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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 10.12.2019

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Pronounced on: 04.06.2020

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O.M.P. (COMM) 26/2019

INDIRA GANDHI NATIONAL OPEN UNIVERSITY

.....Petitioner

Through: Mr. Sanjeev Sindhwani, Sr.
Advocate with Mr. Harmeet
Singh Ruprah & Mr. Navjot
Singh, Advocates

Versus

M/S. SHARAT DAS & ASSOCIATES PVT LTD.Respondent

Through: Mr. Sandeep Sharma, Mr.
Aman Dhyani, Mr. Sarthak
Mannan & Ms. Kanchan
Semwal, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

J U D G E M E N T

IA No. 719/2019 (u/Section 14 of the Limitation Act) & IA No. 720/2019 (Condonation of delay in refiling of the petition)

1. Present petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an Award dated 25.04.2018 passed by the Arbitral Tribunal.

2. I.A. 719/2019 has been filed for excluding the time of 30 days in filing the present petition, under Section 14 of the Limitation Act. It is

averred in the application that the petition was initially filed challenging the Award before the District Court, Saket on 24.07.2018 and was within the statutory period of limitation. However, on account of lack of pecuniary jurisdiction, the same was dismissed as withdrawn vide order dated 28.08.2018 passed in Arb. No. 233/2018 with liberty to approach the appropriate Forum. The certified copy of the order dated 28.08.2018 was made available on 31.08.2018 and the present petition was filed on 11.09.2018. Petitioner had approached the District Court diligently and thus the period of 30 days spent in prosecuting the case in the said Court, should be excluded for granting the benefit in condonation of delay.

3. I.A. 720/2019 has been filed seeking condonation of delay of 91 days in re-filing the petition and the reasons stated therein for the delay in re-filing is that there was 'bereavement in the family' and the petition could not be re-filed on time.

Case of the Petitioner :

4. Petition under Section 34 of the Act was filed on 24.07.2018 (on 89th day) before the learned District & Sessions Judge, Saket Court, New Delhi. On 06.08.2018, Court issued notice on the petition as well as the stay application. Petition was filed within a period of three months provided under Section 34 (3) of the Act and was complete in all respects and was pursued diligently by the Petitioner, after filing.

5. Petition was withdrawn on 28.08.2018 on the ground of lack of pecuniary jurisdiction, with liberty to file a fresh petition in the appropriate Court. On 31.08.2018, Petitioner received the certified copy

of the order dated 28.08.2018. On 11.09.2018, present petition was filed. Defects were raised by the Registry on 14.09.2018, after scrutiny. Petitioner has brought out the following aspects with regard to the First Filing :

- (a). Petition, as initially filed, was complete in all substantial aspects (identical to the one filed in Saket Court).
- (b). All relevant pages of the Petition were signed and stamped including index, notice of motion and memo of parties.
- (c). Affidavit in support of the petition was duly signed and verified, though not attested.
- (d). All applications signed and verified, such as stay of execution, exemption from filing the entire record and for exclusion of time under Section 14.
- (e). Affidavits supporting each application signed, though not attested.
- (f). Affidavit in compliance of Section 34 (5) of the Act filed, though not attested (service of complete set through Speed Post).
- (g). All relevant annexures filed.

6. Petition was re-filed on 25.09.2018 (Second Filing). This filing was within the extended period of 30 days under Proviso to Section 34(3) of the Act and also within 30 days available under the Delhi High Court Rules, for curing the defects.

7. With regard to the Second Filing, Petitioner has brought out the following aspects :-

- (a) Pleadings signed on all pages.

- (b). Statement of Truth filed, signed and verified, but not attested.
- (c). Pecuniary jurisdiction mentioned in the main body of the petition which was the only change made in the petition from the one filed in the District Court.
- (d). Annexures filed were certified as true copies.
- (e). Vakalatnama signed and identified.
- (f). Court fee paid.

8. Defects were raised by the Registry on 26.09.2018. Petition was re-filed on 30.10.2018. Petition was checked and defects were notified on 31.10.2018. Petition was again re-filed on 13.11.2018.

9. With respect to the defects notified on 14.11.2018, Petitioner has brought out as under:-

- (a). Petitioner had no knowledge of the Directions issued by the Court on 31.10.2018 for filing the entire Arbitral Record alongwith the Petition.
- (b). The record had over 1000 pages and many of the documents were two decades old and were dim and could not be scanned.
- (c). Blanks / spaces were removed from the Statement of Truth and rectified.
- (d). Respondent was served by Regd. AD.
- (e). Statement of Truth already signed and verified was attested on 13.11.2018, as per the Commercial Courts Act.
- (f). Affidavits already signed and verified were attested on 13.11.2018.
- (g). Caveat Report taken.

10. Petition was re-filed on 21.12.2018. Court was closed on account of Winter Vacations between 22.12.2018 and 04.01.2019. Defects were notified by the Registry on 05.01.2019. Re-filing was done on 08.01.2019. Thereafter between 09.01.2019 and 16.01.2019, there were minor defects such as markings and underlining in the original records, pages scanned incorrectly, etc. and finally the petition was cleared on 16.01.2019 and numbered.

11. Learned Senior Counsel appearing for the Petitioner submits that the initial filing in the District Court was on the 89th day and was thus within the statutory period of limitation of three months. Petition was complete in all respects and was therefore listed before the Court. It was withdrawn on the ground of lack of pecuniary jurisdiction and was filed in this Court on 11.09.2018. If the benefit of Section 14 of the Limitation Act is given for the period spent in the District Court, First Filing in this Court would be on the 11th day after three months i.e. within the extended period of 30 days as provided under Proviso to Section 34(3) of the Act and the delay can be condoned. It is submitted that the filing was substantially complete in all respects and the petition cannot be termed as a mere “bunch of papers” for stopping limitation.

12. It is next contended that the Second Filing was also within the extended period of 30 days, as also within 30 days available for curing defects under the Delhi High Court (Original Side) Rules. The defects of non-attestation of the Affidavit / Statement of Truth cannot render the filing non-est, as it is a curable defect. Reliance is placed on the judgments in the case of *Alka Kasana v. Indian Institute of*

Technology, 2015 SCC OnLine Del 11455 and *Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors.*, reported as (2006) 2 SCC 777. Since the Second Filing met all the parameters of a valid filing, limitation stopped running on 25.09.2018 and the delay, if any, thereafter was only in re-filing and should be considered liberally. It is contended that procedure is the handmaid of justice and the procedural defects in this case are not of a degree which can lead to dismissal of the petition.

