Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

IN ITS COMMERCIAL DIVISION

INTERIM APPLICATION (L) NO. 22009 OF 2024

IN

COMMERCIAL ARBITRATION PETITION NO. 427 OF 2024

Mumbai Metropolitan Region Development Authority …Applicant

IN THE MATTER BETWEEN

Mumbai Metropolitan Region Development Authority …Petitioner

Versus

Mumbai Metro One Pvt Ltd …Respondent

Mr JP Sen, Senior Advocate, *with Kunal Vaishnav, Prachi Garg, Prerna Verma, Sayli Dolas, Mahek Shah & Manav Jain, i/b DSK Legal, for the Applicant/Petitioner.*

Mr Darius J. Khambata, Senior Advocate, *with Prateek Seksaria, Senior Advocate, Anjali Chandurkar, DJ Kakalia, Bhavna Jaipuria, Paresh Patkar, Vidhi Shah, Dhishan Kukreja, Rohit Agarwal & Kartik Hede, i/b Mulla & Mulla and Craigie Blunt & Caroe, for the Respondent.*

Mr Mahadev, *Authorised Representative, Chief Transportation & Communications Division, present.*

Mr Arvind B, *Authorised Representative, MMRDA, present.*

CORAM: ARIF S. DOCTOR, J
DATED: 24th October 2024

ORDER:

1. The present Interim Application seeks condonation of delay of a period of 14 days in filing the captioned Commercial Arbitration Petition under Section 34 of the Arbitration and Conciliation Act 1996 ("Arbitration Act").

2. Mr Sen, Learned Senior Counsel appearing on behalf of the Applicant submitted that the arbitration proceedings between the Applicant and the Respondent culminated in the passing of an Arbitral Award dated 29th August 2023 ("Arbitral Award") after which both, the Applicant and Respondent filed Applications under Section 33(1)[1] of the Arbitration Act *inter alia* requesting the Tribunal to carry out corrections in Arbitral Award. He submitted that on 27th February 2024 the Applicant received an email from its advocates to which was attached a word file of the unsigned order ("the said Order") passed on the said Application.

3. He submitted that it was only at 5:30pm on 11th March 2024 that the Applicant received a signed copy of the said Order and thus, as

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1 ***33. Correction and interpretation of award; additional award.-...***

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

per Section 34(3)[2] read with Section 12(4)[3] of the Limitation Act 1963 (**"Limitation Act"**), the Applicant's time to challenge the Arbitral Award commenced from 12th March 2024.

4. Mr. Sen then fairly submitted that the captioned Commercial Arbitration Petition was filed in haste, primarily for two reasons (i) that the Parties were engaged in making serious attempts to settle the matter and (ii) that the Applicants' previous advocates, had taken a discharge in the matter after the Award was passed. He also pointed out that the record before the Tribunal was extremely voluminous and the Arbitral Award itself ran into 991 pages. It was thus, he submitted that there was some delay in approaching the Court. He however submitted that the Applicant had at all times acted diligently and with due dispatch and thus the delay was not occasioned because of any inadvertence on the part of the Applicant. Mr. Sen then submitted that in the event, the delay was not condoned, the Applicant would suffer grave loss, harm, and injury whereas no prejudice would be caused to the Respondent if the delay was condoned. It was thus, he submitted that the balance of convenience, lay entirely in favour of the Applicant.

5. The Application was opposed by Mr. Khambata Learned Senior Counsel appearing on behalf of the Respondent who submitted that Section 34(3) of the Arbitration Act provided for two specific trigger dates for limitation to commence for challenging an Arbitral Award.

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2 ***34. Application for setting aside arbitral award-…***

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

3 ***12 Exclusion of time in legal proceedings.—…***

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

The *first* was from the date on which the party seeking to challenge the Award had received the Arbitral Award and the *second* where an Application had been made under Section 33 of the Arbitration Act from the date on which such Application had been disposed of. Mr. Khambata submitted that in the present case, the Application filed under Section 33 of the Arbitration Act had been disposed of on 26th February 2024 when a copy of the said Order was received by the Advocates for the Parties.

