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Avoiding A Non-est Filing: A Look At Common Filing Pitfalls Under Section 34 Of The Arbitration & Conciliation Act

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Challenging an arbitration award under Section 34 of the Arbitration and Conciliation Act, 1996 ("**A&C Act**") is not just a procedural formality—it is a time-bound legal remedy which is governed by strict timelines. Section 34(3) of the A&C Act provides for an inflexible limitation period of three months from the date of receipt of the award (extendable only by 30 days upon sufficient cause being shown), post that the Courts cannot entertain a challenge petition.

Indian Courts, particularly the High Court of Delhi, has over the years created a robust jurisprudence on essentials of a valid filing under Section 34 of the A&C Act. The law has now evolved to distinguish between:

1. Defects that are fatal and render the filing *non-est* from inception, and
2. Defects that may be curable in isolation but, when occurring together, can render a filing ineffective and invalid.

This article attempts to examine how the Courts have approached these defects to set the threshold for a valid filing under Section 34 of the A&C Act, and what lawyers and litigants must do to ensure that their petitions are not dismissed on technical grounds.

I. The Fatal Defect: Non-Filing of the Arbitral Award

Among all filing requirements under Section 34 of the A&C Act, the most crucial one is regarding filing of a copy of the award. The Courts have consistently held non-filing of the award to be a fatal defect to the petition. The underlying principle is straightforward—without the award, the Court cannot apply its mind to the grounds of challenge, as the very subject matter under scrutiny is absent.

While the legal position appeared settled vis-à-vis the requirement of filing the award, a Division Bench of the Delhi High Court in ***Pragati Construction v. Union of India***,¹ expressed doubts over whether non-filing of the award would always render the filing *non-est* and referred the issue to a larger bench for consideration.

Deciding upon the reference, the Full bench in ***Pragati Construction v. Union of India***,² held that filing of the arbitral award is not a mere procedural formality but a substantive requirement. The Court held that a petition without the award cannot be treated as valid filing and does not stop the clock of limitation.

This judgment restores certainty to the law by affirming that a petition under Section 34 of the A&C Act, without the award enclosed, does not stop the limitation period and cannot later be cured by annexing the award in a refiling. It will ensure that Courts are not flooded with *placeholder* petitions filed merely to save limitation.

II. Cumulative Defects: When Procedural Lapses Become Fatal

Apart from the non-filing of the award, the Courts have dealt with numerous cases where other procedural defects—such as missing affidavits, vakalatnamas, or party signatures—have plagued petitions under Section 34 of the A&C Act. These defects may not be fatal individually, but a cumulative effect of such defects may render the filing *non-est*.

In ***Sravanthi Infratech v. Greens Power Equipment***,³ the Delhi High Court encountered a petition that was only 66 pages long at the time of initial filing but increased to 859 pages upon re-filing. The original petition did not have the affidavit, vakalatnama, authority letter, documents, and even the signatures of the party. The Court held that this initial petition could not be treated as a valid filing and therefore did not stop the limitation period.

A similar approach was adopted by the High Court of Delhi in:

- ***ITDC v. Rajiv Kumar Saxena***,⁴ – petition lacked a list of dates, pagination, vakalatnama, and affidavit – *non-est*.
- ***Jay Polychem v. S.E. Investment***,⁵ – missing affidavit, party signature, and statement of truth – *non-est*.
- ***Department of Social Welfare v. Sarvesh Security***,⁶ – no vakalatnama, affidavit, Court fee, or signatures – *non-est*.

- ***Ircon International Ltd v. PNC-Jain Construction Co. (JV)***,⁷ – missing vakalatnama, affidavit and Court fee- *non-est*.

These rulings emphasize that a meaningful, legally sustainable filing must include the components necessary to indicate that the petitioner intends to press the challenge seriously.

III. Not Every Defect Is Fatal: Judicial Balance

However, the Courts have also been careful not to let procedural rigidity override substance. The Courts in several judgments have emphasized that not all defects affect the validity of the petition and that minor or singular defects should not defeat an otherwise valid challenge.

In ***Haier Telecom v. Drive India Enterprise***,⁸ the Bombay High Court held that a defect in the statement of truth alone was not fatal.

Similarly, ***Harji Engineering v. Hindustan Steelworks***,⁹ the High Court of Calcutta held that mere defect in statement of truth is not fatal. The same view was taken by the High Court of Delhi in ***Ravi Batra v. New IDS CGHS***,¹⁰ and followed in several other subsequent judgments.¹¹

These cases reflect a calibrated approach— i.e., the Courts are willing to tolerate minor lapses if the petition, in substance, shows a bona fide intent to challenge the award.

This approach has ultimately been recognised in the Full bench decision in ***Pragati Construction*** wherein Court held that mere non-filing of the statement of truth or a defect therein does not *ipso facto* make the filing *non-est*. However, when accompanied by other material defects—absence of vakalatnama, unsigned petition, deficient Court fee, or substantial changes on re-filing—the petition may reasonably be treated as *non-est*.

IV. Conclusion: Getting It Right the First Time

The jurisprudence on petitions filed under Section 34 of the A&C Act now poses a clear and practical roadmap. A challenge to an arbitral award must not only be filed within the prescribed time—it must be filed properly. There is no scope for shell petitions.

When key components are missing, such petitions are rendered *non-est*. This can have significant consequences, as the limitation period continues to run, and a later attempt to rectify the filing may be considered time barred.

Given this legal position, it becomes essential for parties and practitioners to ensure that petitions under Section 34 of the A&C Act are complete and procedurally compliant at the time of filing. While minor curable defects may not always be fatal,

filings that lack fundamental elements from the outset may not receive the protection of the limitation period. Ensuring completeness at the initial stage is therefore not just advisable—it is necessary to preserve the right to challenge an arbitral award.

Footnotes

1 Order dated 9 May 2024 in FAO(OS)(COMM) 70/2024

2 2025 SCC OnLine Del 636

3 2016 SCC OnLine Del 5645

4 2018 SCC OnLine Del 8847

5 2018 SCC OnLine Del 8848

6 2019 SCC OnLine Del 8503

7 2023 SCC OnLine Del 534

8 2018 SCC OnLine Bom 2829

9 AIR 2022 Cal 18

10 2023 SCC OnLine Del 4456

11 Viceroy Engineering v. Smiths Detection, 2023 SCC OnLine Del 7654, Sanjay Goel v. BKR Capital, 2024 SCC OnLine Del 593, Boston Scientific India v. Advanced Medtech Solutions, 2024 SCC OnLine Del 4656

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