13. Reliance is placed on the judgment of the Supreme Court in *Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.*, (2017) 11 SCC 234, to contend that Supreme Court has watered down the principle laid down by Division Bench of this Court in *Delhi Development Authority v. Durga Construction Co.*, 2013 SCC OnLine Del 4451. In the said case, Supreme Court set aside the judgment of the Single Judge and the Division Bench of this Court which had relied upon *Durga Construction (supra)*. Petitioner also relies on a judgment of Division Bench of this Court in *M/s. Traffic Media (India) Pvt. Ltd. vs. Delhi Metro Rail Corporation in FAO (OS) No.27/2015* where delay caused on account of the fault of the counsel in re-filing was condoned on the ground that party must not suffer due to the acts of the counsel and liberal approach must be adopted in considering condonation of delay. It is argued that the defects pointed out by the Registry were diligently cleared by the Petitioner. The defects pointed out in the Affidavits and the Statement of Truth were removed in the filing on 19.11.2018, but the Registry repeatedly and wrongly showed the defects as continuing,

although they were cured on 03.01.2019, with respect to the Affidavits and on 09.01.2019, with respect to the Statement of Truth.

14. It is submitted that the initial delay in refileing was nearly a month, due to the bereavement in the family of the counsel, but later part of the delay was due to the new Practice Directions issued on 31.10.2018, whereby the entire Arbitral Record was required to be filed. The record being voluminous and two decades old, could be filed with great difficulty. It is contended that the Second Filing was complete in all substantial respects and was a proper filing. In so far as the defects of filing of Statement of Truth and signing on all pages of the pleadings are concerned, these requirements arise from provisions of the Commercial Courts Act, more specifically, Amendments made to CPC. Order VI Rule 15A CPC provides for verification of pleadings in a commercial dispute as prescribed in Appendix-I. The format of the Statement of Truth contained in the Appendix provides for a statement that the pleadings, comprising of total number of pages, have been duly signed. This is the only provision in terms of which each page of the pleading has to be signed and other than this, there is no provision either in the CPC or in the Commercial Courts Act, requiring every page to be signed. In any case, provision of Order VI Rule 15A (5) CPC provides that in the absence of Statement of Truth, Court may strike out a pleading. The use of “may” gives a discretion to the Court and the pleadings need not necessarily be struck off. Since the provision does not make filing of the Statement of Truth mandatory, defect relating to Statement of Truth cannot make the filing non-est. The Rule carefully refers to striking out

pleadings and not declaring them non-est. Thus, even the requirement of signing of every page of pleading is not mandatory.

15. Without prejudice to the above, Learned Senior Counsel argued that the applicability of amended provisions of CPC under the Commercial Courts Act to a petition under Section 34 of the Act, is itself doubtful, in view of Section 10 of the Commercial Courts Act, which merely defines that all Arbitration matters would be Commercial matters, but does not make the Amendments to CPC, applicable to them. Similarly, Practice Directions dated 17.11.2015 do not provide that Amendments to CPC would apply to Arbitration matters. Even the Delhi High Court (Original Side) Rules, as amended by Commercial Courts Act do not prescribe that rigours of CPC would apply to Petitions under Section 34 of the Act.

16. Learned Senior Counsel further argued that the defects pointed out with respect to the Vakalatnama also cannot be so fatal so as to declare the filing of the petition as non-est. Vakalatnama is required to be filed as per provisions of Chapter V of the Original Side Rules, 2018. There is no requirement in the Rules which mandates identification of the signature of the client. Further, Chapter IV (1) of the Original Side, Rules, 2018, permits filing by the client in person or through an Advocate. Clearly, a petition can be filed merely with the signatures of the client and therefore, identification loses its meaning. In so far as the filing of the Vakalatnama itself is concerned, it can be said to be mandatory, where the petition has been signed merely by an Advocate and not by the client at all. In the instant case, it is argued that the

petition when filed initially in the District Court, was filed with the signatures and seal of the client throughout. In fact, it did not bear the signatures of the Advocate. Therefore, merely because the Vakalatnama was not filed in the first instance, in this Court, it cannot be said that the filing was non-est. Vakalatnama was, however, filed at the time of Second Filing i.e. within thirty days' extended period. Petitioner is thus entitled to condonation of delay and it is submitted that the application be allowed.

17. Per contra, Mr. Sandeep Sharma, learned counsel for the Respondent has vehemently opposed the condonation of delay. He submits that the initial filing is a *non-est* filing and the successive re-filing are beyond the statutory period of limitation and even the extended period of limitation under Section 34 (3) of the Act and cannot be condoned. Learned counsel submits that when the petition was filed in the District Court, Saket, it was one day after the prescribed period of three months i.e. on 24.07.2018. The petition was without any application under Section 33(4) of the Act seeking condonation of delay and reliance is placed on the judgment of this Court in ***Union of India vs. Vishwa Mittar Bajaj & Sons & Anr. [2007(2) Arb.L.R. 404 (Delhi)]***, to argue that this was a fatal defect. Petition was not accompanied by any Affidavit / Statement of Truth and did not bear the signatures of the Petitioner or any Authorised Representative. Even the Vakalatnama was not filed, which is evident from the Index filed alongwith the petition. The same was handed over in Court on the first date of hearing on 31.07.2018. Thus, it is incorrect for the Petitioner to submit that a

petition complete in all respects was filed in the District Court. Vide Notification dated 07.07.2018 of the Delhi High Court, all District Courts were designated as Commercial Courts and as per Section 16(2) of Commercial Courts Act, provisions of CPC, as amended by the Commercial Courts Act, 2015 would apply. Schedule to the Commercial Courts Act, 2015 amended Order VI CPC and Rule 15A was inserted. Sub-Rule (1) requires every pleading before Commercial Court to be verified by an affidavit in the form prescribed in the Appendix to the Schedule i.e. a Statement of Truth. Sub-Rule (5) empowers the Court to strike the pleadings not verified by a Statement of Truth. Reading of Sub-Rules (1), (4) and (5) makes the filing of Statement of Truth mandatory. Thus, the filing was *non-est* and benefit of Section 14 of the Limitation Act is not available to the Petitioner.

