



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 07th October, 2023
Pronounced on: 19th December, 2023

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+ FAO (OS) (COMM) 137/2020 & CM APPL. 27646/2020,
27647/2020, 27648/2020, 27649/2020

OIL AND NATURAL GAS CORPORATION LIMITED Appellant

Through: Mr. K.M. Nataraj, learned ASG with
Mr. Kanu Agarwal and Mr. Partap
Singh, Advocates.

versus

PLANETCAST TECHNOLOGIES LTD. Respondent

Through: Mr. Anshu Mahajan and Mr. Gitanshu
and Rustagi, Advocates.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Act, 1996") read with Section 13(1A) of the Commercial Courts Act, 2015, has been filed against Judgement dated 17.06.2020 in I.A. 12712/2019 wherein the application for condonation of delay in filing/refilling the petition under Section 34 beyond the stipulated period of 3 months and 30 days, was dismissed and the Petition was also resultantly dismissed.

2. The **controversy involved in this matter** is the delay in filing/ re-filing the petition under Section 34 of the Act, 1996.

3. Briefly stated, Arbitral Award dated 30.01.2019 was modified by the Arbitral Tribunal on 30.03.2019 and the **amended award was received by the**

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appellant on 24.04.2019. A Petition under Section 34 of the Act, 1996 was first filed on 19.07.2019, however, defects were noted by the Registry and Petition was subsequently re-filed multiple times. An Application for condonation of delay of 17 days in filing/re-filing the Petition was filed by the Appellant. The **learned Single Judge in the impugned judgement dated 17.06.2020 held that the Petition under Section 34 had been filed beyond the prescribed period of 3 months and 30 days and dismissed the petition by observing as under:**

“27. Different judgments have dealt with different aspects of non-est filing. However, seen together, the holistic picture that emerges is that in order to be termed as a “proper” petition, it must be accompanied at least by a Statement of Truth, Vakalatnama, and the Award impugned therein, in the absence of all these vital documents, cumulatively, it can only be said that a „bunch of papers” has been filed as held by the Court in SKS Power (supra). In J. Polychem (supra) and ONGC (supra), Courts have emphasized the importance of filing the Statement of Truth. In Union of India vs. Bharat Biotech (supra), Court has clearly held that non-filing of the impugned Award, within the outer limit of 120 days, will be fatal. Examined in the light of these judgments, the filing of the present petition cannot be treated a valid filing till 25.08.2019, when the 120th day expired. Even though the Petitioner cleared the defects subsequent thereto, but this cannot enure to its advantage and the Court has no power to condone a delay of even 1 day beyond 25.08.2019.

30. It is clear from the narration above that the petition filed upto the 120th day was not filed as per the parameters laid down by the courts for a valid filing and has to be treated as a non-est filing. By the time the defects were cured, 120 days were over and the petition filed beyond 120 days would have to be treated as a fresh



filing and not re-filing. Taken from the said date of fresh filing, it is evident that the initial filing is beyond 120 days and cannot be entertained by this Court.”

4. **It is submitted by the learned Counsel for the appellant** that the Single Bench of this Court in Ashok Kumar Parmar v. D.C. Sankhla, 1995 RLR 85 held that the date of re-filing would be construed as the date of filing when the defects would render the plaint a non-plaint in the eyes of the law. This position has been overruled by the Division Bench of this Court in D.C Sankhla v. Ashok Kumar, 1995 (1) AD (New Delhi) 753. Since the appeal had been dismissed, the judgement has been repeatedly misread as an affirmation of the Single Bench judgement.

5. Further, *Chapter IV Rule 3 of the Delhi High Court, Original Side Rules, 2018* makes no reference to *non-est* filing and only prescribes a time limit for the rectification of defects. In this regard reliance has been placed on DDA Vs. Durga Construction Company, 2013 SCC OnLine Del 4451 & Northern Railway vs. Pioneer Publicity Corporation Private Limited, (2017) 11 SCC 234 wherein it has been categorically held that the Section 34(3) of the Act, 1996 only refers to a delay in filing and thus, there is no restriction in condoning the delay in re-filing.