6. He then submitted that there could be no dispute that the Application under Section 33 was disposed of on 26th February 2024, since (i) the Applicant's advocates vide an email dated 27th February 2024, had specifically informed the Applicant that "*the Tribunal has passed its order under Section 33 of the Arbitration and Conciliation Act 1996, the time limit to file an application for setting aside the Metro I award has commenced*" and (ii) the Applicant had in paragraph 13 of the captioned Petition expressly stated that "*The corrections made by the Order dated 26.02.2024 is the part of the Arbitral Award. The unsigned corrected award dated 26.02.2024 was received by the Petitioner through his Advocate's email dated 27.02.2024. Hence the present Petition is within time*". Basis this he submitted that the period of limitation commenced on 27th February 2024 and expired on 26th May 2024 and the condonable period of 30 days expired on 25th June 2024 i.e. before the filing of the captioned Petition.

7. Mr. Khambata then placed reliance upon the judgement of the Delhi High Court in the case of ***M/s Prakash Atlanta JV vs National***

Highways Authority of India[4] to submit that the Delhi High Court had in the case expounded as to why limitation should run from the date of disposal of the Section 33 Application and not from the date of receipt of the corrected Award. From the said judgement, he pointed out as follows, viz.

> *"17 Now, if a party has received an award and there are errors of computation, clerical, typographical or of the kind brought to the notice of the Arbitral Tribunal, the reasoning of the award is made known to the parties in the award itself. The errors would only result in such corrections being made which do not impact the reasoning in the award and thus the argument that unless the award is corrected a party cannot form an opinion concerning the merits of the award has no legs to stand on any reason."*

He then pointed out that the judgement in the case of ***Prakash Atlanta JV*** was expressly followed by a Learned Single Judge of the Delhi High Court in the case of ***Union of India vs Ved Prakash Mithal & Sons***[5]. He also further pointed out in a Special Leave Petition (SLP) filed against the judgement of the Learned Single Judge in the case of ***Ved Prakash Mithal*** the Hon'ble Supreme Court had while dismissing the same expressly affirmed the finding of the Learned Single Judge and also overruled the decision of this Court in the case of ***Amit Suryakant Lunavat vs Kotak Securities***[6] in which this Court had held that the commencement of the period of limitation for filing an Application to set aside an award under Section 34 was linked to receipt of the corrected/modified award as opposed to the date of the disposal of the Application under Section 33.

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4 2016 SCC OnLine Del 743

5 2017 SCC OnLine Del 9039

6 2010 (6) MhL.J. 764

8. He then also pointed out that the judgement in the case of ***Ved Prakash Mithal*** was also then followed in a subsequent judgement of the Hon'ble Supreme Court in the case of ***USS Alliance vs State of Uttar Pradesh***[7]. It was thus that Mr. Khambata submitted that the period of limitation for filing a Petition to set aside the Arbitral Award in the facts of the present case, had commenced from the date of the disposal of the Application filed under Section 33 of the Arbitration Act, which was 26th February 2024.

9. Mr. Khambata submitted that the statutory period for challenging an Arbitral Award under Section 34 of the Arbitration Act was 90 days and that the Court did not have the power to condone the delay beyond a period of 30 days from date of receipt of the Arbitral Award or in cases where an Application was made under Section 33, then from the date on which such Application had been disposed of. He submitted that in the present case, the period of limitation (including the discretionary period of 30 days) would expire on 25th June 2024 and thus, the captioned Commercial Arbitration Petition having been filed on 27th June 2024 was filed beyond limitation. He then placed reliance upon the judgments of the Hon'ble Supreme Court in the case of ***UOI vs Popular Construction Company***[8] and ***Bhimashankar Sahakari Sakkare Karkhane Niyamita vs Walchandnagar Industries Ltd***[9] to submit that the Hon'ble Supreme Court had laid down therein that the timelines under Section 34 had to be strictly construed and had refused to admit Applications/Petitions after the period of limitation had expired.

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7 2023 SCC OnLine SC 778

8 (2001) 8 SCC 470.

9 (2023) 8 SCC 453.

