award is not in contention. The only question is whether the copy of the impugned award, delivered to DUSIB by the arbitrator was a signed copy. Similarly, the decision in Tecco Trichy Engineers & Contractors (supra) contemplates the initiation of the limitation described under Section 34 in the light of the delivery of the arbitral award to the party once the party "receives" the award; the same not being in dispute in the present case.*
>
> ***16.*** *As observed by the Single Judge, the expression 'signed copy' in Section 31(5) clearly indicates the legislative intent that a copy authenticated by the arbitrator is served on each party. The purpose of enacting the said provision is clearly to ensure that the parties receiving the award are in a position to act on the same. Emphasizing on this legislative intent, the Single Judge elaborated on how the 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*

[6] ***2017 SCC OnLine Del 9810***

the expression "signed copy of the award" in a restrictive manner as to connote a copy bearing the original signatures of the arbitrator in his handwriting. The Single Judge cited Section 3(56) of the General Clauses Act, 1897 that defines 'sign' as under:

"(56) - "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions;"

17. *and also the various definitions of "sign" and "signature" as provided in Black's Law Dictionary, Eighth Edition, to demonstrate the utility of such a sign or a signature, which is primarily for authentication purposes.*

18. *National Agricultural Co-operative Marketing Federation of Indian Ltd. v. R. Piyarelall Import and Export Ltd. AIR 2016 Cal 160, a Division Bench of the Calcutta High Court upheld the decision of the Single Judge rejecting the petition under Section 34 of the Act for setting aside an award on the ground of limitation, was also cited by the Single Judge, where the arbitral 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. Here, the Court held that:*

"24 it was not the intention of legislature that all the copies of the award,- dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.

25. Had It been the legislative intent that all copies of the award required to be furnished to the respective parties to a multiparty arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain: the original signatures of the arbitrators. Parliament would perhaps, not have used the expression 'signed copy of the award'

but used the expression 'a copy of the award, duly signed by the arbitrators', in Section 31(5) of the 1996 Act."

xxx xxx xxx"

49. Considering the aforesaid, it is clear that valid delivery of the Addendum to Award dated 17th May, 2018 and order dated 07th March, 2018 took place respectively on 17th May, 2018 and 22nd May, 2018 in terms of Section 31(5) of the Arbitration Act. Thus, the period of limitation for filing of petition under Section 34 of the Arbitration Act in the present case commenced on 22nd May, 2018. Thus, the limitation period for filing the present petition was till 22nd August, 2018.

50. In the present case, the petition was firstly filed on 14th August, 2018, which was returned under objections. Perusal of the Log Information showing the information of the defects raised by the Registry shows that at the time of initial filing on 14th August, 2018, the petition was not accompanied by Arbitral Award and total 46 pages were filed. Thus, the petition was returned under objection by the Registry on 18th August, 2018. Thereafter, the petition was re-filed by the petitioner on 24th August, 2018 when 1785 pages were filed. Defects were again raised and petition was returned under objection on 25th August, 2018. The petition was thereafter re-filed on 31st August, 2018. However, the same was again returned under objections on 01st September, 2018. The defects were removed by the petitioner on the same date and re-filing was thereafter done on the same day i.e. 01st September, 2018. Thereafter, the present petition was listed before this Court since all objections were removed by the petitioner.

51. This Court had requisitioned the files showing the log information of filing of the present writ petition that contained files showing the actual filing of the petition and documents on different dates. The file provided by the Registry shows that the filing done by petitioner on 14th August, 2018 contained only 46 pages. The petition filed on 14th August, 2018 was not accompanied by the Arbitral Award or attested copy of the Statement of Truth, though signatures of the parties and the advocate were there. Duly signed vakalatnama had also been filed on 14th August, 2018. Since the filing on 14th August, 2018 was unaccompanied by Arbitral Award and without attested copy of the Statement of Truth, such filing as done by petitioner on 14th August, 2018 cannot be considered to be a proper filing. The same was non-est filing and cannot be considered by this Court.

52. Perusal of the file as received from the Registry showing the filing done by petitioner on 24th August, 2018 reveals that 1785 pages had been filed by petitioner. The filing on 24th August, 2018 contained duly signed copy of the petition by the party as well as the advocate in question. Further, duly attested Statement of Truth was filed along with the petition. Arbitral Award dated 11th December, 2017 was also duly filed along with the petition on 24th August, 2018. Though objections were raised by the Registry even qua the filing on 24th August, 2018, however, the said objections were only procedural in nature like absence of bookmarking, etc. Once a duly signed petition along with proper Statement of Truth, Arbitral Award, vakalatnama duly signed by the party as well as the advocate was filed, the same was a proper filing. Therefore, any objections raised by the Registry

thereafter were only procedural in nature as substantive filing was done by petitioner on 24th August, 2018.

53. In view of the aforesaid, the actual date of filing of the present petition is 24th August, 2018. As noted above, though objections were raised by the Registry even thereafter and petition was returned under objections on 25th August, 2018 and 01st September, 2018, however, the said objections cannot be considered to be fundamental in nature and were only procedural objections. In this regard, Division Bench of this Court in the case of ***Oil and Natural Gas Corporation Ltd. Vs. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Limited (Meil)***[7], has held as follows:

> *"**32.** It is material to note that Section 34 of the A&C Act does not specify any particular procedure for filing an application to set aside the arbitral award. However, it does set out the grounds on which such an application can be made. Thus, the first and foremost requirement for an application under Section 34 of the A&C Act is that it should set out the grounds on which the applicant seeks setting aside of the arbitral award. It is also necessary that the application be accompanied by a copy of the award as without a copy of the award, which is challenged, it would be impossible to appreciate the grounds to set aside the award. In addition to the above, the application must state the name of the parties and the bare facts in the context of which the applicants seek setting aside of the arbitral award.*
>
> ***33.** It is also necessary that the application be signed by the party or its authorised representative. The affixing of signatures signify that the applicant is making the application. In the absence of such signatures, it would be*

[7] ***2023 SCC OnLine Del 63***

difficult to accept that the application is moved by the applicant.