6. It is the case of the appellant that procedural amendments cannot be construed in a manner that would prevent the court from meeting the ends of justice. Thus, a plaint which is not in compliance of Order VI Code of Civil Procedure, 1908 would only result in procedural defects that can be cured as held in Vidyawati Gupta vs. Bhakti Hari Nayak (2006) 2 SCC 777. Nevertheless, all pages of the Petition have been duly signed by the authorised signatory of the appellant. The objections have marked a general defect of the petition and pleadings not having signatures. However, there are no particulars



as to which page of the petition / application / Memo of Parties (MOP) / Index / Power of Attorney / was left unsigned and undated. This is ex facie incorrect, since the said documents were admittedly signed and filed on behalf of the Appellant on 19.07.2019.

7. It is further submitted that the a defective verification in the plaint is a curable defect for which a petition cannot be thrown out in limine as held in Saritha S. Nair vs Hibi Eden, 2020 SCC OnLine SC 1006. With respect to the non-filing of the vakalatnama along with the Memorandum of Appeal, the same was also held to be inherently curable in Bihar SEB v. Bhowra Kankanee Collieries Ltd., 1984 Supp SCC 597; Uday Shankar Triyarv. Ram Kalewar Prasad Singh and Another, (2006) 1 SCC 75.

8. It is contented that Learned Single Judge has failed to consider that in the instant case, wherein admittedly every page of the petition has been signed by the Authorized Signatory of the Appellant, the non-filing of a Vakalatnama cannot render the entire petition filed on the first instance on 19.07.2019 as non-est. Notwithstanding the above, it is submitted that the Vakalatnama had been duly filed on 19.07.2019 i.e. the date of first filing.

9. With respect to the non-filing of the statement of truth, it is submitted that Supreme Court in the case of Steel Authority of India Ltd. and Ors vs National Union Water Front Workers and Ors., (2001) 7 SCC 1 has held that if there are penalties prescribed for non-compliance with statutory requirements, the non-compliance shall result in accrual of only those penalties and not any others.

10. Lastly, with respect to the requirement of filing the Award along with the petition under Section 34 of the Act, 1996, it is submitted that such a requirement does not flow from the Act, 1996 and this cannot be termed as a pre-requisite procedure in filing. The courts have to apply the law in a



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meaningful manner that meets the ends of justice as held in Collector (LA) v. Katiji, (1987) 2 SCC 107.

11. It has been vehemently submitted that procedural laws have a purpose and such procedure cannot form the basis for thwarting a case. Since such procedures can be corrected on a later date, the petition as such cannot be rejected without an opportunity to rectify the defects.

12. **Learned counsel for the respondents** have contended that the initial filing of the petition under Section 34 that was made on 19.07.2019 was *non-est* and void as it did not comply with the minimum requisites for filing a valid petition. The date asserted to be the second re-filing is in fact, the date of first filing which is beyond the period prescribed under Section 34(3) and therefore, the objections have been rightly dismissed by the learned Single Judge as being beyond the period prescribed under Section 34(3) of the Act.

13. **Submissions heard from the Learned Counsel for both the parties and also perused the Written Arguments.**

14. Before evaluating the filings in the present case, it would be pertinent to reproduce Section 34(3) of the Act which reads as under :

“Section 34

...

(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: Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”



Period of Filing and Re-Filing:

15. A plain reading of Section 34(3) of the Act, 1996 Act shows that the statutory period of limitation for filing the Objections under Section 34 of the Act, 1996 against the Award, is 3 months. As per the Proviso to the Section, an extended period of 30 days is available and the Court has powers to condone the delay provided, sufficient cause is shown for not filing the petition within the statutory period.

16. The Apex Court in Union of India vs. Popular Construction, (2001) 8 SCC 470 observed that the legislative intent of providing a strict and non-flexible limitation period should not be defeated by condoning the delay without sufficient cause. One of the main objectives as stated in the Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act, was the need to minimize the supervisory role of Courts in the arbitral process. This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in the following terms:

“5. Extent of judicial intervention.- Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part”

17. It was concluded by the Apex Court that the scheme and history of the 1996 Act supports the conclusion that the Time-Limit prescribed under Section 34 is absolute and unextendible by Court under Section 5 of the Limitation Act, 1963 in view of the expression language of Section 34 (3) of the Act.

