



ARBITRATION AND CONCILIATION

Delhi High Court reiterates its findings on what constitutes non est filing for the purposes of calculating period of limitation.

AUTHOR Aushi Doshi, Neeli Sandesara

PUBLISHED 8 February 2023

Introduction

The [High Court of Delhi](#), in a recent judgement re-iterated the concept of *non-est* filing in *Ambrosia Corner House Private Limited V. Hangro S Foods*¹. The Court laid out instances that would constitute *non-est* filing while encouraging courts to adopt liberal approach to define the same. The Court also held that as there are no clear and definite guidelines to ascertain such filing, as that would largely depend upon the facts and circumstances of each case at hand.

Facts of the case:

The Petition was filed challenging the arbitral award dated March 14, 2022 under section 34 of the Arbitration and Conciliation Act, 1996 (“**the Act**”). As per Section 34(3) of the [Arbitration and Conciliation Act, 1996](#), the timeline for filing petition expired on 13th June, 2022. The Court was closed for summer vacation between 4th June, 2022 till 1st July, 2022; for the purpose of limitation the Court was deemed to have re-opened on 4th July, 2022. The first attempt to file the Petition was made on 4th July, 2023, however, the same was marked as defective by the Registry.

Thereafter, the Petitioner re-filed it on 26th, 27th and 29th July, 2022. However, owing to certain further defects, the said petition was returned for the purpose of re-filing.

Lastly, the petition that was filed on August 1, 2022 was admitted.

Contentions

The learned counsel for the Respondent raised the preliminary objection that the said petition is not maintainable as it is filed beyond the prescribed period of limitation stipulated under S. 34(3) of the said Act and hence submitted that such filing was *non est*. He further submitted that as the petition was eventually filed on July 26, 2022, the said date shall be considered as the date of filing of the petition and the Petitioner cannot take the benefit of Section 4 of the Limitation Act, 1963. Further, the Petitioner did not file an application seeking condonation of delay. Additionally, he contended that the filing was without a copy of the impugned arbitral award or the documents in support for challenge. The Petitioner also did not attest the affidavit in support through Oath Commissioner.

The learned counsel for the Petitioner contended that the petition is within the prescribed period of limitation under S. 34(3) as it was filed on the date of re-opening of the said Court after summer vacation which was July 4, 2022 and that petition contained complete particulars and grounds of challenge of the award. Further, the petition was signed on each page by the Director of the petitioner company and by the counsel, who had filed *vakalatnama*.

Observations of the Court

The Court has placed reliance on the decisions passed by the said Hon'ble High Court of Delhi in *Oil and Natural Gas Corporation Ltd. V. Joint Venture of M/s. Sai Rama Engineering Enterprise & M/s. Megha Engineering & Infrastructure Limited (MEIL)*² and *Oriental Insurance Co. Ltd. V. Air India*³.

Taking into consideration the judgements, that laid out certain instances that would constitute *non est* filing. Such instances would *inter alia* include a petition that is filed without the signatures of either party or its authorised signatories or not accompanied with a copy of the impugned arbitration award or does not contain material particulars. That facts of each case would determine whether the filing is *non est* or not.

Further, the Court observed that the petition dated 4th July, 2022 was the same as the petition filed on the July 26, 2022. The said petition was also signed by the authorised signatories of the Petitioner on each page along with a duly filed *vakalatnama* of the learned counsel of the Petitioner. In addition to the compliance as stated above, the Petitioner along with his petition dated 4th July, 2022 attempted (and later re-attempted on July 26, 2022) to file separately all the requisite documents including the impugned arbitral award in accordance with the Delhi High Court (Original) Side Rules, 2018. In light of the above, the Court held that the petition filed said July 4, 2022 cannot be held as *non est*. That at best, the petitioner committed an error in not filing the documents in a separate folder.

With respect to the issue of limitation, the Court held that as the Petitioner attempted to file the petition on 4th July, 2022, that is the date of re-opening of the Court, benefit of S. 4 of the Limitation Act, 1963 cannot be denied and hence the petition filed on the said date is within the period of limitation stipulated within Section 34(3) of the Act.

Accordingly, the objection of the Respondent on the petition being barred by provisions of Section 34 (3) of the Act was rejected.

- [1](#) 2023 SCC OnLine Del 517
- [2](#) 2019 SCC OnLine Del 10456
- [3](#) 2019 SCC OnLine Del 11634