



\$~14

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

+ **FAO(OS) (COMM) 54/2023, CM APPL. 39274/2024**

IRCON INTERNATIONAL LIMITEDAppellant

Through: **Ms. Monisha Handa, Adv.**

versus

M/S PNC-JAIN CONSTRUCTION CO (JV).....Respondent

Through: **Mr. Vikas Goel, Mr. Vivek Gupta and Mr. Wanglen Ngangom, Advocates.**

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

11.03.2025

%

1. This appeal is directed against the order rendered by the learned Single Judge who has on a due consideration of the material placed before it come to the conclusion that the original filing under Section 34 of the Arbitration & Conciliation Act, 1996 petition would be *non est* since it was not accompanied with the Award which was sought to be impugned.

2. We find that the aforesaid question is no longer res integra and stands conclusively answered by the Full Bench of this Court in **Pragati Construction Consultants v. Union of India**,¹ wherein the following observations appear:

“NON-FILING OF THE ARBITRAL AWARD

57. As noted hereinabove, a challenge to an Arbitral Award is maintainable on very limited grounds; it is not in form of an appeal against the Arbitral Award.

¹ 2025 SCC Online Del 636



58. Section 34(2)(a) of the A&C Act states that an Arbitral Award may be set aside by the Court only if the party making the application “*establishes on the basis of the record of the Arbitral Tribunal*” that a party was under some incapacity; or the Arbitration Agreement is not valid; or the party making the application was not given proper notice of appointment of an Arbitrator or the arbitral proceedings; or was otherwise unable to present its case; or the Arbitral Award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration for it contains a decision on matters beyond the scope of submission to arbitration; or the composition of the Arbitral Tribunal or the arbitral procedure, was not in accordance with the agreement of the parties. The Court may under Section 34(2)(b) of the A&C Act, also set aside an Arbitral Award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being enforced, or the Arbitral Award is in conflict with the public policy of India. Under Sub-Section 2A of Section 34 of the A&C, an Arbitral Award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the Award is vitiated by patent illegality “*appearing on the face of the Award*”.

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.*, (supra), *SPML Infra Ltd. v. Graphite India Ltd.*, 2020 SCC OnLine Del 2808, *Air India Ltd.*, (supra), *Reacon Engineers India Pvt. Ltd.*, (supra), *Executive Engineer National Highway Division v. S&P Infrastructure Developers (P) Ltd.*, 2022 SCC OnLine Del 1859, *ITDC v. Bajaj Electricals Ltd.*, 2023 SCC OnLine Del 158, *NHAI v. KNR Constructions*, 2023 SCC OnLine Del 519, *Brahmaputra Cracker and Polymer Ltd.* (supra), *Panacea Technologies Ltd.*, (supra), *Delhi Development Authority v. Gammon Engineers & Contractors Private Limited*, 2024 SCC OnLine Del 5154, *Container Corp. of India v. Shivhare Road Lines*, 2024 SCC OnLine Del 5490, and, *Good Health Argo Tech Pvt. Ltd. v. Haldiram Snacks Pvt. Ltd.*, 2024 SCC OnLine Del 6050.



61. Even in both the Judgments which led to the present Reference, that is, in ***Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)*** (supra), and in *Planetcast Technologies Ltd.* (supra), both the Division Benches have held that the filing of the Impugned Arbitral Award is not an empty procedural requirement and is, therefore, absolutely essential. We may first quote from *Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)*, (supra) as under:

*“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)

62. In *Planetcast Technologies Ltd.* (supra), the requirement of filing of the Impugned Arbitral Award was reiterated as under:

*“37. 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 out-right 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.”*

(Emphasis Supplied)

63. Consequently, we have no hesitation in holding that for an application under Section 34 of the A&C Act, non-filing of the Impugned Arbitral Award is a fatal defect, making the application



“non-est”.

64. 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)

65. Reference to provisions of Order XLI Rule 1 of the CPC and Section 423 of the BNSS has been made to contend that these provisions specifically direct filing of a copy of the impugned decree/order along with the appeal, while Section 34 of the A&C Act does not mandate the filing of the Impugned Award, therefore, by necessary implication filing of the said Award is not mandatory. We do not find any force in this submission. The A&C Act is a complete Code in itself and drawing such implications from other Statutes may not be apposite. There is no warrant in the A&C Act to draw the implication, as sought for.

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.

67. The Reference in FAO(OS)(COMM) 70/2024 titled *Pragati Construction Consultants v. Union of India* is answered



accordingly by holding that filing of the Arbitral Award under challenge, is an essential pre-requisite for filing the application under Section 34 of the A&C Act, and in absence thereof, the filing of the said application will be treated as “*non-est*”.

XXXX

XXXX

XXXX

CONCLUSION:

97. We summarise our answer to the Reference, as under:

a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would make the said application liable to be treated and declared as *non-est*, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;

b) Mere non-filing of the Statement of Truth or a defect in Statement of Truth being filed, that is, including with blanks or without attestation, would not *ipso facto*, make the filing to be *non-est*. However, if accompanied with other defects, the Court may form an opinion, based on a cumulative list of such defects, that the filing was *nonest*;

c) Similarly, non-filing or filing of a defective *Vakalatnama*; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as *non-est*. However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, is liable to be declared *non-est*.”

3. In view of the aforesaid, we find no merit in the challenge which stands raised. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J

MARCH 11, 2025/akc