18. It is next contended that the objections filed before this Court on 11.09.2018 are hopelessly time barred. The Award was received on 25.04.2018 and the period of 120 days under Section 34(3) of the Act expired on 22.08.2018. Delay in filing is thus of 147 days. Further as per defect list, the final filing, complete with accompanying affidavits, Statement of Truth and Vakalatnama was done only on 09.01.2019 and the delay cannot be condoned.

19. Learned Counsel, on the basis of defect sheets, points out that when the petition was filed on 11.09.2018, it was without any date, Court Fee, Statement of Truth, signature of the counsel for the Petitioner, Vakalatnama, and without any date on the Verification. Affidavit was filed, but not attested. Total of 237 pages were filed and there was no

application seeking condonation of delay. If the benefit under Section 14 of the Limitation Act was to be given, even then after 28.08.2018, total of 29 days were left with the Petitioner to seek the benefit of Proviso to Section 34(3). 29 days expired on 26.09.2018 and the period available under Rule 3 of Chapter IV of the Notification No.722 of the Delhi High Court dated 16.10.2018, expired on 11.10.2018.

20. The Second Filing was done on 25.09.2018 without any advance copy being served on the respondent under Chapter III Rule VI of the Delhi High Court (Original Side) Rules, 2018. The Second Filing also had defects. Signatures of the Petitioner were missing on the petition. Both Affidavits and the Statement of Truth were unattested and the Statement of Truth had blanks. Vakalatnama was not filed even on 25.09.2018. The filing was thus not a proper filing and the 29 days left with the Petitioner expired on 26.09.2018.

21. The Third Filing was done on 30.10.2018, but with defects. Application for condonation of delay in filing / refilling was filed without a supporting affidavit. Application did not contain the number of days of delay. Statement of Truth and Vakalatnama were not filed and all the affidavits were still unattested. Total 241 pages were filed.

22. In terms of Rule 3 of the Delhi High Court Rules, 30 days for removing the defects had expired on 11.10.2018 and the petition now suffered from a delay of 19 days in re-filing as on 30.10.2018. The defect sheet clearly revealed that the filing done on 25.09.2018 and 30.10.2018

were identical and no efforts had been made to cure any defects, during the whole month.

23. It is contended that with respect to the Fifth Filing on 19.11.2018, Petitioner had sought to argue that it was complete in all respects, but this is incorrect. A perusal of the petition shows that for the first time, 1305 pages were filed. The following defects would show that the filing was a *non-est* filing, even at this stage; (a) no advance service to the respondent; (b) incomplete Statement of Truth was filed; (c) the same was shown to have been verified on 21.09.2018, but the attestation was on 13.11.2018 and the petition was dated 19.11.2018; (d) defects marked on 20.11.2018, show that affidavit was neither identified nor attested, but the attestation bears the date of 13.11.2018, raising a presumption that the attestation was backdated and (e) affidavits attested only on 13.11.2018, whereas the application for condonation of delay of 130 days in re-filing is not dated and the index bears the date of 20.12.2018, which again, raises a presumption of backdated attestation.

24. Learned counsel next contends that the reason given in the Application bearing No. 72/2019 for condonation of delay in re-filing is that there was bereavement in the family of the counsel. However, in the affidavit dated 21.01.2019, filed in compliance of the order dated 18.01.2019, there is not even a whisper of the bereavement.

25. Learned counsel submits that the limitation period under Section 34(3) of the Act is absolutely inelastic and strict rigours have to be applied by the Courts in considering an application for condonation of

delay. The manner in which the filing and re-filing has been done and the vital defects not having been cured within the outer limit of 120 days, disentitles the Petitioner to seek condonation of delay. The application does not disclose 'sufficient cause' as required under the Proviso to Section 34(3) of the Act. Learned Counsel relies on the judgments in the case of *Haji Banda Hasan vs. Gupta & Gupta Pvt. Ltd.*, 2019 SCC OnLine 10018, *SKS Power Generation vs. ISC Projects Private Limited*, 2019 SCC Online Del 8006; *Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Limited (Meil)*, 2019 SCC OnLine Del 10456; *Jay Polychem (India) Ltd. v. S.E. Investment Ltd.*, 2018 SCC OnLine Del 8848; and *Durga Construction (supra)*; to argue that a petition which is filed with the vital defects is a *non-est* filing and the date on which a petition, cured of all defects, is filed, is a date of fresh filing and not refiling. Petitioner has not been able to satisfy the Court that a valid petition was filed within the period of 120 days and therefore, the application for condonation of delay deserves to be dismissed.

26. I have heard Learned Senior Counsel for the Petitioner and learned Counsel for the Respondent.

27. Plain reading of Section 34 (3) of the Act shows that the statutory period of Limitation for filing the objections against the Award is three months. Under the Proviso to the Section, an extended period of 30 days is available for filing the petition and the Court has powers to condone the delay provided sufficient cause is shown for not filing the petition within the statutory period of three months. The Limitation period is

inelastic and inflexible and the Court cannot condone a delay of even one day beyond 120 days. Relevant para of the judgment of the Supreme Court in ***Union of India v. Popular Construction, (2001) 8 SCC 470***, is as under:-

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

28. Relevant paras in the case of ***Simplex Infrastructure Limited v. Union of India, (2019) 2 SCC 455***, are as under :-

“18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131

days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

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21. Under the circumstances, we are of the considered opinion that in view of the period of limitation prescribed in Section 34(3), the learned Single Judge of the High Court was not justified in condoning the respondent's delay of 514 days in filing the application. The judgment rendered by the learned Single Judge of the High Court of Calcutta on 27-4-2016, in Union of India v. Simplex Infrastructures Ltd. [Union of India v. Simplex Infrastructures Ltd., 2016 SCC OnLine Cal 12045] is set aside and the appeal is allowed. The petition under Section 34 stands dismissed on the ground that it is barred by limitation. There shall be no order as to costs."

