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

% ***Judgment reserved on: 09.10.2025***

Judgment pronounced on: 30.10.2025

\+ FAO(OS) (COMM) 107/2025, CM APPL. 40694/2025 (Stay), CM APPL. 40695/2025 (Ex. from filing certified copies of documents), CM APPL. 40696/2025 (Ex.) & CM APPL. 40697/2025 (Delay of 1 days in filing the appeal)

UNION OF INDIA .....Appellant

Through: Dr. B. Ramaswamy, CGSC.

versus

M/S GR-GAWAR (J.V.) .....Respondent

Through: Ms. Aditi Tambi, Advocate.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal has been instituted under Section 37 of the **Arbitration and Conciliation Act, 1996**[1], read with Section 13 of the Commercial Courts Act, 2015, challenging the **Judgment dated 24.04.2025**[2] passed by the learned Single Judge of this Court in OMP (COMM) No. 38/2025. By the said Judgment, the learned Single Judge dismissed the Petition under Section 34 of the A&C Act filed by the Appellant on the ground of delay, holding that the same was

[1] A&C Act
[2] Impugned Judgment

barred by limitation.

2. The present dispute finds its origin in a contract awarded by the Ministry of External Affairs to the Respondent for the upgradation of existing roads in the Terai Region of Nepal.

3. In accordance with the terms of the contract, the disputes that arose between the parties were first referred to a **Dispute Review Expert**[3]. The learned DRE, after considering the respective claims, recommended a partial allowance of the Respondent's claims along with post-award interest.

4. Dissatisfied with the learned DRE's recommendations, both parties invoked the arbitration clause, leading to the constitution of an Arbitral Tribunal. Upon conclusion of the proceedings, the learned Arbitral Tribunal rendered an Award dated 03.01.2024, which was subsequently modified through a Corrigendum dated 02.03.2024.

5. The Appellant, being aggrieved by the Arbitral Award, filed a Petition under Section 34 of the A&C Act, before the learned Single Judge of this Court. However, the said filing suffered from several procedural deficiencies, including non-payment of requisite court fees and omission of essential documents.

6. Upon scrutiny, the Registry found the filing to be incomplete and non-compliant with procedural requirements as mandated by the Rules of this Court. Although the Appellant made attempts to rectify these defects, the final re-filing of the Petition was made on 20.01.2025, which was beyond the statutory period of 120 days prescribed under Section 34(3) of the A&C Act.

7. The learned Single Judge, while considering the Appellant's

[3] DRE

application for condonation of delay being IA No. 1633/2025, dismissed the Petition on the ground that the initial incomplete filing could not be treated as a valid filing, and that the subsequent re-filing was beyond the permissible time limit. Aggrieved by the said order, the Appellant has preferred the present Appeal, contending that the procedural lapses were curable in nature and that the 170-day delay in filing ought to have been condoned in the interest of justice.

8. Along with the aforesaid application, the Appellant also filed another application being IA No. 1635/2025, seeking condonation of an additional delay of 211 days in the re-filing of the Petition under Section 34 of the A&C Act.

9. In view of the foregoing background, the solitary issue that requires consideration is as to whether the initial filing of the Petition under Section 34 of the A&C Act was, in effect, *non-est* filing, and whether the application seeking condonation of delay in filing the Petition under Section 34 of the A&C Act is barred by limitation.

10. In our considered view, it is appropriate to extract the relevant portions of the Impugned Judgment, as it provides a comprehensive and detailed analysis, addressing both the factual matrix and the applicable law thereon. The relevant excerpts from the Impugned Judgment are as follows:-

> "**8**. The moot question involved in the instant application pertains to whether the filing dated 20.06.2025 in question is only a "defective" filing or *"non est"* in the eyes of law?
>
> **9**. In order to ascertain the exact date of filing and subsequent rectifications made by the applicant, this Court, *vide* order dated 03.04.2025, directed the Registry to furnish a detailed report. From a perusal of the report, it emerges that the original filing by the applicant, dated 20.06.2024, comprised approximately 146 pages. However, upon scrutiny, several defects were identified and subsequently intimated to the applicant on 29.06.2024. These defects broadly included non-signing of each page of the pleadings

by the applicant, absence of a statement of truth, discrepancy in the memo of parties, wherein, it was filed as a normal application while other documents indicated a commercial dispute, and inconsistencies in the *Vakalatnama*.

