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

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Decided on: 25.09.2019

+ **MAC.APP. 336/2019, CM APPL. 10381/2019 & CM APPL. 15973/2019**

M/S BHATIA ACID (P) LTD

..... Appellant

Through: Ms. Mayuri Shukla, Advocate.

versus

THE NEW INDIA ASSURANCE CO LTD

..... Respondent

Through: Mr. Anshum Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 10383/2019 (for delay in filing the appeal)

1. Issue notice.
2. The learned counsel named above accepts notice on behalf of the non-applicant.
3. For the reasons mentioned in the application, the delay in filing the appeal is condoned.
4. The application is allowed and disposed-off.

MAC.APP. 336/2019, CM APPL. 10381/2019 & CM APPL. 15973/2019

5. Issue notice.
6. The learned counsel named above accepts notice on behalf of the respondent.
7. At joint request, the appeal is taken up for disposal.

8. It is the appellant's case that they were never served a notice before the learned Tribunal, therefore, the service of notice in the Execution Proceedings apropos Execution of the Award of compensation dated 21.04.2017 came as a surprise to them. They moved an application before the learned MACT seeking review of the Award. The same was dismissed on 12.02.2019 on the basis of the report of Process Server which showed that the appellant refused to accept summons. The appellant had challenged the said report and wanted to cross examine the Process Server. The same was denied to them. The learned counsel for the appellant submits that as a gesture of their bonafides, the appellant has already furnished a Bank Guarantee to the learned MACT in satisfaction of the awarded amount, which is sought to be recovered by the insurer. The awarded amount has already been paid to the beneficiaries of the Award.

9. The Court is of the view that insofar as the appellant raised the issue that it was never served and that the statement of the process server cannot be considered as the absolute truth and it is open for verification, the appellant has a right which cannot be denied to it. In the circumstances, the case is remanded to the learned MACT, limited to the examination of whether service of notice had been duly effected upon the appellant in the Claim Petition. The parties shall appear before the learned MACT on 22.10.2019.

10. The appeal, alongwith pending applications, is disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 25, 2019

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