10. Mr. Khambata then also submitted that it was well settled that the law of limitation was founded on public policy and though the same may in certain cases harshly affect a party nonetheless the same had to be applied with in all its rigour. He submitted that the consequence of a statutory provision was never an evil and that the Court did not have power to ignore such provision no matter how harsh the consequence was. He then placed reliance upon the judgment of the Hon'ble Supreme Court in the case of ***Basawraj vs Land Acquisition Officer***[10] in support of his contention that if a Petition is filed beyond the statutory period the Courts cannot condone the delay. It was thus, that Mr. Khambata submitted that the present Application must necessarily be dismissed.

11. Mr. Sen, then dealing with the submissions of Mr. Khambata first submitted that the contention that the Application filed under Section 33 was disposed of on 26th February 2024 was plainly untenable and misconceived. He reiterated that what was received by the Applicant on 26th February 2024 was only a word file of the said Order which was admittedly unsigned. He then invited my attention to Section 33(7)[11] of the Arbitration Act and pointed out that the same clearly stipulates that Section 31 of the Arbitration Act would apply to a correction of the Arbitral Award. He thus submitted for the Application to have been disposed of in terms of Section 34(3) it was mandatory for the Tribunal to have (i) signed the order and (ii) delivered the same to the Parties in the same manner that an Arbitral Award would have to be. Mr. Sen placed reliance upon the judgement of the Hon'ble Supreme Court in

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10 (2013) 14 SCC 81.

11 **33 Correction and interpretation of award; additional award.— …**

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section."

the case of ***Dakshin Haryana Bijli Vitran Nigam Limited vs. Navigant Technologies Private Limited***[12] and pointed out therefrom that the Hon'ble Supreme Court had expressly held that there could be no finality in the Award, except after it was signed by the Tribunal, since it was the signing of the Award, which gives it finality.

12. Mr. Sen then submitted that even the second contention of the Respondent i.e., regardless of the date of receipt of a signed copy of the said Order, it would only be the date of the disposal of the Application, which would trigger the limitation, could possibly lend itself to misuse. To amplify the point he was making, he submitted that if an Order passed on an Application filed under Section 33 of Arbitration Act signed 120 days prior to its date of receipt, would then automatically bar any challenge to such Order. He submitted that this very contention of the Respondent had infact been negated by the Hon'ble Supreme Court in the case of ***USS Alliance*** and from the said judgement of the Hon'ble Supreme Court pointed out the following, viz.

> *"2. In our opinion, looking at the purpose and object behind Section 34 (3) of the Act, which is to enable the parties to study, examine and understand the award, thereupon, if the party chooses and is advised, draft and file objections within the time specified, the starting point for the limitation in case of suo moto correction of the award, would be the date on which the correction was made and the corrected award is received by the party. Once the arbitral award has been amended or corrected, it is the corrected award which has to be challenged and not the original award. The original award stands modified, and the corrected award must be challenged by filing objections."*

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12 (2021) 7 SCC 657

13. Mr. Sen then also placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***State of West Bengal represented through the Secretary and Others vs. Rajpath Contractor and Engineers Ltd.***[13] and pointed out that the Hon'ble Supreme Court had in the said judgement held that the period of limitation mentioned Section 34(3) was of 'three months' and not ninety days. It was thus that he submitted that three months from the date of receipt of the said Order came to end on 12th June 2024 and the Petition was filed on 27th June 2024 i.e. within condonable period of 30 days.

14. Mr. Sen, then submitted that none of the judgements upon which the Respondent had placed reliance were applicable to the facts of the present case, since in none of those cases was limitation computed from the date of receipt of an unsigned Order passed on an Application filed under Section 33 of the Arbitration Act. It was thus he submitted that that the Respondents' case was based on an erroneous reading and interpretation of the settled legal position and the plain letter of the statue in question, namely Section 33 and 34(3) of the Arbitration Act as also the Hon'ble Supreme Court in the case of ***Dakshin Haryana.*** Mr. Sen also placed reliance upon a Judgment of the Delhi High Court in the case of ***Ministry of Youth Affairs and Sports, Dept. of Ports Govt of India vs Ernst and Young Pvt Ltd (Now known as Ernst and Young LLP) & Anr.***[14] from which he pointed out that the Delhi High Court had held that the period of limitation to file objections would only commence

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13 2024 SCC OnLine SC 1655

14 2023 SCC OnLine Del. 5182.

after valid delivery of the Award under Section 31(5)[15] of the Arbitration Act.