18. In Simplex Infrastructure Ltd. vs. Union of India 2019 (2) SCC 455, the Apex Court interpreted the words “*but not thereafter*” in Section 34 (3) of the Act, 1996 and held that not a day beyond 120 days from the day of receipt of the Award, can be condoned by the Court.



19. The Limitation period of 3 months plus 30 days is inelastic and inflexible, and any delay of even one day beyond this period cannot be condoned by the Court as has been held by the Hon'ble Supreme Court of India in the Union of India vs. Popular Construction (supra) and Simplex Infrastructure Limited (supra).

20. From an analysis of the limitation period for filing an Appeal under Section 34 of the Act, 1996 the question for consideration in the present Appeal is: **when can the filing be considered as validly made for the purpose of calculation of the prescribed period of 3 months and 30 days.**

Difference between a non-est filing and valid filing:

21. **Section 34 (3) of the Act, 1996 only prescribes limitation with regard to filing an application to challenge the Award.** However, for ascertaining the date of first filing, the nature of defects noted in the Petition plays a significant role.

22. In this regard, what assumes importance to adjudicate the date of commencement of 3 months, is the nature of defects. The Single Judge of this Court in the case of Ashok Kumar Parmar (supra), held that the emphasis should be on the nature of defects found in the plaint. **If the defects are formal or ancillary in nature not affecting 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.** On the other hand, if the defects are of such character that 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. The Division Bench upheld this view in D.C Sankhla (supra). Though the appellant had raised a contention that the Division Bench has rejected the concept of *non-est* filings, it is pertinent to observe that such a



finding in that case was made solely based on the perfunctory defects listed in Rule 1 and 2 in Chapter IV of the Delhi High Court (Original Side) Rules, 1967 which did not affect the nature or validity of the plaint. Thus, the emphasis on fatal defects as observed by the Single Bench, still stands.

23. This view has been fortified in Durga Construction Company (supra), where Division Bench of this Court explained the distinction between *non-est* filing and re-filing. It was observed that the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may be required to be re-typed. In such a case where the initial filing is within the period of 120 days as specified in **Section 34 (3) of the Act, 1996** but the re-filing is beyond this period it cannot be said that the Court lacks jurisdiction to condone the delay in re-filing.

24. It was further held in DDA vs Durga Construction (supra), in some situations, **where a party's petition or application is so blatantly insufficient or flawed and they contain flaws that are essential to the institution of the proceedings, their filing would be deemed *non-est* and meaningless.**

25. In order to have a correct perspective of the objections taken to the filing of the Petition under Section 34 of the Act, 1996, the defects in filing pointed out by the Registry have to be examined to discern if they are ancillary or fatal in nature.

26. It would be pertinent to refer to the log information of the petition which is reproduced below:

First filing 19.07.2019	<i>(i)Total 64 pages filed without complete pagination without complete bookmarking.</i> <i>(ii)No Award filed. No documents filed.</i>
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	(iii) <i>In addition to the E-Filing, it is mandatory to file hard copies of the fresh matters filed under section 9, 11 and 34 of the Arb. Act 1996 with effect from 22.10.2018.</i> <i>Defects marked during scrutiny:</i> ... (v) <i>Petition/ Applications/ Mop/ Index/ Power Of Attorney Be Signed And Dated By Petitioners And Advocate</i> ... (vi) <i>Statement of Truth be filed as per Commercial Court Act, 2015. Entire Pleadings be signed by the Plaintiff/Petitioner OXI- R-1(3) of CPC (AMENDED) by Commercial Court Act, 2015 -2018</i>
First re-filing 08.08.2019,	<i>Total 64 pages filed. Without complete pagination without complete bookmarking. All previous objections not removed</i>
Second re-filing 04.09.2019	<i>Total 2643 pages filed. Blanks be filled in these statement of Truth. Orientation of documents be correct. Hard file be submitted. Page No.687,958,1875-1879 are missing in the documents. Fair typed copies of dim illegible and hand written documents be filed</i>
Third re-filing 06.09.2019 & 07.09.2019	Refiling accepted 12.09.2019

Non-filing of the Copy of the Award:



27. The first deficiency in the filing of the petition under Section 34 of the Act was that the Award was not filed along with the petition. A question arises if an application filed under Section 34 of the Act, 1996 which is not accompanied by a certified copy of the Award despite having received the Award, should be considered as a formal or a fatal defect.