29. The issue of delay in re-filing as well as *non-est* filing came up before a Division Bench of this Court in ***Durga Construction (supra)***. It was held that the Courts would have jurisdiction to condone the delay, but the approach cannot be liberal and conduct of the applicant will have to be tested on the anvil of whether the applicant was acting with due diligence and dispatch. The applicant would have to show that delay was on account of reasons beyond his control. Relevant para reads as under :-

"21. Although, the courts would have the jurisdiction to condone the delay, the approach in exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. The applicant would have to show that the delay was on account of reasons beyond the control of the applicant and could not be avoided despite all possible efforts by the applicant. The purpose of specifying an inelastic

period of limitation under section 34(3) of the Act would also have to be borne in mind and the Courts would consider the question whether to condone the delay in re-filing in the context of the statute. A Division Bench of this High Court in Competent Placement Services through its Director/Partner v. Delhi Transport Corporation through its Chairman, 2011 (2) R.A.J. 347 (Del) has held as under:

“9. In the light of these provisions and decisions rendered by the Hon'ble Supreme Court, it is thus clear that no petition under Section 34 of the A&C Act can be entertained after a period of three months plus a further period of 30 days, subject to showing sufficient cause, beyond which no institution is permissible. However, the rigors of condonation of delay in re-filing are not as strict as condonation of delay of filing under Section 34(3). But that does not mean that a party can be permitted an indefinite and unexplainable period for re-filing the petition.”

30. In the same case, the Court while examining the nature of filing, within the statutory period, held that where the petition filed by a party is so hopelessly inadequate and insufficient or contains defects which are fundamental to the institution of the proceedings, then in such cases the filing would be considered ‘non-est’ and Petitioner cannot be given the benefit of initial filing. The date on which the defects are cured, would be considered as a date of initial filing. Relevant paras of the judgment read as under :-

“17. The cases of delay in re-filing are different from cases of delay in filing inasmuch as, in such cases the party has already evinced its intention to take recourse

to the remedies available in courts and has also taken steps in this regard. It cannot be, thus, assumed that the party has given up his rights to avail legal remedies. However, in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing. A similar view in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967 was expressed in Ashok Kumar Parmar v. D.C. Sankhla, 1995 RLR 85, whereby a Single Judge of this Court held as under:—

“Looking to the language of the Rules framed by Delhi High Court, it appears that the emphasis is on the nature of defects found in the plaint. If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.”

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25. Thus, in our view a Court would have the jurisdiction to condone delay in re-filing even if the period extends beyond the time specified in section 34(3) of the Act. However, this jurisdiction is not to be exercised liberally, in view of the object of the Arbitration and Conciliation Act to ensure that arbitration proceedings are concluded expeditiously.

The delay in re-filing cannot be permitted to frustrate this object of the Act. The applicant would have to satisfy the Court that it had pursued the matter diligently and the delays were beyond his control and were unavoidable. In the present case, there has been an inordinate delay of 166 days and in our view the appellant has not been able to offer any satisfactory explanation with regard to the same. A liberal approach in condoning the delay in re-filing an application under section 34 of the Act is not called for as it would defeat the purpose of specifying an inelastic period of time within which an application, for setting aside an award, under section 34 of the Act must be preferred.”

31. Again in the case of **SKS Power Generation (supra)**, a Co-ordinate Bench of this Court observed that when the petition lacks the basic documents such as Vakalatnama, Statement of Truth etc., it can be termed only as a ‘bunch of papers’ and cannot be treated as proper filing so as to give the benefit in condonation of delay. Relevant paras read as under :-

“8. As far as non filing of the affidavit, authorization on behalf of the petitioner to file the petition, as also the vakalatnama is concerned, learned senior counsel for the petitioner, relying upon the judgments of the Supreme Court in Uday Shankar Triyar v. Ram Kalewar Prasad Singh (2006) 1 SCC 75 and of this Court in Alka Kasana v. Indian Institute of Technology, 2015 SCC OnLine Del 11455, submits that these defects being procedural in nature, could be cured at a later stage and therefore, shall have no effect as far as the original filing of the petition is concerned. He submits that therefore, the original filing of the petition being 14.01.2019, is within the time prescribed under Section 34(3) of the Act and the delay is only in refiling of the petition.

9. Learned senior counsel for the petitioner further relies upon the judgment of the Supreme Court in *Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.*, (2017) 11 SCC 234 to contend that for purposes of considering the condonation of delay in refiling of the petition, Section 34(3) of the Act shall have no application. The reason for such delay has to be liberally construed and benefit granted to the petitioner.

10. On the other hand, learned counsel for the respondent submits that the petition as filed on 14.01.2019 cannot be considered as a petition in the eyes of law. It was merely a bunch of papers filed in the name of a petition. He further submits that even if the same is to be considered as a petition, the petitioner having taken more than two months thereafter to cure the defects, while considering an application for condoning the delay in refiling, this Court must take into account the nature of the petition as originally filed and cannot apply the same liberal test as is usually applied to such an application. He placed reliance on the judgment dated 19.10.2016 passed by this Court in *OMP 470/2015, Sravanthi Infratech Pvt. Ltd. v. Greens Power Equipment (China) Co. Ltd.*; *Delhi Development Authority v. Durga Construction Co.*, 2013 (139) DRJ 133 (DB); judgment dated 11.07.2012 in *FAO(OS) 295/2012, Delhi Transco Ltd. v. Hythro Engineers Pvt. Ltd.*; and *India Tourism Development Corporation v. CP Associates Pvt. Ltd.*, 2019 SCC OnLine Del 7615.

11. I have considered the submissions made by the learned counsels for the parties. It is not contested by the petitioner that the original petition filed on 14.01.2019 contained only 29 pages with blanks and with no signature of the petitioner or its authorized representative. There was no vakalanama filed authorizing the advocate to file the said bunch of

papers. I am intentionally using the words “bunch of papers” as what was filed was nothing more than that. The petition sought to impugn the Arbitral Award and the Additional Award without even annexing the same. Clearly what was filed was merely a ‘bunch of papers’ to somehow stop the period of limitation from running. The petitioner thereafter made no endeavour to refile the petition with expedition once the same had been returned back under objection on 15.01.2019. The petitioner took another two months to refile the petition only on 26.03.2019, albeit, still under defects. This filing was beyond a period of 30 days from three months of receipt of the Additional Award by the petitioner.