15. Mr. Sen then placed reliance upon a Judgment of the Calcutta High Court in the case of ***Saltee Productions Pvt Ltd vs Indus Towers Ltd,***[16] from which he pointed out that the Calcutta High Court in analysing the provisions of Section 33 and 31(5) of the Arbitration Act read with Section 12 of the Limitation Act in very similar facts to those in the present case had *inter alia* held as follows, viz.

> *"48. On a conjoint reading of Section 33 and 31(5) of the A & C Act, this Court holds that the Arbitral Tribunal is obliged to deliver a signed copy of the order disposing of the request under Section 33 of the said Act to the parties. When the arbitral award is corrected, the original award stands modified and this Court has already held that the application for setting aside has to be of the corrected award."*

He additionally pointed out that the Calcutta High Court in the case of ***Saltee Productions*** negated very similar arguments as those advanced by the Respondent in the present *inter alia* by observing as follows:

> *"50. Mr. Karmakar would contend that the expression "date of disposal of the request under Section 33" used in Section 34(3) of the A & C Act has to be given a literal interpretation. The object behind Section 34 of the A & C Act is to enable an aggrieved party to pray for setting aside the Arbitral Award. To the mind of this Court, the provisions of Section 34(3) require purposive interpretation so that the object behind such provision is achieved. The Hon'ble Supreme Court in*

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15 ***31. Form and contents of arbitral award.—…***
(5) After the arbitral award is made, a signed copy shall be delivered to each party.

16 2024 SCC OnLine Cal 5128.

Shailesh Dhairyawan vs. Mohan Balkrishna Lulla reported at (2016) 3 SCC 619 held that purposive interpretation should be made if it brings about an end which is at variance with the purpose of statute. The Hon'ble Supreme Court held thus–

"33. We may also emphasise that the statutory interpretation of a provision is never static but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced."

It was basis the above, as also what had been held by the Hon'ble Supreme Court in the case of ***USS Alliance*** that Mr. Sen submitted that the captioned Arbitration Petition had been filed within time, since a signed copy of the order was received on the 11th of March 2024. He however caveated his submission by pointing out that even this order was only signed by the Presiding Arbitrator and not by all three members of the Tribunal as was mandated by Section 31(1)[17] of the Arbitration Act.

16. He then, without prejudice to the aforesaid, submitted that even assuming the date of disposal of the Application was 26th February 2024, the said Order was received by the Applicant only on 27th February 2024 when the Advocate for the Applicants had forwarded the same to the Applicant. It was thus he submitted that the Petition was within time since. (i) the period of limitation would commence on 28th

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17 ***31. Form and contents of arbitral award.*** *— (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*

February as per Section 12(2) of Limitation Act (ii) three months from 28th February 2024 would be 28th May 2024, and (iii) 30 days from 29th May 2024 would expire on 28th June 2024 and (iv) the Petition was lodged after 4.00 pm on 26th June 2024 and it was the next date, i.e., 27th June 2024 which had to be reconned as per '*e-Filing Rules of High Court of Bombay, 2022'* **("e-filing Rules")**. Thus, he submitted that the Petition had been lodged on the 30th day of extendable period and was thus not beyond limitation.

17. Mr. Khambata in sur rejoinder submitted that the physical signed copy of the said Order also bore the date of 26th February 2024. It was thus that he submitted that it must be presumed that the said Order was signed on 26th February 2024 and was thus disposed of on that date. He placed reliance upon a judgement of the Privy Council in the case of ***Mina Kumari Bibi vs. Bijoy Singh Dhudhuria***[18] to submit that the general presumption in law was that a document was made on the date which it bears.