10. Moreover, certain electronic records submitted were not accompanied by the requisite declaration on oath. The filing also lacked necessary averments concerning maintainability based on pecuniary jurisdiction, and crucial procedural requirements, such as submission of the E-Court fee receipt, one-time Process Fee (PF), and stamping/Court fees, remained unfulfilled. Additionally, the affidavit of service, evidencing service upon the other counsel, was missing, and there was no certificate confirming the filing of the relevant arbitration record.

11. The applicant further omitted the application seeking condonation of delay beyond the 90-day statutory limit, complete particulars of advocates in the Vakalatnama, appropriate bookmarking of annexures/documents, and failed to provide each part of the document in OCR format. The memo of parties was left incomplete, and the documents lacked appropriate page numbering in the index.

12. Although these defects were communicated to the counsel for the applicant on 29.06.2024. However, corrective action to address these issues was only initiated much later, specifically on 17.01.2025, continuing thereafter on 18.01.2025, and finally concluding on 20.01.2025, when the applicant completed rectification of all defects. The defects as communicated on 29.06.2024, and the rectification of the same on various dates, as provided by the Registry are reproduced hereunder:-

DIARY NO : 1819336 / 2024	**PARTIES**	UNION OF INDIA Vs. M/S GR-GAWA R(J.V.)
CASE TYPE: O.M.P. (COMM)		

LIMITATION INFORMATION	
ENTRY DATE	**DESCRIPTION**
20-01-2025 11:50	LIMITATION REMARKS :date of award is 03/01/2024 DATE OF FILING IS 20/06/2024=169-90=79 DAYS COD AND CODR GIVEN
18-01-2025 11:40	date of award is 03/01/2024 DATE OF FILING IS 20/06/2024=169-90=79 DAYS COD AND CODR GIVEN
29-06-2024 02:47	date of award is 03/01/2024 DATE OF FILING IS 20/06/2024=169-90=79 DAYS

DEFECTS INFORMATION				
SERIAL	**DEFECT**	**DEFECT DESCRIPTION**	**DATE**	**DATE**

NO.	CODE		DEFECT	RECTIFICATION	
1	1	EACH PAGE OF PLEADING BE SIGNED BY THE PETITIONER/PETITIONERS. BLANKS BE FILLED IN THE STATEMENT OF TRUTH. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
2	2	PLEASE INSERT AVERMENT BEFORE THE PRAYER REGARDING COMMERCIAL DISPUTE AS PER PRACTICE DIRECTION. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
3	3	IN CASE OF ELECTRONIC DOCUMENTS- DECLARATION ON OATH BE FILED BY THE PARTY FOR ELECTRONIC RECORDS AS PER ORDER XI RULE VI OF CPC. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696		
4	5	PLEASE INSERT THE PARA OF PECUNIARY JURISDICTION WITH VALUE OR IT SHOULD BE STATED HOW THE PETITION IS MAINTAINABLE AS PER PECUNIARY JURISDICTION. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
5	8	E-COURT FEE RECEIPT NO. BE ENTERED AT THE TIME OF FILING THE MATTER. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
6	10	ONE-TIME PF TO BE FILED BY THE PLAINTIFF AT THE TIME OF FILING OF THE PLAINT/PETITION/SUIT AND BY THE DEFENDANT AT THE TIME OF FILING OF THE WRITTEN STATEMENT. CH-I, R-13 -VI, R-2 -2018 ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
7	96	CERTIFICATE TO THE EFFECT THAT RELEVANT RECORD OF THE ARBITRATION PROCEEDINGS BEING THE RELEVANT PLEADINGS DOCUMENTS DEPOSITIONS ETC HAS BEEN FILED ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7	
8	201	Caveat report be obtained and at the time of each subsequent refiling and proof of service be filed. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696		
9	202	Fresh Notice of Motion upon Counsel for concerned respondant be filed if 3 days have elapsed since the date of last service. Any amenments done in the petition should also	2024-06-29 14:47:45.696		