12. In my view, while considering the application seeking condonation of delay in refiling, the above is a very relevant criteria and consideration to be kept in mind. As held by this Court in Durga Construction Co. (supra), where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. This was reiterated by this Court in Sravanthi Infratech Pvt. Ltd. (supra), where the petition had been filed without documents, vakalatnama, affidavit or authority.

13. In Durga Construction Co. (supra), this Court further held that while the Courts would have jurisdiction to condone the delay in refiling of the petition, once such delay is beyond the maximum period provided under Section 34(3) of the Act, the approach of the Court exercising such jurisdiction cannot be liberal and the conduct of the applicant will have to be tested on the anvil of whether the applicant acted with due diligence and dispatch. From the above narration of the

facts, it can easily be concluded that the petitioner did not act with due diligence or dispatch.

14. Infact, in the application filed by the petitioner seeking condonation of delay in such re-filing, there is absolutely no explanation given as to how the original petition filed on 14.01.2019 did not bear the signature of the petitioner and didn't contain a vakalatnama or the affidavit or the authorization of the petitioner to file such petition or the Impugned Award or the Impugned Additional Award. The only explanation, if at all it could be called one, is reproduced hereinunder:—

“4. That pursuant to the filing of the petition on 14 January 2019 the Registry, Delhi High Court raised objections and directed the petitioner to file the entire arbitral records along-with the aforementioned petition. It is humbly submitted that the entire arbitral records are bulky and it required the Petitioner some time to file it. That the inadvertent delay to file the entire arbitral records was due to the records being bulky.”

15. The so called explanation is completely frivolous and bereft of particulars.

16. The reliance of the learned senior counsel for the petitioner on the Judgment of the Supreme Court in Uday Shankar (Supra) is ill founded. In the said case it has been held that defect in signing the memorandum of appeal or any defect in the authority of the person signing the memorandum of appeal or the omission to file the vakalatnama executed by the appellant alongwith the appeal, will not invalidate the memorandum of appeal, if such omission or defect is not “deliberate” or “mischievous”. In the present case, the non filing was clearly deliberate and mischievous as it was intended only to stop the period of limitation from

running and thereafter the petitioner took no steps to have the petition re-filed expeditiously.

17. In Alka kasana (Supra) the petitioner therein had given justification for non-filing of the affidavit alongwith the petition. As noted above, in the present case the petitioner has not even made such an endeavour.”

32. This Court in **ONGC (supra)** while examining the said issue held that the filing of Vakalatnama, Statement of Truth and signing of the petition are vital for any petition to be termed as proper filing. If the petition filed within the limitation period of 90 days or the extended period of 30 days is a non-est filing, limitation would not stop and on the date the defects are cured and it is filed, it would be treated as a ‘fresh’ filing. Thus, what emerges from a reading of the various judgments is that when a petition is filed under Section 34(3) of the Act, it must not be a mere ‘bunch of papers’ but must fulfil vital parameters, to qualify as valid filing.

33. In the present case, when the filing and re-filing is examined, it is seen that the objections to the Award were first filed before the District Court, Saket on 24.07.2018 which was the 89th day. The petition was withdrawn on 28.08.2018, on account of lack of pecuniary jurisdiction. Three months from the receipt of the Award (after giving the benefit of Section 14 of the Limitation Act), expired on 30.08.2018. The extended period of 30 days expired on 29.09.2018. The petition was first filed in this court on 11.09.2018 i.e. beyond 90 days, but within the extended 30 days. The defects noted by the Registry were: (a) no Statement of Truth,

(b) no Vakalatnama, (c) Affidavit not attested, (d) Petition not signed on each page, (e) none of the affidavits with the application attested and (f) no application for condonation of delay.

34. The Second Filing on 25.09.2018 also had major defects, such as Affidavit dated 21.09.2018 not attested, Statement of Truth not attested, Affidavits alongwith applications not attested, application only for condonation of delay in re-filing filed and the only reason given was bereavement in the family of the counsel, with blanks in the number of days of delay.

35. The Third Filing was on 30.10.2018 i.e., beyond the 120 days and more than one month after previous re-filing. Till this date, there were only 241 pages filed. Some previous objections were notified by the Registry as 'not removed'. 245 pages were filed on 13.11.2018. On 19.11.2018, 1305 pages were filed. Significantly, the Affidavits and the Statement of Truth which were eventually attested, bear 13.11.2018 as the attestation date.

36. The question that arises is whether the filing within the outer limit of 120 days, was a valid or a *non-est* filing. The defects notified by the Registry indicate that on initial filing, the petition lacked vital documents as required by the laid down parameters of a valid filing, as noticed above. While the re-filing was done on 25.09.2018, but most of the defects were not cured, despite the Petitioner knowing that the outer limit of 120th day was expiring on 29.09.2018. It is obvious that the re-filing was callously done and only with a view to stop limitation. Thereafter,

re-filing was done on 30.10.2018, but without removing substantial objections. By this date the period of 120 days was over and any subsequent removal of objections, cannot come to the petitioner's aid.

37. Reading of catena of judgments, some of which are alluded to above, only points to one conclusion, that the petition filed within the permissible period under Section 34(3) of the Act was a *non-est* filing. In view of the observations of the Division Bench in ***Durga Construction (supra)***, once the petition was cured of all the defects and filed, the said date would be a date of fresh filing and not re-filing. Since in the present case, the said date goes beyond the 120th day, petition would be treated as having been initially filed beyond the limitation period and the extended period of 30 days. Court lacks the power to condone the delay as held by the Supreme Court in ***Union of India v. Popular Construction (supra)*** and ***Simplex Infrastructure (supra)***. Thus the application seeking condonation of delay in re-filing becomes irrelevant.

38. It is no doubt true that the Courts have emphasized that while considering condonation of delay in re-filing, a liberal approach has to be adopted, but those judgments would not apply in the present case, where the initial filing was *non-est* and by the time the defects were cured and a valid petition was filed, the period under Section 34(3) of the Act expired.

39. It needs to be noted that the intent of the Legislature in prescribing a strict limitation period to challenge an Award is to further the object of expeditious disposal under the Alternate Dispute Resolution Mechanism and in case the party aggrieved by the Award, is permitted to challenge

the Award without any fetters of limitation and a liberal approach is adopted, the entire purpose would be frustrated. It is obvious that the Petitioner has adopted a callous, negligent and lackadaisical approach not only in filing, but also in re-filing the petition as well as in removing the defects.