18. Mr. Khambata also submitted that it was well within the Applicant's knowledge that on 27th February 2024 not only had the Application under Section 33 been disposed of by the Tribunal but also that limitation had begun to run, since the Applicant was served with a copy of the said Order vide email on 27th February 2024. He placed reliance upon a judgment of Hon'ble Supreme Court in ***Vinod Kumar Singh vs. Banaras Hindu University and others***[19] to submit that it was well established that a judgment takes effect from the moment it is pronounced in open. He submitted that the signing of the said judgement subsequently

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18 19116 SCC OnLine PC 86

19 (1988) 1 SCC 80

was mere formality of authentication. He thus submitted that even if the said Order had not been signed on the 26th of February, 2024, it would nevertheless amount to a disposal of the Application/Request within the meaning of Section 34(3) of the Arbitration Act.

19. Mr. Khambata then in dealing with the judgements relied upon by the Applicant, *first*, from the judgement of the Hon'ble Supreme Court in the case of ***USS Alliance*** pointed out that it was a case of *suo moto* correction of an Arbitral Award and not pursuant to an Application filed under Section 33 of the Arbitration Act. It was thus he submitted that the issue of the date of disposal of the Application in the later part of Section 34(3) of the Arbitration Act did not come into play. He then pointed out that the judgement itself made clear that no question arose therein of receipt of an order passed under Section 33 of the Arbitration Act after an unsigned order had already been communicated to the parties, since in that case there was only one document i.e. the order dated 5th May 2018 which was received by the parties on the same date on which the Application under Section 33 was disposed of. He submitted that it was in the context of these specific facts that the Hon'ble Supreme Court had noted in paragraph 2 of the said judgement that the starting point for the limitation in a case of *suo moto* correction of the Award, would be the date on which the correction was made, and the corrected Award was received by the party. He then further submitted a judgement was not to be read as a statute and a mere observation on an issue which did not arise, was neither ratio nor obiter and hence not binding. He also reiterated that the said judgement squarely accepted the ratio of the judgement of the Hon'ble Supreme Court in the case of ***Ved Prakash Mithal*** and hence it must be read in that context.

20. He then submitted that the judgment of the Calcutta High Court in the case of ***Saltee Productions Pvt Ltd*** did not represent the correct position in law, since the same was contrary to the ratio laid down by the Hon'ble Supreme Court in the case of ***Ved Prakash Mithal & Sons vs Union of India***.[20] He pointed out that this was because the said judgment equated the requirement of receipt of a signed copy of an Arbitral Award to the Order passed disposing of an Application filed under Section 33. He submitted that such an interpretation would render otiose the two trigger points in Section 34(3). He further submitted that the Applicant's reliance upon paragraph 37 of the judgement of the Calcutta High Court in the case of ***Saltee Productions*** which dealt with Section 12 of the Limitation Act was also misdirected, since Section 12(4) of the Limitation Act provided for the computation of the period of limitation for an Application to set aside an Award and that Section 12(4) does not (a) apply to orders passed under Section 33 of the Arbitration Act or (b) require a signed copy of the Award.

21. Mr. Khambata then in dealing with the judgment of the Delhi High Court in the case of ***Ministry of Youth Affairs and Sports*** submitted that the same was also not applicable to the facts of the present case, since the said case pertained to a *suo moto* correction to an Arbitral Award. It was thus he submitted, the second part of Section 34(3) of the Arbitration Act would not apply, since the corrections were made absent any request by a party. He thus submitted that paragraph 45 of the said judgment on which reliance was placed by the Applicants, was required to be read and understood in the context of these facts.

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20 2018 SCC OnLine SC 3181.

22. Mr. Khambata then submitted that even the judgement in case of ***Dakshin Haryana*** would have no Application, since in the facts of that case the parties were tendered a draft of the Arbitral Award and asked to check if any changes or corrections were required to be made. He thus submitted that what was infact given to the Parties in that case was infact an unsigned draft of the Arbitral Award. However, in the present case the email containing the said Order expressly stated that the attached to the email was an Order passed by the Arbitral Tribunal in Application under Section 33 and the record bore out that the Petitioner had accepted this fact.