		be informed/served to the opposite/concerned party ADVOCATE REMARKS :-		
10	203	SERVICE BE MADE TO THEIR NOMINATED COUNSEL PERSONALLY / TRACKING REPORT / DELIVERY REPORT OF SPEED POST / COURIER BE ATTACHED ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	
11	207	ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	
12	209	PETITION/ APPLICATIONS/ ANNEXURES/ORDER/POWER OF ATTORNEY SHOULD BE STAMPED / COURT FEES SHORT OR MISSING ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
13	210	PETITION/ APPLICATIONS/ MOP/ INDEX/ POWER OF ATTORNEY BE SIGNED AND DATED BY PETITIONERS AND ADVOCATE ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
14	230	Application for condonation of delay in filing/refiling be filed along with affidavit. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
15	235	No. of days be given in the prayer of delay application. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
16	237	VAKALATNAMA BE FILED / DATED AND SIGNED BY THE COUNSEL AND ALL PETITIONERS. EACH ADVOCATE MUST MENTION THEIR NAME/ ADDRESS/ ENROLMENT NO. MOBILE NUMBER/ EMAIL IN VAKALATNAMA. TITLE ON THE VAKALATNAMA BE CHECKED. WELFARE STAMP BE AFFIXED. SIGNATURE OF THE CLIENT BE IDENTIFIED. ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
17	348	PROPER BOOKMARKING BE DONE ALONG WITH THE DESCRIPTION OF THE ANNEXURES AND PAGE NO AS GIVEN IN THE INDEX ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
18	352	COURT FEE IS SHORT OR MISSING ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7
19	357	BLANKS BE FILLED IN AFFIDAVIT ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7

20	368	AN UNDERTAKING BE GIVEN BELOW INDEX THAT EACH AND EVERY PAGE OF THE PETITION/APPEAL/APPLICATION IS FILED IN OCR FORMAT ADVOCATE REMARKS :-	2024-06-29 14:47:45.696	2025-01-18 11:40:53.7

OTHER DEFECTS INFORMATION	
ENTRY DATE	**DESCRIPTION**
18-01-2025 11:40	Description of any other Defects:TOTAL 6677 PAGES FILED,BLANKS BE FILLED PETITION , FAIR TYPE COPY OF DOCUMENTS BE GIVEN(D-4)D-6. UNDER OBJECTIONS
29-06-2024 02:47	Description of any other Defects:total 146 pages filed,no page numbering is mentioned on the index,page number 2 blank,NO documents shall be filed as annexure to any pleading, as per DELHI HIGH COURT RULES ANNEXURE E (PRACTICE DIRECTIONS), please see nomanclature on the vakalatnam it stated OMP but the petition is filed under the head of omp(comm), NO AWARD FILED, NO DOCUMENTS FILED, NO PAGE NUMBERING MENTIONED ON THE INDEX,COURT FEES BE PAID. ONE TIME PF FEES BE PAID AS PER NOTIFICATION DT 23/08/2019.UNDER OBJECTION

ADVOCATE REMARKS

13. It is further to be noted that the Registry has given a further detailed note as to the dates on which the instant application was originally filed, when the objections were notified and when the steps were taken by the applicant to rectify the defects. The same is reproduced hereunder for the sake of clarity:-

> *"In this regard, it is humbly submitted to consider the following date of events :*

20.06.2024	*The first date of filing of petition.*
29.06.2024	*The first on which defects were pointed out by the Registry and returned.*
17.01.2025	*Petition refiled after removing some of the objections.*
18.01.2025	*Again, defects were pointed out by the registry as few defects were not cured by counsel and same were returned.*
20.01.2025	*The counsel made certain averments, on the basis of which case was passed for 21.01.2025.*

> *The averments made by the counsel for the petitioner are as under:"*

14. The applicant made the first attempt of rectification only on 17.01.2025, and eventually rectified all defects by 20.01.2025. It is apparent that prior to 17.01.2025, the application was devoid of the mandatory document, namely, the copy of the impugned arbitral

award, along with various other defects such as non-filing of the memo of parties, leaving of blanks in the affidavit, the pages of the application being unsigned contrary to the mandate of Commercial Courts Act, the various important documents not being annexed to the application, constituting serious defects.