34. *In addition to the above, other material requirements are such as, the application is to be supported by an affidavit and a statement of truth by virtue of Order XI, Section 1 of the Commercial Courts Act, 2015. It is also necessary that the filing be accompanied by a duly executed vakalatnama. This would be necessary for an advocate to move the application before the court. Although these requirements are material and necessary, we are unable to accept that in absence of these requirements, the application is required to be treated as non est. The application to set aside an award does not cease to be an application merely because the applicant has not complied with certain procedural requirements.*

35. *It is well settled that filing an affidavit in support of an application is a procedural requirement. The statement of truth by way of an affidavit is also a procedural matter. As stated above, it would be necessary to comply with these procedural requirements. Failure to do so would render an application under Section 34 of the A&C Act to be defective but it would not render it non est.*

.....

37. *It is, thus, necessary to bear in mind the distinction between the procedural requirements that can be cured and those defects that are so fundamental that the application cannot be considered as an application under Section 34 of the A&C Act, at all.*

.....

40. *It is relevant to note that the affidavits accompanying the application filed on 20.02.2019 were signed but not attested and to that extent, the defects as pointed out are not accurate. It is clear from the above, that none of the defects are fundamental as to render the application as non est in the eyes of law. All the defects, as pointed out, are curable defects. It is settled law that any defect in an affidavit supporting pleadings can be cured. It is seen from the record that the filing was also accompanied by an*

> *executed vakalatnama, however, the same was not stamped. It is also settled law that filing of a court fee is necessary, however, the defect in not filing the court fee along with the application can be cured. In view of above, we are unable to accept that the application, as filed on 20.02.2019 or thereafter on 23.02.2019, was non est.*
>
> ***41.*** *We may also add that in given cases there may be a multitude of defects. Each of the defects considered separately may be insufficient to render the filing as non est. However, if these defects are considered cumulatively, it may lead to the conclusion that the filing is non est. In order to consider the question whether a filing is non est, the court must address the question whether the application, as filed, is intelligible, its filing has been authorised; it is accompanied by an award; and the contents set out the material particulars including the names of the parties and the grounds for impugning the award."*

54. In view of the aforesaid, it is clear that though the period of limitation for filing the present petition was till 22nd August, 2018, the initial filing of 14th August, 2018 cannot be considered as filing, as the same was non-est. The initial filing on 14th August, 2018 contained only 46 pages and was not accompanied by the impugned Arbitral Award. However, upon re-filing on 24th August, 2018, 1785 pages were filed by petitioner, which also included the Arbitral Award. Thus, though objections were raised by Registry subsequently and re-filing was done on 31st August, 2018 and 01st September, 2018, however, the re-filing as done by petitioner on 24th August, 2018, 31st August, 2018 and 01st September, 2018 cannot be considered as non-est filing. It is also pertinent to note here that re-filing of the petition was done by petitioner within time and without any delay.

55. Accordingly, in view of the detailed discussion as aforesaid, there is a delay of two days in filing the present petition, considering the fact that filing done on 24th August, 2018 by petitioner was a proper filing. The delay of two days in filing the present petition is within the extended period of 30 days beyond the statutory period of three months as provided under Section 34 of the Arbitration Act.

56. Proviso to Section 34(3) of the Arbitration Act stipulates that if the Court is satisfied that the applicant was prevented by "sufficient cause" from making the application within the period of three months, it may entertain the application within a further period of 30 days. "Therefore, if a petition is filed beyond the prescribed period of three months, the court has the discretion to condone the delay only to an extent of thirty days, provided sufficient cause is shown." (**See: *State of Himachal Pradesh and Another Vs. Himachal Techno Engineers and Another*, *(2010) 12 SCC 210)***. Therefore, this Court has to see whether there is "sufficient cause" in the present case for condoning the delay of 2 days in filing the present petition.

57. It is undisputed that no application for condonation of delay has been filed on behalf of petitioner as it was the consistent stand of petitioner that the present petition has been filed within the statutory period of three months as provided under Section 34 of the Arbitration Act. However, fact remains that application for condonation of delay can be filed at any time till the proceedings are pending. (See: ***USS Alliance Vs. State of Uttar Pradesh and Ors., 2023 SCC OnLine SC 778).***

58. Since it is by the present judgment that it has been held that the

initial filing of 14th August, 2018 was a non-est filing, this Court deems it appropriate to grant an opportunity to petitioner to file an application for condonation of delay in filing the present petition. Needless to state that upon such an application being filed on behalf of the petitioner, the Court would have to consider whether or not the petitioner has shown "sufficient cause" for condoning delay. The Court will exercise its discretion whether or not the delay should be condoned upon considering the application of the petitioner for condonation of delay.

59. In view thereof, petitioner is granted liberty to file application for condonation of delay within three weeks from the passing of this judgment.

60. List before the Roster Bench on 01st September, 2023.

(MINI PUSHKARNA)
JUDGE

AUGUST 23, 2023
au/ak/c