23. It was thus Mr. Khambata submitted that the Petitioner ought to have approached this Court within three months from the date of disposal of said Order. He reiterated that it was settled law that this Court could not condone the delay beyond 30 days. Basis this he submitted that the present Interim Application and consequently the Petition ought to be dismissed.

24. Mr. Seksaria Learned Senior Counsel appearing on behalf of the Respondent submitted that the present Petition was merely e-filed on 26th June 2024 at 10:43 PM and hence as per Rule 14 of e-filing Rules, the date of e-filing would be on the next Court working day i.e. 27th June 2024. He submitted that the website however noted the date of filing as 9th July 2024 and not 27th June 2024. He then pointed out that the 'synopsis' and 'list of dates' annexed to present Petition were also dated 9th July 2024. Mr. Seksaria then additionally pointed out that the Vakalatnama of the Applicants erstwhile advocates was dated 17th December 2021 whereas the 'Statement of Truth' was also of December 2021. He submitted that a Vakalatnama is not a general authorization

but an express authorization which authorises an advocate to appear and plead in a particular matter. He submitted that the cause of action itself arose in 2024 hence, Vakalatnama dated December 2021 could not be considered as valid authorization to file the present Petition. Basis this he submitted that what was filed by the Petitioner on 26th June 2024 was a fatally defective Petition. In support of his contention that such a fatally defective Petition would not lie, since the same was *non est* and must be dismissed, he placed reliance upon judgments of Delhi High Court in ***Delhi Development Authority vs. Durga Construction Co.,***[21] ***SKS Power Generation (Chhattisgarh) Ltd. Vs. ISC Projects (P) Ltd.***,[22] ***Sravanthi Infratech Private Limited Vs. Greens Power Equipment (China) Co. Ltd***[23] and ***Department of Social Welfare Vs. Sarvesh Security Services (P) Ltd.***[24]

25. Mr. Sen in dealing with objections raised by Mr. Seksaria submitted that none of the defects pointed out by Mr. Seksaria were in any manner fatal so as to consider the filing of the captioned Petition as *non est*. He first pointed out that none of the so called defects as claimed by Mr. Seksaria were even raised by the Registry. Mr. Sen then submitted that the verification clause of the Petition reflected the date of 26th June 2024 as the date on which the Petition was verified before Notary Public and the title and docket of the Vakalatnama also mentioned the year 2024. It was basis this he submitted that mentioning the incorrect date on the Vakalatnama was an inadvertent error. He submitted that it was not the case of the Respondent that the

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21 2013 SCC OnLine Del 4451

22 2019 SCC OnLine Del 8006

23 2016 SCC OnLine Del 5645

24 2019 SCC OnLine Del 8503

present Petition was filed without a signature, without Vakalatnama, without statement of truth or that the documents were not attested as per law.

26. He then submitted that the judgments cited by Mr. Seksaria were also distinguishable on facts and thus did not apply to the facts of the present case. He pointed out that in the case of ***Durga Construction Co.*** the objections which were raised pertained to the fact that the Petition in that case was not filed on legal size paper. He pointed out that, in the case of ***SKS Power Generation (Chhattisgarh) Ltd***. the Petition was filed without the signature of the Petitioner. Similarly, he pointed out that in the case of ***Sravanthi Infratech Private Limited*** the Petition was filed without a vakalatnama, affidavit, authority/resolution and without the signature of the Petitioner. In the case of ***Sarvesh Security Services (P) Ltd.*** the Petitioner had failed to file vakalatnama and affidavit in support. He thus reiterated that facts of the present case were there for materially different from the cases upon which reliance was placed by Mr. Seksaria.

27. Mr. Sen then in support of his contention that an improper filing would not be *non est* in law placed reliance upon judgment of Division Bench of Delhi High Court in ***Oil And Natural Gas Company Ltd. Vs. Joint Venture of M/s Sai Rama Engineering Enterprises & M/s Megha Engineering & Infrastructure Limited.***[25] Basis this he submitted that the defects pointed out by Mr. Seksaria were procedural defects which were curable and hence not fatal in nature nor would the filing of

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25 Judgment dated 9th January 2023 of the Delhi High Court in FAO (OS) (COMM) 324/2019

present Petition assuming such defects existed be said to be *non est* in law.