15. Upon perusal of the final filing dated 20.01.2025, it is seen that the application in its entirety spans over 6,677 pages. Juxtaposed against the initial filing, which contained merely 146 pages. It is manifestly evident that the original filing was little more than a perfunctory exercise, undertaken solely to arrest the progression of the statutory limitation period. The substantial disparity between the initial and subsequent filings unequivocally points towards an attempt by the applicant to circumvent the rigours of limitation by filing a skeletal document, bereft of essential pleadings and requisite annexures. Such an exercise, being an evident eyewash, cannot be countenanced in law as a *bona fide* filing aimed at instituting proceedings under Section 34 of Act of 1996.

16. The legal position regarding mandatory filing requirements under Section 34 of the Act has been settled by the Division Bench of this Court in ***Oil and Natural Gas Corporation Ltd.*** Paragraphs 41 to 44 of the said decision read as under:-

> *"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.*
>
> *42. In the given facts, the first question - whether the application filed on 20.02.2019 and 23.02.2019 can be considered as non est - is answered in the negative.*
>
> *43. The second question to be addressed is whether in the given facts of the case, the delay in filing the application was liable to be condoned. Ms. Suri, learned counsel appearing for the respondent, contended that the appellant had failed to render any explanation regarding failure to file the application within the given period of three months. She submitted that although the applicant has mentioned certain grounds for delay that had occurred after 23.01.2019, it had failed to render any explanation for the period prior to that date.*

> *44. It is settled law that the party requesting the court to condone the delay in respect of filing any application, petition or appeal, must explain the reasons for the delay. The delay has to be explained on a day-to-day basis. In the given circumstances, the party must explain the reasons as to why it was prevented from filing an application under Section 34 of the A&C Act within the given period of three months after receipt of the award."*

17. Further, in ***Pragati Construction Consultants***, the Full Bench of this Court, after extensive analysis of the statutory framework and precedents, conclusively settled, *inter alia*, that the filing of the impugned arbitral award along with an application under Section 34 of the Act of 1996 is not merely a procedural formality but constitutes an essential and mandatory prerequisite.

18. In the aforementioned decision, reliance was placed upon the judgment of the Supreme Court in ***Sunny Abraham v. Union of India***, wherein, though in a context outside the Act, the Supreme Court elaborated upon the concept of *"non est"*. It was clarified that the term *"non est"* indicates towards something that has no existence in the eyes of law owing to a fundamental legal defect in the process leading to its creation, thus surpassing a mere curable irregularity. In other words, a legal instrument suffering from such fundamental infirmity is considered *void ab initio*, thereby incapable of validation by subsequent corrective measures. The Court underscored that a defect of such a fundamental character renders the instrument non-existent in law from its very inception, and therefore, acts carried out in furtherance thereof cannot subsequently legitimise its validity or revive it retrospectively.

19. It was unequivocally held that the absence of the arbitral award renders such an application legally non-existent, thereby incapable of initiation of valid judicial proceedings. Referring to a catena of decisions, the Court therein upheld the principle that the non-filing of the award with the Section 34 application is fatal and not curable by subsequent rectification, was reiterated and affirmed. The relevant portion of the said decision reads as under:-

> *"59. In our opinion, none of the above conditions can be satisfied unless the Arbitral Award under challenge is placed before the court. Therefore, filing of the Arbitral Award under challenge along with the application under Section 34 of the A&C Act is not a mere procedural formality, but an essential requirement. Non-filing of the same would, therefore, make the application "non est" in the eyes of the law. 60. In fact, we find that this Court has almost consistently held that non-filing of the Arbitral Award would make the petition "non est". Reference in this regard may be made to : SKS Power Generation*

(Chhattisgarh) Ltd. case25, SPML Infra Ltd. v. Graphite India Ltd.35, Air India Ltd. case, Reacon Engineers (India) (P) Ltd. case, Executive Engineer National Highway Division v. S&P Infrastructure Developers (P) Ltd., ITDC v. Bajaj Electricals Ltd., NHAI v. KNR Constructions Ltd., Brahamputra Cracker and Polymer Ltd. case26, Union of India v. Panacea Biotec Ltd., DDA v. Gammon Engineers & Contractors (P) Ltd., Container Corpn. of India Ltd. v. Shivhare Road Lines, and Good Health Agro Tech (P) Ltd. v. Haldiram Snacks (P) Ltd."