40. Insofar as the argument of the Petitioner that the defects relating to non-filing of Statement of Truth and Vakalatnama are curable, is concerned, the issue stands answered by the judgments in ***Durga Construction (supra)*** and ***S.K.S. Power Generation (supra)***. In this context, I may also refer to some other judgments of this Court. In ***OMP 470/2015 titled Sravanthi Infratech Pvt. Ltd. v. Greens Power Equipment (China) Co. Ltd., decided on 19.10.2016***, Court held as under:

“12. It is only on 3rd September, 2015, the petition was refiled but again without removing the complete defects. Therefore, for the purposes of Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders, the date of filing of the petition had to be considered as 3rd September, 2015. It is stated that there is a delay of 83 days in filing the petition and in the absence of any application seeking condonation of delay filed at the time of initial filing of the petition no indulgence is sought to be granted to the Petitioner. Significantly it is pointed out that on 10th July, 2015 when the petition was first filed it contained only 66 pages whereas when it was refiled on 18th August, 2015 it consisted 859 pages.

13. Having considered the submissions of the learned counsel for the parties, the Court is of the view that although the number of days delay in filing the petition was 17 days, even if the date of receipt is taken as

24th March, 2015 as claimed by the Petitioner what was filed could not be considered as a petition. What was filed was a petition without a vakalatnama, without an affidavit, without signature of the party on the petition. These are fatal defects and what was filed on 10th July, 2015 can hardly be considered a proper filing of the petition with there being no documents, no vakalatnama, no application for condonation of delay, no affidavit, no authority.

14. Secondly, despite knowing that initial limitation of 90 days in terms of Section 34(3) of the Act had expired on 23rd June, 2015 even according to the Petitioner, the petition was filed only on 10th July, 2015. Thus, the Petitioner knew on that date itself that the petition was beyond the 90 days limitation period. The Petitioner ought to have filed an application for condonation of delay on the very date that the petition were filed, i.e. 10th July, 2015.

15. Thirdly, the Petitioner also did not pursue the matter diligently despite knowing that the outer limit of 120 days was expiring on 22nd July, 2015 and no attempt was made to cure the defects before 12th August, 2015, the date on which 30 days period for curing the defects as per Rule 5 Chapter I Part A of the Volume 5 of the Delhi High Court Rules and Orders expired. The defects were not cured up to 18th August, 2015. It was only then that a petition containing 859 pages was filed. When this was compared with the 66 page petition, it confirmed the suspicion that what was initially filed was neither a comprehensive nor a properly signed petition.

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17. The other strange phenomena is that when the petition was filed on 10th July, 2015 it was without any affidavit of the Petitioner. Later when the defects were cured and the petition was re-filed on 18th August 2015, the date of the supporting affidavit and the signing of the petition by the

Petitioner was shown as 10th July 2015. In other words they were ante-dated to 10th July, 2015. This is prima facie an attempt to falsify the record.

18. The Court is not expected to mechanically condone the delay in filing the petition in terms of the proviso to Section 34(3) of the Act. It can only be upon the Petitioner satisfying that the delay was for bona fide reasons can the Court proceed to condone the delay. In the present case the Court is unable to be persuaded to hold that the delay in filing and re-filing the petition was for bona fide reasons.

19. By filing a petition with just 66 pages to start with (which later on - refiling grew to 859 pages) with no signature of the petitioner, without affidavit, without vakalatnama the Petitioner has sought to defeat the whole object of Section 34(3) of the Act. This Court is statutorily mandated to take a strict view of the outer limit within which petitions under Section 34 of the Act have to be filed. It is, therefore, not possible for this Court to lightly condone the delays that have occurred in the present case in filing and refiling of the petition.”

41. In **Jay Polychem (supra)**, the Court held as under:

“2. The present petition was filed on 31.10.2015. However, the said petition was neither signed on behalf of the petitioners nor supported by signed and attested affidavits. In addition to the above, the petition was also defective on several other grounds and, thus, was returned on 31.11.2015. It is relevant to note that the petition was filed just before the expiry of the period of three months available in terms of Section 34(3) of the Act, for filing a petition under Section 34 of the Act.

3. The petition was thereafter refiled on 23.12.2015. This was not only beyond the period of three months as

prescribed under Section 34(3) of the Act but also beyond the further period of 30 days, which could be condoned by the Court in terms of proviso to Section 34(3) of the Act. Although, Section 34(3) of the Act is not applicable for any delay in refiling - as held by the Supreme Court in Northern Railway v. Pioneer Publicity Corp. Pvt. Ltd., (2017) 11 SCC 234 as well as by a Division Bench of this Court in Delhi Development Authority v. Durga Construction Co., 2013 (139) DRJ 133 - but what was filed by the petitioners on 31.10.2015 could not be considered as a petition at all in view of the defects noticed above.

4. In Ashok Kumar Parmar v. B.D.C. Sankiila, 1995 RLR 85, this Court had, in the context of Rules 1 & 2 of Chapter IV of the Delhi High Court (Original Side) Rules, 1967, observed as under:

“If the defects are of such character as would render a plaint, a non-plaint in the eye of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not effecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit.”

5. The aforesaid view would also be applicable in case of a petition under Section 34 of the Act. In Delhi Development Authority v. Durga Construction Co. (supra), a Division Bench of this Court had observed as under:

“..in certain cases where the petitions or applications filed by a party are so hopelessly inadequate and insufficient or contain defects which are fundamental to the institution of the proceedings, then in such cases the filing done by the party would be considered non est and of no consequence. In such cases, the party cannot be

given the benefit of the initial filing and the date on which the defects are cured, would have to be considered as the date of the initial filing.”

6. Clearly, a Statement, which is neither signed nor supported by an affidavit cannot be considered as an application under Section 34 of the Act. Thus, the petition filed on 31.10.2015 was non-est. In this view, the present petition is not maintainable, as it has been filed beyond the prescribed period of three months and also beyond the further period of thirty days within which this Court could entertain the petition on petitioners establishing that it was prevented from sufficient cause from presenting the petition within the period prescribed.