28. Mr. Sen then invited my attention to Rule 14 of e-filing Rules which reads viz;

> *"14. Computation of Time*
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> *14.1 Wherever limitation/time limits apply, it will be the responsibility of the party concerned to ensure that the filing is carried out well before the cut-off date and time. The date of e-filing will be taken as that date when the Action is electronically received in the Registry within the prescribed time on any working day. For computing the time at which e-filing is made, Indian Standard Time (IST) will apply.*
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> *14.2 e-filing through Designated Counters will be permissible up to 16.00 hours on any court working day. On-line e-filing carried out after working hours on any day, will be treated as the date which follows the actual filing date provided it is a court working day. Actions filed on a day declared as gazetted holiday or on a day when the court is closed, will be regarded as having been filed on the next working day. For the computation of limitation, on-line e-filing shall be subject to the same legal regime as applicable to physical filing, save and except as provided herein above.*
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> *14.3 The facility for on-line e-filing through the web portal shall be available during all twentyfour hours of each day, subject to breakdown, server downtime, system maintenance or such other exigencies. Where on-line e-filing is not possible for any of the reasons set out above, parties can either approach the Designated Counters for e-filing during working hours on court working days or take recourse to physical filing. No exemption from limitation shall be permitted on the ground of a failure of the*

web based on-line e-filing facility.

14.4 Provisions for limitation governing on-line e-filing will be the same as those applicable to physical filing. The period of limitation for such actions will commence from the date when e-filing is made as per the procedure prescribed in these Rules."

(emphasis supplied)

Basis the above he submitted that e-filing of the Petition was in conformity with the captioned rule and without any fatal defects. It was thus he submitted that the date of filing was the 27th of June, 2024 and not the 9th of July 2024 as submitted by Mr. Seksaria.

29. After having heard Learned Senior Counsel at great length, in my view, only one question really arises for consideration viz.

i. *Whether an Application filed under Section 33 of the Arbitration Act, can be said to have been disposed of on the basis of an unsigned order delivered to the Advocates of the Parties.*

Let me now proceed to answer the above question, but before I do, it is essential to set out and note the following, viz.

A. Section 33(7) of the Arbitration Act expressly provides that Section 31 of the Arbitration Act shall apply to a correction *or* interpretation of the arbitral award *or* to an additional arbitral award made under Section 33. Section 31(1) of the Arbitration Act mandates that an Arbitral Award "*….shall be signed by the members of the Tribunal"* and Section 31(5)

mandates that "*a signed copy of the Arbitral Award shall be delivered to each party*". The Hon'ble Supreme Court has in the case of ***Dakshin Haryana*** expressly held that Section 31(1) of Arbitration Act was couched in mandatory terms hence, the same is not a ministerial act or an empty formality, which can be dispensed with.

B. *Also,* an Application filed under Section 33(1) of the Arbitration Act envisages (i) correction of any computation errors, clerical errors, typographical errors and/or (ii) an interpretation of specific point or part of the award. Section 33(4) contemplates an additional award in respect of claims presented in the arbitral proceedings but omitted from the arbitral award. Thus, in either or both scenarios, for any order passed on an Application filed under Section 33(1) and/or 33(4) to attain finality, the same would have to be signed by the Tribunal and delivered to the Parties. If the Respondent's contention was to be accepted, it would effectively mean that a Party would have to either challenge and/or enforce an unsigned Award.

C. It is not in dispute that what was sent by the Stenographer of the Arbitral Tribunal to the Advocates for the Parties on 26th February was an attachment containing only a word file of the said order which was admittedly unsigned. However, what was received by the Applicant on 11th March 2024 was a signed order which was not only reformatted but also had the words "*For and on behalf of the Arbitral Tribunal and with concurrence of the Co-Arbitrators of the Tribunal*"

added to the said Order before the signature of the Presiding Arbitrator. Hence clearly in my view, what was sent on 26th February 2024 by the Stenographer of the Arbitral Tribunal to the Advocates for the Parties was at the very highest a draft Order and nothing more. I find that the judgement of the Calcutta High Court in the case of ***Saltee Productions Pvt Ltd.*** is entirely apposite to the facts of the present case.