20. It is further required to be noted that in ***Sudesh Hans v. Gian Chand Hans***, the Court was again called upon to consider an almost similar matter. While referring to the decisions of both ***ONGC Ltd*** *and* ***Pragati Constructions***, the Court reiterated that the belated re-filing, where the original impugned award was not filed with the original Section 34 application is fatal to the proceedings. The relevant portion of the said decision reads as under:-

"*10. The reliance placed by the learned counsel of the petitioner on the decision in Ambrosia Corner House (Supra) to argue that the absence of the award at the time of the initial filing does not render the petition non-est is found misplaced in view of the observation made by the Full Bench of this Court in Pragati Constructions (Supra), which while referring to the decision of the Division Bench of this Court in ONGC Ltd. v. Planetcast Technologies Ltd. held as follows:—*

> *"4. We may, herein, itself note that the only Judgment which may be read as dispensing with the requirement of filing of the Arbitral Award was in Ambrosia Corner House Pvt. Ltd. v. Hangro S. Foods, 2023 SCC OnLine Del 517, of which one of us namely (Navin Chawla, J) was the author. However, the same has been rightly distinguished by the Division Bench of this Court in Planetcast Technologies Ltd. (supra), by observing as under:*
>
> > *"36. To further clarify the law on the indispensable requirements while filing a Petition under Section 34 of the Act, 1996, it is pertinent to refer to the judgment of the Single Bench of this Court in Ambrosia Corner House Private v. Hangro S. Foods, 2023 SCC OnLine Del 517. It has been widely misconstrued that the said judgment recognised the filing of a Petition under Section 34 of the Act, 1996 to be valid even though it was not accompanied by the Award. However, the perusal of the judgment itself makes*

it evident that the impugned Award had not been e-filed in a separate folder as was required under the Delhi High Court (Original Side) Rules, 2018. In those peculiar circumstances, the objections were entertained and the first filing was not found to be non-est. Clearly, it is not as if the Award had not been filed along with the objections under Section 34 of the Act. The facts as involved in Ambrosia Corner House (supra) are, therefore, clearly distinguishable."

(Emphasis Supplied)

Further, in view of the said decision, this Court is of the opinion that given the nature of defects pointed out by the Registry on 01.04.2024 and the petitioner's failure to re-file the petition within the maximum condonable period of 30 days after 3 months, the petition filed on 28.03.2024 without the award, inter alia, was not a valid filing. Admittedly, a copy of the award was sent to both parties via email on the same day it was passed, i.e., 29.12.2024. The mere ipse dixit of the petitioner that the wrong file was inadvertently uploaded and the defects remained uncured despite the Registry's observations due to DIAC's failure to provide copies of the arbitral records cannot be accepted. The first/initial filing was therefore non est, implying that it cannot be considered as filing in any sense. The initial filing being non est, the limitation time does not stop and the date of filing must be reckoned from the date of refiling, i.e., 29.06.2024, which is beyond the prescribed period of 3 months and 30 days. It would also be pertinent to mention that even otherwise, the application under Section 151 of CPC seeking condonation of delay in filing the petition lacks sufficient reasoning.

11. In light of the facts and circumstances discussed above as well the decision rendered by the Full Bench of this Court in Pragati Constructions (Supra), this Court finds no reason to entertain the present petition. The petition stands dismissed alongwith the pending applications."