28. The significance of filing of the Award along with the Section 34 Petition can be understood by referring to ***Section 39 of the Arbitration Act, 1940*** which provides for an Appeal against an Order, for setting aside or refusing to set aside an Award. Section 41 of the Arbitration Act, 1940 required the form and contents of an Appeal under Section 39 to be in accordance with the provisions of the C.P.C. i.e. Order XLI Rule 1 CPC as held in *Superintending Engineer and ors vs B Subba Reddy*, (1999) 4 SCC 423.

29. Pertinently, such a requirement has been excluded in the Act, 1996; in fact, the applicability of C.P.C. has been specifically excluded under Section 19(1) of the Act, 1996. The said Act, does not specify any such procedure or the documents to be accompanied while filing objections against an Award. However, the rules for a proper and valid filing have been applied as general principles of law over the years. Thus, defects in filing must not be of such nature that makes the filing hopelessly inadequate that it fails to hold the character of an application/petition under Section 34 of the Act, 1996.

30. In the case of *Vidya Drolia* (supra), the Supreme Court has explained that the intention of legislators to provide Section 34 of the Act, 1996 in its present form was to have a limited review of the Award instead of a full-fledged Appeal process. The limitation prescribed under Section 34(3) is bound with the right to file objections itself. The objections must be relatable to the limited grounds provided under Section 34(2) of the Act. *A party intending to object to an award, is first required to file an application under*



Section 34 (1) indicating the objections along with the copy of an award and other necessary documents, which are required as proof to satisfy grounds provided under Section 34(2)(a) and (b) of the Act. Such complete petition is required to be filed within the time period prescribed under Section 34 (3) of the Act, 1996 failing which the Appeal is rendered nugatory.

31. Further, it was the legislative intent to provide fixed time frame for filing the petition under Section 34 which was required to be strictly adhered to so as to make the arbitration time bound and commercially prudent.

32. It is pertinent to note that the Apex Court in Chintels India Limited vs Builders Private Limited, (supra) observed that an application under Section 34 of the Act, 1996 must not only be within the time prescribed under Clause 3 of Section 34, **but must also be in compliance with Section 34(2) & (2A) by setting out the grounds on which the application is made.**

33. The pre-requisite of filing a copy of the impugned Award along with the Petition under Section 34 of the Act, 1996 has been emphasised by this Court in Executive Engineer vs Shree Ram Construction, (2010) 120 DRJ 615(DB) and SKS Power Generation (Chhattisgarh) Ltd. vs ISC Projects Private Limited, 2019 SCC OnLine Del 8006.

34. The Division Bench of this Court in Oil and Natural Gas Corporation Ltd vs Joint Venture of Sai Rama Engineering Enterprises & Megha Engineering and Infrastructure Limited, (2023) SCC OnLine Del 63 had observed that though Section 34 of the Act, 1996 does not prescribe any particular procedure for filing an application to set aside an Award, it definitely has to set out the grounds on which the application is made. It was also held **that the application has to be accompanied by the impugned Award as it would otherwise be impossible to appreciate the grounds upon which the Award is challenged.** It was observed as under:



"42. We may also add that in given cases there may be a multitude of defects. Each of the defects considered separately may be insufficient to render the filing as non est. However, if these defects are considered cumulatively, it may lead to the conclusion that the filing is non est. In order to consider the question whether a filing is non est, the court must address the question whether **the application, as filed, is intelligible, its filing has been authorised; it is accompanied by an award; and the contents set out the material particulars including the names of the parties and the grounds for impugning the award.**"

35. Further, in Brahmaputra Cracker and Polymer Ltd v. Rajshekhar Construction Pvt Ltd, 2023 SCC OnLine Del 516, the Single Bench of this Court held as under:

"15. A petition under Section 34 represents a challenge to the award rendered by the Arbitral Tribunal. A petition which is not accompanied by a copy thereof cannot possibly be understood or recognised as a valid challenge presented under Section 34. **The non-filing of the award would clearly amount to a fundamental defect. This since the award would constitute an essential element of the filing and be liable to be viewed as an inviolable prerequisite. A petition purporting to be under Section 34 of the Act which neither carries the grounds on which the award is assailed or one which fails to annex a copy of the same cannot possibly be construed or accepted as an action validly initiated under Section 34 of the Act.** It becomes pertinent to note that non-filing of an arbitral award was recognised to be a fundamental defect and one which would clearly render the filing to be non est both in **Bharat Biotech** as well as in **Oil and Natural Gas Corporation Ltd.** The basic precept of a non est filing was succinctly explained by the Division Bench in **Durga Construction Co.** to be a petition or an application filed by a party which is so hopelessly inadequate or suffering from defects which are clearly fundamental to the institution of the proceedings. Clearly therefore and if the aforesaid basic precepts are borne in mind, it is manifest that a petition which purports to be under Section 34 of the Act cannot possibly be



countenanced or accepted as such unless it is accompanied by a copy of the award.

16. The Court also bears in mind that the filing of a petition or an attempted filing of a petition under Section 34 unaccompanied with a Statement of Truth or the award should not be lightly countenanced especially where the same may be merely presented in order to stall the limitation period prescribed in Section 34 from commencing. Such attempts have to be clearly discouraged and disapproved. It is to ward off that greater mischief which convinces the Court to hold that the filing of a copy of the award and the submission of the Statement of Truth must be recognised to be foundational, basic and indispensable requirements of a petition under Section 34 of the Act."

36. To further clarify the law on the indispensable requirements while filing a Petition under Section 34 of the Act, 1996, it is pertinent to refer to the judgement of the Single Bench of this Court in Ambrosia Corner House Private vs. Hangro S Foods 2023 SCC OnLine Delhi 517. It has been widely misconstrued that the said judgement recognised the filing of a Petition under Section 34 of the Act, 1996 to be valid even though it was not accompanied by the Award. However, the perusal of the judgment itself makes it evident that the impugned Award had not been e-filed in a separate folder as was required under the Delhi High Court (Original Side) Rules, 2018. In those peculiar circumstances, the objections were entertained and the first filing was not found to be *non-est*. Clearly, it is not as if the Award had not been filed along with the objections under Section 34 of the Act. The facts as involved in Ambrosia Corner House (supra) are, therefore, clearly distinguishable.

37. Therefore, it has been consistently held that non filing of the Award along with the Petition under Section 34 of the Act, 1996 is a fatal defect, making such filing as non-est. The objections under Section 34 must be on justiciable grounds as prescribed under Section 34(2) as such grounds can be



ascertained only by referring to the Award made by the learned Arbitrator. The filing of an Award is not an empty procedural requirement since sans the Award, the Court is left absolutely clueless to comprehend the grounds taken in the objection Petition and thereby unable to decide whether the Petition merits Notice to be issued or out-right rejection. In the absence of the Award, the grounds on which the objections have been taken cannot be appreciated and considered if they are within the scope of Section 34(2) and thus, such filing of objections without the impugned Award render the entire objections incomprehensible for consideration under Section 34 of the Act.

38. **The Award is, therefore, absolutely essential for the Court to proceed further**, meaning thereby that the court cannot proceed further until the Award is filed. The first step would commence only on filing of the Award and therefore, effective date of filing necessarily would be the date of filing of Award in support of the Petition and till then it cannot be considered valid filing. The necessary corollary is that non- filing of the Award is a fatal defect making the filing as *non-est*.

39. In the facts under consideration, the objections under Section 34 of the Act, 1996 had been filed without being accompanied by the Award, which has been belatedly filed only on second re-filing dated 04.09.2019, which is beyond the period of 3 months and thirty days. **It is a defect which is fatal and makes the initial filing on 19.07.2019 and subsequent dates of re-filing till 04.09.2019, as non-est.**

Non filing of Statement of Truth:

40. It has been argued by the counsel for the appellant that procedural enactments ought not to be considered in such a manner that it would prevent the Court from meeting the ends of justice. The amendments effected in



Commercial Courts Act, 2015 to various provisions of CPC as applicable to the commercial disputes have been geared to achieve such object but being procedural in nature, they are directory in nature and non-compliance thereof would not automatically render the plaint *non-est*. Reliance had been placed on Vidyawati Gupta vs. Bhakti Hari Nayak (2006) 2 SCC 777, wherein the Supreme Court after noting the celebrated decision of the Supreme Court in the case of Salem Advocate Bar Association vs. Union of India (2003) 1 SCC 49, the effect of the amendments introduced in the Code by the amending Act 46 of 1999 and 22 of 2002, reiterated the principle that rules or procedure are made to further the cause of justice and not to obstruct the same.