D. Additionally, I find that none of the judgements relied upon by the Respondent deal with the issue which has arisen for consideration in the present case as already framed above. Hence, the judgements cited by the Respondent are distinguishable on facts. It is also crucial to note that the Hon'ble Supreme Court in the case of ***USS Alliance*** specifically noted that the purpose and object behind Section 34(3) of the Arbitration Act was to enable the Parties to study, examine and understand the Award to enable them to file their objections within the time specified [in Section 34(3)] and in cases of *suo moto* correction of an Award, the starting point of the limitation would be the date on which the correction was made and the corrected Award (which in the facts of that case was infact the Order passed on an Application filed under Section 33) was received by the Party. Though this was in the context of a *suo moto* correction, the purpose and object behind Section 34(3) as specifically enunciated in the said judgement would in my view equally apply to a case where an Application under Section 33 has been allowed and not merely in cases of *suo moto* corrections made by the Tribunal. The judgement of the Hon'ble

Supreme Court also notes that once the arbitral award is amended or corrected it would be the corrected award which has to be challenged and not the original Arbitral Award. Hence, I find that the reliance placed by the Applicant on the judgements in the case of ***Prakash Atlanta JV*** and ***Ved Prakash Mithal*** to be entirely misplaced in the facts of the present case. For the same reasons, equally misplaced is the Respondent's reliance upon the judgements in the case of ***Vinod Kumar Singh*** and ***Mina Kumari Bibi***.

E. However, since, the main plank of Mr. Khambata's argument was based on judgment of the Delhi High Court in ***Prakash Atlanata JV*** and judgment of Hon'ble Supreme Court in ***Ved Prakash Mithal,*** I find it necessary to expressly deal with them. First, in the case of ***Prakash Atlanta JV*** the copy of the Order passed under Section 33 was given to the parties on the same day that it was passed, and it was not an unsigned order. Also, the Arbitral Award which incorporated the corrections was thereafter delivered to the Parties. Hence, the issue of limitation which fell for determination before the Delhi High Court was in the context of the receipt of the corrected Award and not the order passed disposing of the Application under Section 33. *Similarly,* the judgment of Hon'ble Supreme Court in ***Ved Prakash Mithal*** pertained to the dismissal of Application filed under Section 33 of the Arbitration Act and in that context that the Hon'ble Supreme Court held limitation would commence from the date of dismissal of said Application, since the word 'disposal' was used in Section 34(3) would include dismissal of Application

as well.

F. *Also,* even if Respondent's contention that the Application was disposed of on 26th February 2024 is to be accepted, the present Petition would still be within time, since there is no dispute that the Applicant received the unsigned copy of said Order on 27th February 2024 and thus the limitation would commence from 28th February 2024 as per Section 12(2) of Limitation Act. The period of three months therefrom would come to an end on 27th May 2024 and the extended period of 30 days from 28th May 2024 would expire on 27th June 2024 i.e. the day on which the present Petition was filed.

G. I find no merit in the contention that the Petition contained fatal defects when e-filed. From a perusal of record, I find that the Petition was verified on 26th June 2024 before notary public and was e-filed on 26th June 2024 at 10:43 PM. None of the defects in filing the present Petition shown to me by Mr. Seksaria can be said to be fatal or would render the filing of the Petition *non-est* in law. Therefore, in view of Rule 14 of e-filing Rules, the date of filing would be 27th June 2024. Hence, the judgments of the Delhi High Court in ***Durga Construction Co.***, ***SKS Power Generation (Chhattisgarh) Ltd, Sravanthi Infratech Private Limited***, ***Sarvesh Security Services (P) Ltd.*** would not be applicable in the facts of the present case.

30. Hence for the aforesaid reasons, I find that the issue as framed

must be answered in the negative.

31. The Interim Application is therefore allowed in terms of prayer clause (a) which reads thus, viz.

> *"a. This Hon'ble Court be pleased to condone the delay of 14 days in filing the present Petition and take the present Petition on record."*

(ARIF S. DOCTOR, J)