21. While balancing the equities between procedural compliance and the substantive rights of parties, and bearing in mind that no appellate mechanism is provided under the Act of 1996, save for recourse to Section 34, the Court is mindful that the right under Section 34 ought not to be defeated merely on technicalities. A liberal approach must be adopted when evaluating whether a filing is to be treated as *non est.* The Court is conscious that minor procedural defects, such as the absence of signatures on

each page, inadequacies in the affidavit or verification, or other curable lapses, standing alone, would not render a filing *non est.* However, where such defects cumulatively lead to the conclusion that the filing was made solely to arrest the running of the limitation period, without any genuine intent to prosecute the matter diligently, and with the sole object of circumventing the statutory timelines, the Court, on a fact-specific analysis, is justified in treating the filing as *non est*.

22. In the present case, a comparison of the initial filing made in June 2024 and the final corrected filing in January 2025 reveals substantial divergences. There have been massive additions of supplementary documents and extensive corrections to the pleadings. Such discrepancies are not trivial and align with the standards laid down in ***Pragati Construction Consultants***, where the following principles were enunciated: -

(a) failure to file the arbitral award along with the Section 34 application renders the filing liable to be declared *non est*, and limitation continues to run notwithstanding such a filing;

(b) minor defects like the absence or defect in the statement of truth do not *per se* render the filing *non est*, but cumulatively they may contribute; and

(c) defects such as non-filing or defective vakalatnama, incomplete signatures, alterations in pleadings, or deficient court fees individually do not render the filing *non est*, but where multiple substantial defects are present, the Court may conclude that the filing was intended merely to stall limitation.

23. Therefore, the examination under Section 34 of the Act of 1996 must necessarily encompass two essential considerations. Firstly, whether the application has been filed within the outer statutory limit of 120 days, as explicitly mandated under Section 34(3). Secondly, whether any delay in filing beyond the initial period of 90 days, but within the permissible extension of 30 days, is accompanied by sufficient cause and an adequate day-to-day explanation demonstrating *bona fide* reasons. The statutory scheme unequivocally prescribes that no application under Section 34 can be entertained beyond the absolute outer limit of 120 days from the date of receipt of the award. It follows that any delay within the permissible 30-day extension must be accompanied by cogent, satisfactory, and meticulous explanation, failing which the delay cannot be condoned. Consequently, the statute leaves no discretion to entertain a application filed beyond 120 days, irrespective of the reasons advanced for such delay.

24. The ratio laid down by the Supreme Court in ***State of Maharashtra v. Hindustan Construction Company Ltd***, and reiterated in ***Union of India v. Popular Construction Co***, further fortifies this legal proposition, unequivocally holding that the period of limitation prescribed under Section 34(3) of the Act is strict and inflexible. Thus, the initial filing on 20.06.2024, which

admittedly lacked the copy of the arbitral award, must be treated as *non est* in law. The eventual filing of the copy of the award between 17.01.2025 and 20.01.2025, being significantly beyond the outer limit of 120 days, cannot retrospectively validate the originally defective application.

25. Applying the established legal principles to the facts of the present case, the award dated 03.01.2024 (*corrigendum dated 02.03.2024)* required the application under Section 34 of the Act of 1996 to have been validly filed within the strict timelines stipulated therein. The statutory period of 120 days expired on 30.06.2024.

26. **26**. Since the complete filing, rectified of all defects including submission of the arbitral award, was completed only by 20.01.2025, the delay thus occasioned cannot be condoned under the statutory framework provided by Section 34(3) of the Act of 1996, as consistently interpreted by the Supreme Court and by this Court. In view of the above authoritative precedents, and particularly guided by the Full Bench decision of this Court in ***Pragati Constructions***, the Court finds itself constrained to hold that the present application is *non est* and thus, is barred by limitation.

27. Moreover, with respect to the matter being listed after a delay of almost seven months from the date of the first filing, reference may be drawn to the decision of this Court in ***North Municipal Corporation of Delhi v. Harchan Dass Gupta Const. Pvt. Ltd***, wherein it was noted that if a party fails to file the petition in the proper format, and objections are raised regarding the defective filing, such defects must be cured within a maximum aggregate period of thirty days as per Part G, Chapter I, Part A, Rule 5 of the Delhi High Court Rules. Sub-rule (3) thereof stipulates that if the re-filing is effected beyond the time allowed, it shall be considered a fresh institution, with the use of the term "shall", leaving no room for discretion.