7. The Supreme Court in the case of Union of India v. Popular Construction, (2001) 8 SCC 470 has held that the time limit prescribed under Section 34(3) of the Act to challenge an award is not extendable by the Court under Section 5 of the Limitation Act, 1963 in view of the express language of Section 34(3) of the Act. The petition is, thus, not maintainable because as on 23.12.2015, the maximum time available within which the petition could be entertained by this Court - that is three months and a further period of 30 days - had expired.”

42. In *Director-cum-Secretary, Department of Social Welfare vs. Sarvesh Security Services Pvt. Ltd.*, 2019 SCC OnLine Del 8503, Court held as under:

“5. It is an admitted fact that the petition as originally filed did not have the signatures of the Petitioner. It was also not accompanied with the statement of truth in the form of the affidavit. Besides, as noted above, the vakalatnama in favour of the counsel was also not placed on record. The question therefore is whether such a petition could qualify as a filing in law? This question has been a subject matter of several decisions including the

one relied upon by the learned counsel for the Respondent. It has been held that such a petition would not qualify as a filing and the Court has discouraged litigants to file such petitions in order to avoid the rigour of strict provision of limitation as stipulated under Section 34 (3) of the Act.

6. The learned counsel for the Petitioner has tried to distinguish the judgment of SKS Power Generation (supra) on facts by contending that in the said case, the copy of the award was not placed on record whereas in the present case the award had been filed along with the petition. He also contends that since he is a Panel counsel of the Petitioner, the vakalatnama that he had in his favour for the proceedings before the Arbitral Tribunal should also be deemed to be valid for the purpose of the filing of the present petition. Both the contentions are unmerited. The petition, as filed before this Court, admittedly, did not have the Vakalatnama. The Vakalatnama was filed on 27th April 2019. Perusal of the said vakalatnama shows that it has been signed on 11th January 2019 and bears the court fees stamps dated 20th February 2019. Therefore, it is clear that for the purpose of filing the present petition, the counsel needed specific authorisation to proceed in the matter. This vakalatnama has been executed after the filing of the present petition. The vakalatnama executed in favour of the counsel for the purposes of the arbitration proceedings is inconsequential for the present petition. Pertinently, the petition is also not accompanied with the said vakalatnama. This contention is now being raised only to somehow overcome the fundamental lacuna in the present case. Just because the counsel is a Panel lawyer, it does not put him in any special category. The power of attorney in his favour had to be specifically issued. The petition has not been filed on the strength of the counsel being a panel lawyer. The other fact mentioned to distinguish the decision in SKS Power Generation (supra) is of annexing the copy of the award. To the court this does not render the aforesaid decision inapplicable. The basic

requisites for filing the present petition are the signatures of the parties, the affidavits accompanying the petition and the vakalatnama. Merely because an award is also accompanied with the petition does not in any way change the position in law and therefore, the decision of the coordinate Bench of this Court in SKS Power Generation (supra) would be squarely applicable to the facts of the present case. Lastly, the learned counsel for the Petitioner has strenuously argued that he had received oral instructions from his client to file the present petition and he being one of the panel lawyers of the Petitioner, is entitled under law to file the present petition. This submission is also ex-facie devoid of merit for two reasons. Firstly, no such averment has been made in the present application and moreover, such oral instructions would not authorise him to file the present petition contrary to the rules. The Petitioner cannot be given the benefit of the initial filing and the date on which the defects are cured would have to be considered as the date of initial filing.

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9. Pertinently even on the date of re-filing, i.e. after the expiry of the statutory period of three months and thirty days, the Petition was not accompanied by the affidavits of the Petitioner or the vakalatnama. The vakalatnama of the Petitioner is filed on 27th April 2019 and the affidavits have been filed on 2nd May 2019, which is beyond the expiry of the period of limitation. The conduct of the applicant does not show that he acted with due diligence and dispatch or that the delay was on account of reasons beyond his control and could not have been avoided despite all possible efforts by the applicant. In the present case there has been a delay of 118 days in re-filing. This period of delay itself beyond the statutory period of three months provided for filing the petition. Thus the petition is ex-facie, beyond the statutory period of three months and thirty days prescribed under Section 34(3) of the Act. Such a delay in re-filing cannot be permitted to frustrate the

object of the Act. This view is also supported by the decision of this court in FAO (OS) 485-86/2011, dated 7th November 2013, DDA v. Durga Construction Co., M/s. Competent Placement Services v. Delhi Transport Corporation: 2011 (2) R.A.J. 347 (Del), The Executive Engineers v. Shree Ram Construction & Co.: 2011 (2) R.A.J. 152 (Del) and Ashok Kumar Parmar v. D.C. Sankhla: 1995 RLR 85.

10. The initial filing was a deliberate attempt to stop the period of limitation from running. Thereafter, the Petitioner did not take any steps to have the vakalatnama and the affidavits filed in the Court within the period prescribed under Section 34 (3) of the Act. The re-filing done was to keep the matter alive without curing the defects leading to the gross delay. For the foregoing reasons, it is clear that the present application seeking condonation of delay for re-filing cannot be allowed.”

43. In fact, in the case of **SKS Power Generation (supra)**, Court has dealt with the issue of non-filing of the Vakalatnama as well as distinguished the judgment in the case of **Alka Kasana (supra)**, relied upon by the Petitioner herein.

44. Learned Senior Counsel for the Petitioner has laid a lot of stress on the issue that Amendment to Order VI CPC, whereby Rule 15A was inserted, only requires the pleadings to be verified by an affidavit in the form prescribed in the Appendix to the Schedule to the Commercial Courts Act, 2015 and therefore, at best, non-filing of Statement of Truth or the absence of attestation on it, could only lead to striking of the pleadings. Equally emphatically, it was argued that Rule 5 of Chapter I of Volume V of the Delhi High Court Rules, provide an aggregate period of 30 days for curing the defects and the said benefit should be given to

the Petitioner as the defects in the Statement of Truth and Vakalatnama etc. were cleared in accordance with the said Rules. It was also sought to be argued, though subtly, that by virtue of Section 10 of the Commercial Courts Act, the Amendments to CPC would not apply to Section 34 of the Act. In my view, issue of benefit of Rule 5 stands answered in various judgments delivered by this Court and need no further adjudication. In **FAO(OS) (COMM) No. 25/2017, titled Government of NCT of Delhi vs. Y.D. Builders & Hotels Pvt. Ltd.**, a Division Bench of this Court held as under:

“9. Furthermore, we notice from the said decision itself that Rule 5 of Chapter I of Volume V of the Delhi High Court Rules and Orders had been referred to in paragraph 5 of the said decision. The said Rule 5 reads as under:-

"Rule - 5. Amendment - The Deputy Registrar, Assistant Registrar, Incharge of the Filing counter, may specify the objections (a copy of which will be kept for the Court Record) and return for amendment and re-filing within a time not exceeding 7 days at a time and 30 days in the aggregate to be fixed by him, any memorandum of appeal, for the reason specified in Order XLI, Rule 3, Civil Procedure Code.

