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

+ O.M.P. (COMM) 66/2023 & I.As. 2782/2023, 2784-88/2023.

UNION OF INDIA

..... Petitioner

Through: Mr. Vineet Dhanda, CGSC, Ms. Gurleen Kaur, Mr. Archit Aggarwal, Advocates.

versus

NCC LIMITED

..... Respondent

Through: Dr. Amit George, Mr. Piyo Harold Jaimon, Mr. Rayadurgam Bharat, Mr. Amol Acharya, Mr. Rishabh Dheer, Mr. Arkaneil Bhaumik, Mr. Adhishwar Suri, Advocates.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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23.02.2024

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 [“the Act”], the petitioner – Union of India, seeks to assail an arbitral award dated 10.02.2022 rendered by a learned Sole Arbitrator, adjudicating disputes between the parties under a contract dated 12.09.2013.

2. The petition is accompanied by applications for condonation of delay of 19 days in filing of the petition and of 135 days in refiling of the petition.

3. At the very outset, it is undisputed that delay in filing of a petition



under Section 34 of the Act, can be condoned upto a maximum of 30 days, i.e., any delay in filing of a petition beyond the limitation period of three months plus the maximum condonable period of 30 days, is not maintainable.

4. The factual position in the present case is that the award was made on 10.02.2022 and received by the parties on 12.02.2022. The period for filing of the petition within limitation thus expired on 12.05.2022 and the maximum condonable period of delay expired on 12.06.2022. As the Court was on vacation at the time and reopened on 04.07.2022, Ms. Gurleen Kaur, learned counsel for the petitioner, submits that the maximum condonable period of delay would extend to 04.07.2022. The petition was, in fact, first filed on 29.06.2022, within this period.

5. However, Dr. Amit George, learned counsel for the respondent, raised an issue as to whether the original filing of the petition was a valid filing or *non-est*. This Court called for the relevant records from the Registry. Those records show that what was filed by the petitioner on 29.06.2022 was a total of 37 pages, whereas the record now before the Court is of 1142 pages. The defects marked by the Registry as on this date were *inter alia* with regard to lack of bookmarking, court fees, affidavits, the award and documents.

6. Ms. Kaur, in fact, accepts that the filing of 29.06.2022 comprised only of the petition and the Statement of Truth. Dr. George draws my attention to the Statement of Truth as available on the record, which is dated 22.09.2022, i.e., long after the period of limitation had expired. According to Ms. Kaur, this was due to a re-filing from a different user id. In my view, it is not necessary to enter into this controversy, as even if



the Statement of Truth was properly filed within time, the first filing of the present petition was, in any event, *non-est*.

7. It is admitted by Ms. Kaur that the defects – including, most significantly, the filing of the impugned award – were cured only in September 2022, which is, even giving all benefit of doubt to the petitioner, beyond the maximum condonable period.

8. The question as to the circumstances in which a filing would be considered *non-est* has been elucidated in several decisions, including two decisions of the Division Bench of this Court, which make it clear that non-filing of the award is in itself a fatal defect. In *Oil & Natural Gas Corporation Ltd. v. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & Ors.* [FAO(OS)(COMM) 324/2019, dated 09.01.2023], the Court observed 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.”*

[Emphasis supplied.]

9. The aforesaid position has been reiterated in the judgment in *Union of India v. M/s Panacea Biotec Limited* [FAO(OS)(COMM) 81/2020, dated 19.12.2023] beyond the pale of doubt:

*“36. Therefore, **it has been consistently held that non filing of the Award along with the Petition under Section 34 of the Act, 1996 is a fatal defect, making such filing as non-est.** The objections under*



Section 34 must be on justiciable grounds as prescribed under Section 34(2) as such grounds can be ascertained only by referring to the Award made by the learned Arbitrator. The filing of an Award is not an empty procedural requirement since **sans the Award, the Court is left absolutely clueless to comprehend the grounds** taken in the objection Petition and thereby unable to decide whether the Petition merits Notice to be issued or outright rejection. In the absence of the Award, the grounds on which the objections have been taken cannot be appreciated and considered if they are within the scope of Section 34(2) and thus, such filing of objections without the impugned Award render the entire objections incomprehensible for consideration under Section 34 of the Act, 1996.

37. **The Award is, therefore, an absolute essential for the Court to proceed further**, meaning thereby that the Court cannot proceed further until the Award is filed. The first step would commence only on filing of the Award and therefore, effective date of filing necessarily would be the date of filing of Award in support of the Petition and till then it cannot be considered valid filing. **The necessary corollary is that non-filing of the Award is a fatal defect making the filing as non-est.**”

[Emphasis supplied.]

10. The importance of filing of the award is, in fact, elucidated by reference to the petition in the present case, which contains several references to an “interim award”, whereas the impugned award itself admittedly is a final award. Such averments are contained *inter alia* in paragraph 19 and grounds ‘A’ and ‘CCC’ of the petition, which read as follows:

“19. That the legislation has granted the right to the Arbitrator to adjudicate and grant the interim award only when there is an unequivocal, unambiguous and unconditional admission. It is relevant to mention here that no such admission was presented in the Arbitration and therefore, the award passed by the Ld. Arbitrator is bad in law and liable to be set-aside.

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A. BECAUSE the instant petition is preferred against the Interim Award dated 10.02.2022 passed by the Ld. Arbitrator in Arb. P. 193/2019, wherein the Ld. Arbitrator without looking into the objections and any admission of the Petitioner had allowed and passed



the Arbitral award in favour of the Respondent and against the Petitioner.

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CCC. BECAUSE the legislation has granted the right to the Arbitrator to adjudicate and grant the interim award only when there is an unequivocal, unambiguous and unconditional admission and no such admission was presented in the Arbitration and therefore, the award passed by the Ld. Arbitrator is bad in law and liable to be set-aside.”

Ms. Kaur states that these averments have been incorporated by way of an inadvertent typographical error. Without going into the question of whether such elaborate and repeated averments can be characterized as a typographical error, what is important for the present purposes is that the validity or otherwise of these grounds could not have been appropriately appreciated without a copy of the award at all.

11. It is the admitted position that a copy of the impugned award was not filed alongwith the original petition, and was filed only in September 2022, after the maximum condonable period of delay. Following the judgments of the Division Bench and the admitted position that the original filing in the present case was without a copy of the award, the only possible conclusion is that the original filing was *non-est*.

12. The petition under Section 34 of the Act is therefore barred by limitation and dismissed.

13. All pending applications also stand dismissed.

PRATEEK JALAN, J

FEBRUARY 23, 2024

'Bhupi' /