28. In the said decision, the Court emphasized that Rule 5 empowers the Deputy Registrar or Assistant Registrar, in charge of the Filing Counter, to specify objections and return the memorandum of appeal or petition for amendment and re-filing within seven days at a time and thirty days in the aggregate. If the defects are not rectified within this prescribed time, the document is either to be listed for dismissal for non-prosecution or treated as a fresh institution. In ***Delhi Transco Ltd. v. Hythro Engineers Pvt. Ltd,*** it was reaffirmed that re-filing beyond thirty days amounts to a fresh institution under Rule 5(3). The said rule is reproduced hereunder for the sake of clarity:-

"CHAPTER 1
Judicial Business
Part A(a)
THE PRESENTATION AND RECEPTION OF APPEALS, PETITIONS AND APPLICATIONS FOR

REVIEW AND REVISION

5. Amendment—The Deputy Registrar Assistant Registrar, Incharge of the Filing counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Asstt. Registrar, in charge of the filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Asstt. Registrar in charge of the Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Note—The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal.]"

29. Presently, the Delhi High Court (Original Side) Rules, 2018, Chapter IV, Clause 3, similarly provides that if a pleading or document is found defective, the Deputy Registrar/Assistant Registrar must return it with objections, allowing for rectification within seven days at a time and thirty days in the aggregate. If not refiled in time, it shall either be listed for dismissal for non-prosecution or, if refiled belatedly, must be accompanied by an application seeking condonation of delay. The said rule reads as under:-

"3. Defective pleading/ document.-

(a) If on scrutiny, the pleading/ document is found defective, the Deputy Registrar/ Assistant Registrar, Incharge of the Filing Counter, shall specify the objections, a copy of which will be kept for the Court Record, and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate.

(b) If the pleading/ document is not taken back for amendment within the time allowed under sub-rule (a), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(c) If the pleading/ document is filed beyond the time allowed under sub- rule (a) the pleading/ document must

> *be accompanied with an application for condonation of delay in re-filing of the said pleading/ document.*
> *(d) Any party aggrieved by any order made by the Registrar under this Rule may, within fifteen days of the making of such order, appeal against it to the Judge in Chambers."*
>
> **30**. In the instant case, it *prima facie* appears that the procedure under Clause 3(a) and Clause 3(b), namely, listing of the matter for dismissal for non-prosecution if defects are not cured within the permitted period, has not been duly followed as well. As per the procedure laid down in the original side rules, it is clearly indicated that the matter should be listed before the Court after the expiry of the 30 days aggregate period which begins from the notification of defects/objections in the filing. It is seen that the application was filed on 20.06.2024 and the objections were first notified on 29.06.2024. Assuming the period of 30 days began on 29.06.2024, the application should have been listed before the Court on 29.07.2024 with the uncured defects itself for appropriate orders to be passed, which has clearly not been followed with. Let the Registry to strictly comply with the aforesaid rules and the procedure mandated therein.
>
> **31**. Thus, in view of the cumulative defects and the substantial nature of the corrections and additions made post-limitation, this Court is satisfied that the initial filing was merely an attempt to stop the running of limitation and was not a *bona fide* invocation of Section 34 of the Act of 1996. Accordingly, the filing must be held to be *non est* in law.
>
> **32**. Consequently, the instant application stands dismissed as barred by limitation beyond the period of 120 days in the aggregate, and the delay beyond the same in filing of the Section 34 application can, in no circumstance whatsoever, be condoned. (Reference can be made to the decisions in the cases of ***State of Maharashtra v. Hindustan Construction Company Ltd and Union of India v. Popular Construction Co)***.
>
> **33**. The instant section 34 application stands dismissed, alongwith all pending applications. No order as to costs."