(2) If the memorandum of appeal is not taken back for amendment within the time allowed by the Deputy Registrar, Assistant Registrar, in charge of the filing Counter under sub-rule (1), it shall be registered and listed before the Court for its dismissal for non-prosecution.

(3) If the memorandum of appeal is filed beyond the time allowed by the Deputy Registrar, Assistant Registrar, in charge of the

Filing Counter, under sub-rule (1) it shall be considered as fresh institution.

Note - The provisions contained in Rule 5(1), 5(2) and 5(3) shall mutatis mutandis apply to all matters, whether civil or criminal."

10. Upon reading Rule 5(3), which would apply mutatis mutandis to all matters, whether civil or criminal, and would, therefore, apply to a petition under Section 34 of the Arbitration and Conciliation Act, it is evident that in case such a petition is refiled beyond the time allowed by the Registry under sub-Rule (1), the filing shall be considered as a fresh institution. Since the ultimate filing was done on 26.05.2016 and was well beyond the period permitted by the Registry, the filing of the petition under Section 34 would have to be construed as a fresh filing on 26.05.2016. This would mean that not only there was a delay in re-filing but there was a delay in filing of the petition itself which ought to have happened within three months and at the latest within a period of 30 days thereafter, subject to the fulfillment of the conditions laid down under the proviso to Section 34(3) of the said Act. Clearly, the petition, on this ground also, was time barred."

45. Section 2 (d) defines 'Commercial Division' to mean the Commercial Division in a High Court constituted under Section 4(1). 'Commercial Dispute' has been defined in Section 2(1)(c). Section 10 is relevant for the present petition and reads as under :-

"10. Jurisdiction in respect of arbitration matters.— Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and— (1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been

filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. (2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. (3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”

46. Section 16 of the Commercial Courts Act, 2015 is as under :

“16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes.—

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908, as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

47. Order VI Rule 3 and 3A of the CPC are as under :-

“Forms of pleading.—The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

3A. Forms of pleading in Commercial Courts.—In a commercial dispute, where forms of pleadings have been prescribed under the High Court Rules or Practice Directions made for the purposes of such commercial disputes, pleadings shall be in such forms.”

48. Order VI Rule 15A CPC is as under :-

“15A. Verification of pleadings in a commercial dispute,— (1) Notwithstanding anything contained in Rule 15, every pleading in a commercial dispute shall be verified by an affidavit in the manner and form prescribed in the Appendix to this Schedule. (2) An affidavit under sub-rule (1) above shall be signed by the party or by one of the parties to the proceedings, or by any other person on behalf of such party or parties who is proved to the satisfaction of the Court to be acquainted with the facts of the case and who is duly authorised by such party or parties. (3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise. (4) Where a pleading is not verified in the manner provided under sub-Rule (1), the

party shall not be permitted to rely on such pleading as evidence or any of the matters set out therein. (5) The Court may strike out a pleading which is not verified by a Statement of Truth, namely, the affidavit set out in the Appendix to this Schedule.”

49. Section 10 of the Commercial Courts Act, 2015 clearly provides that where the subject matter of an Arbitration is a commercial dispute of a specified value then all applications arising out of such Arbitration under the Act, 1996, filed on the Original Side of the High Court, shall be heard and disposed of by the Commercial Division constituted by the High Court. Section 16 in Chapter VI of the Commercial Courts Act provides that Commercial Division shall follow the provisions of CPC as amended by this Act. A conjoint reading of the above provisions leaves no doubt that the CPC and its Amendments would apply to petitions under Section 34 of the Act being heard by the Commercial Division of this Court. There is no merit even in the contention that the defects in Vakalatnama /Statement of Truth, being curable, under Rule 15A can be permitted to be cured after the period of limitation or the extended period of 30 days under Section 34(3) of the Act expires. These submissions have to be seen in the background of the law as it has evolved in field of condonation of delay in filing petitions under Section 34(3) of the Act. On one hand are the judgements interpreting the words ‘but not thereafter’, strictly holding that not even one day’s delay can be condoned, beyond 120 days and on the other hand is a plethora of case law that filing of wholly insufficient, inadequate petitions, classified as a mere ‘bunch of paper’ is a non-est filing and cannot stop limitation. If this Court was to hold that non-filing of Vakalatnama, Statement of Truth is a

curable defect and it is open to an Objector to file a petition, lacking the vital documents and then cure the defects at his will, it would clearly be against the principles laid down in these judgements. Various judgements referred to above, including several others, on non-est filing clearly mandate the filing of these vital documents within the period of limitation and this is in keeping with the strict timelines under Section 34(3) of the Act, so that the purpose of expeditious disposal under a special dispute resolution mechanism, is not defeated. Permitting a party, aggrieved by an Award, to file hopelessly inadequate petitions to stop limitation and then argue that the defects are curable, in my view, will also put the intent of the Legislature, to provide a strict and inelastic limitation period, to naught. Additionally, it would be wholly unfair to the party who has an Award in its favour, to wait endlessly, as even the enforcement proceedings would have to await the dismissal of the Objection Petition.

50. For the many reasons given above, I hold that the petition, as filed during the extended period of 30 days, under Proviso to Section 34(3) of the Act, was a non-est filing and thus the application seeking condonation of delay in re-filing cannot be allowed.

51. Application seeking exclusion of time under Section 14 of the Limitation Act is allowed, granting benefit of exclusion of 30 days to the Petitioner.

52. Application seeking condonation of delay in re-filing is dismissed.

O.M.P. (COMM) 26/2019 & I.A. No. 718/2019

In view of the dismissal of the application seeking condonation of

delay, the petition is hereby dismissed together with the application for stay.

JYOTI SINGH, J

JUNE 4th, 2020

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