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DUA ASSOCIATES

IN BRIEF

NON-EST FILING UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996

I. Introduction

Section 34(3) of the Arbitration and Conciliation Act, 1996 (A&C Act) stipulates that an application to set aside an arbitral award be made within a period of three months from the date of receipt of the award. Further, the proviso to Section 34(3) of the A&C Act clothes the Court with the power to condone the delay of a further period of thirty days, if sufficient cause is shown. It is apposite to note that the proviso expressly excludes the possibility of any further extension. This has been clarified by several judgments of the Hon'ble Courts including the Hon'ble Supreme Court in the matter of *Simplex Infrastructure Ltd v. Union of India*[1].

Issues arise in computing the limitation period when the application challenging the award is filed improperly. For instance, filing an application without the arbitral award or without payment of the proper court fee would amount to the filing being improper and thus non-est (non-existent) in the eyes of law. It would be further complicated when the application is returned for certain defects and the same is re-presented within the limitation period or the extended period of limitation mentioned above, albeit, without either filing the award or remitting the proper court fee and the period of limitation period has expired. In such cases, would the party be permitted to maintain its application despite having not remitted the proper fee or filed the award within the limitation period or the extended limitation period? In other words, would such a filing be treated as non-est in law despite having filed the application per se within the period of limitation? This Article discusses relevant High Court rules, arbitration rules and judgments delivered in this regard.

II. Non-remittance of proper court fee

In the case of *M. Gajendran v. M/s Everest Blue Metals*[2] *(Gajendran case)*, the Hon'ble Madras High Court, upon referring to several judgments, has held that non-remittance of court fee or non-remittance of the remainder of the court fee, within the condonable period of limitation would divest the court from condoning any subsequent remittance by virtue of the mandate prescribed under Section 34(3) of the A&C Act. In specific, the period of limitation would not stop, and the filing of such application without the sufficient court fee would amount to it being improperly presented, and thus beyond the statutory period of limitation. It would not help that the application was filed in all other respects within the period of limitation.

III. Non-filing of the arbitral award

The Full Bench of the Hon'ble Delhi High Court in its judgment in *Pragati Construction Consultants v. Union of India and Anr*[3] and *Bharat Broadband Network Limited v. Sterlite Technologies Ltd 2025*[4] considered the questions of whether the non-filing of the arbitral award along with the application would ipso facto make the filing to be "non-est" and whether such filing without annexing the arbitral award would stop the limitation under Section 34(3) of the A&C Act.

These significant questions were referred to the Hon'ble Full Bench in the light of the prevalent practice of making dummy filings before a Court, to bring the petition within the period of limitation. Clearance of these defects often span over a period exceeding three months, thereby resultantly causing significant delay in the hearing of the petition under Section 34 of the A&C Act, which is against the ethos of the Act itself. Fundamental defects which go beyond remedial irregularity and cannot be revived retrospectively by subsequent rectification render a filing invalid and thus non-est in the eyes of law.

[1] 2019 (2) SCC 455
[2] 2025: MHC:2432
[3] (2025) 3 High Court Cases (Del) 636/ 2025 SCC Online Del 636
[4] SCC Online Del 636

The Hon'ble Court referred to *ONGC v. Planetcast Technologies Ltd.*[5] which underscored the significance of the requirement of the filing of the impugned arbitral award, in order to constitute a proper filing. In the absence of an arbitral award, the Hon'ble Court cannot adjudicate the merits of the application which sets out the grounds on which the challenge against the award is made. Therefore, failure to annex the award while filing the application renders the filing non-est in the eyes of law.

As a corollary, the date of re-filing/ re-presentation of the application along with the award, assuming all other pertinent conditions have been fulfilled, constitutes the date of the original filing. In this regard, the limitation period specified in Section 34(3) of the A&C Act, must be computed taking into account the date on which the application is filed along with the arbitral award. Delay, if any, in re-presenting the application can be condoned only if it is in the statutorily permissible condonable period of thirty days, otherwise, such filing would be non-est in law.

As for the question as to whether the original award should be filed along with the application or would it suffice to file a certified copy thereof has also been dealt with by the Hon'ble Delhi High Court in *Pragati Construction Consultants*, holding that a copy may be filed. It is however relevant to note that the Delhi High Court (Original Side) Rules, 2018 (DHC Rules), referred to in the aforementioned case, does not prescribe the filing of an arbitral award, let alone the "original", along with the application. Under the Madras High Court (Arbitration) Rules, 2020 (Arbitration Rules) notified on March 17, 2021, the practice directions under Clause 3.4 provides that an application shall be accompanied along with the "original" award or a duly certified copy.

Considering such a mandate, it would be interesting to see if the Hon'ble Courts having similar Rules as compared to the Arbitration Rules, would treat filing of an application only with a copy of an award as a proper filing.

IV. Conclusion

The above decisions reinforce that the limitation prescribed under Section 34(3) of the A&C Act is strict and admits of no relaxation beyond the statutory period. The judgments also underscore the need for strict compliance with the applicable High Court Rules governing filings under Section 34 of the A&C Act. While certain questions, such as the sufficiency of filing a copy of the award under the applicable rules requiring the original or a certified copy to be filed, may still warrant judicial consideration, the overarching principle is clear that procedural compliance is integral to maintaining a challenge to an arbitral award within the statutory period.

[5] 2023 SCC Online Del 8490

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