11. After a thorough examination, we find no infirmity in the Impugned Judgment.

12. However, in addition, it is deemed necessary to refer to the IAs filed by the Appellant in support of the Petition under Section 34 of the A&C Act. IA No. 1633/2025 was filed for the purpose of seeking condonation of the delay in the filing of the Section 34 petition. The

relevant paragraphs of the said application are reproduced as follows:-

> "3. That the Petitioner while submitting some important documents before this Hon'ble Court, some time was delayed during the collection and submission before this Court.
> 4. In this situation, kindly grant this petition 170 days of delay as condoned."

13. We also deem it appropriate to extract the relevant portions of IA No. 1635/2025 seeking condonation of delay in re-filing of the Section 34 petition. The contents of the application are substantially identical, save for the number of days, and are reproduced as follows:-

> "3. That the Petitioner while submitting some important documents before this Hon'ble Court, some time was delayed during the collection and submission before this Court.
> 4. In this situation, kindly grant this petition 211 days of delay as condoned."

14. We are unable to discern even an attempt on the part of the Appellant to put across a semblance of a reason for the delay. The sufficient cause, as is required, at the outset, remains woefully absent.

15. The learned Single Judge, while examining these IAs, after referring to the judgments of Co-ordinate Benches of this Court, was compelled to hold that the original filing made by the Appellant was *non-est*. This conclusion of the learned Single Judge is based on the fact that the Appellant had failed to file the Impugned Arbitral Award itself while filing the Section 34 Petition, which, as held by the 3-Judge Bench of this Court in ***Pragati Construction Consultants v. Union of India***[4], would, in itself, render the re-filing *non-est.*

16. In our considered view, the learned Single Judge has rightly analyzed the meaning and implications of a *non-est* filing. The term

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"*non-est*" effectively means something that does not exist, and precludes any stoppage of the limitation period, as also affirmed by the larger Bench in ***Pragati Construction*** (*supra*), which reads as follows:

> "**66.** We, therefore, have no hesitation in holding that filing of the copy of the impugned award, which is under challenge, is a bare minimum, rather, mandatory requirement for an application under Section 34 of the A&C Act. Further, non-filing of the same would make such an application "*non est*" in the eyes of law, thereby, not stopping the period of limitation from running."

17. In the Impugned Judgment, the learned Single Judge after examining at length, the provisions of the Delhi High Court Rules as well as Practice Directions issued in pursuance of those Rules pertaining to filing and re-filing rightly held as such.

18. In view of the discussion therein, it is manifestly evident that the Appellant has been grossly negligent in taking the requisite steps to demonstrate even a semblance of a valid filing of the petition. The learned Single Judge has, in our view, rightly concluded that, given the multitude of defects identified, which were not cured within the prescribed time, and the re-filing, being beyond the stipulated period, such act of re-filing having been carried out after a considerable delay, coupled with the woefully inadequate reasons given in support of the same, cannot be treated as a fresh institution of proceedings.

19. We are also firmly of the opinion that the initial filing was, at best, a half-hearted and belated attempt on the part of the Appellant to pre-empt the passage of time, rather than a *bona fide* invocation of Section 34 of the A&C Act.

20. In addition to the reasons provided by the learned Single Judge, we are of the firm opinion that the alleged reasoning sought to be

espoused in the application for condonation of delay in filing under Section 34, as well as the application for condonation of delay in re-filing, are by themselves, *non-est*. No substantive details have been provided, and it is evident that the absence of any cogent reasoning reflects the manner in which the officials of the Appellant have chosen to conduct this litigation. We are, furthermore, distressed by the approach adopted by the Appellant, *namely*, the Government of India, in handling this matter, particularly given the significant stakes involved, which directly and indirectly, impose a considerable burden on the exchequer.

21. During the course of the hearing, we specifically requested the learned Counsel representing the Union of India to offer an explanation for the delay, as no such explanation was forthcoming either in the applications before the learned Single Judge or in the Appeal under Section 37 of the A&C Act before us.

22. The sole explanation provided by the learned Counsel was that the record was voluminous, and they had to organize all the pages prior to filing, which we find wholly unsatisfactory.

23. In light of the foregoing facts, circumstances, and the settled position of law, we are firmly of the view that the Impugned Judgment requires no interference.

24. Accordingly, the present Appeal, along with all pending applications, stands dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

OCTOBER 30, 2025/nd/sm/va