41. Petitions under Section 34 of the Act, 1996 fall within the jurisdiction of the Commercial Division of the High Court, making the Commercial Courts Act, 2015 applicable to such petitions. The pre-requisite of filing a Statement of Truth has been emphasised in Order XI Rule 1 C.P.C. as amended under Commercial Courts Act, 2015 which reads as under:

“Order XI Rule 1CPC:

(3) The plaint shall contain a declaration on oath from the plaintiff that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.

Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix.”

42. In this regard, it is pertinent to refer to Section 15A of the Commercial Courts Act, 2015 which provides for the verification of pleadings presented to the commercial courts which reads as under:

“15A. Verification of pleadings in a commercial dispute. –

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(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.”

43. Section 15A of C.P.C as amended under Commercial Courts Act, therefore, requires that a pleading has to be mandatorily supported by a duly attested affidavit by way of verification failing which the said pleading shall not be permitted to be read as evidence of any manner set out therein. It further provides that any pleadings not verified by a *Statement of Truth*, namely, the affidavit may be struck out by the Court. It is, therefore, evident that the affidavit by way of the *Statement of Truth* is mandatorily required to be filed along with the petition in order to be a document worth considering under the law.

44. The pre-requisite of filing the Statement of Truth has been reiterated in the case of Jay Polychem (India) Ltd & Ors. Vs. S.E. Investment Ltd. 2018 SCC OnLine Del 8848, where this Court while dealing with non-filing of Statement of Truth, held that a Statement which is neither signed nor supported by an affidavit cannot be considered as an application under Section 34 of the Act. The Petition thus filed without the Statement of Truth is *non-est*.

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33. Similarly in Director-cum-Secretary, Department of Social Welfare vs. Saresh Security Services Pvt. Ltd., (2019 SCC OnLine Del 8503), the petition was filed without a Statement of Truth. The question therefore was *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.*

45. Suffice is it to say, without the Statement of Truth, the filing of the petitions under Section 34 of the Act, 1996 by the petitioners becomes non-est and is reduced to a sheer futile attempt to pause the limitation period from running out. The appellant cannot claim the benefit of a *non-est* filing though made within the period of limitation, when the proper filing of the petition was only made after the expiry of the stipulated period of three months and thirty days.

Pleadings filed without signatures:

46. It has been submitted by the appellant that the petition and the pleadings of the first filing had been duly signed by the authorised signatory. Yet the registry had marked an ambiguous defect in this regard.

47. It can be evinced from a perusal of the Log Information that the Petition and Power of Attorney had not been signed in the filing dated 19.07.2019. Not only did the appellant fail to clarify this alleged mistake in noting defects with the Registry, but also failed to cure any of these defects in the first re-filing dated 08.08.2019. Had the petition been signed in the first filing and the defects in this regard had been noted as an oversight, the same defects would not have

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been once again noted by the Registry in the first re-filing dated 08.08.2019 as well. Therefore, the justification provided by the appellant does not inspire confidence.

48. In light of the above conclusion, the consequence of this defect has to be examined. Order VI Rule 14 CPC stipulates that pleadings have to be authorised by the pleader. The provision reads as under:

“14. Pleading to be signed.—Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf”

49. In Oil and Natural Gas Corporation (supra) this court had contemplated the implication of an unsigned petition as under:

33. It is also necessary that the application be signed by the party or its authorised representative. The affixing of signatures signify that the applicant is making the application. In the absence of such signatures, it would be difficult to accept that the application is moved by the applicant.

50. Thus, the significance of the petitioner affixing their signature in the pleadings cannot be overemphasised as without it, the filing would not hold the character of a petition which has been bonafidely filed on behalf of the petitioner. This defect in the Petition of the appellant, again reflect that the initial filing was *non-est*.

Non-filing of Vakalatnama:

51. A Vakalatnama is proof that the counsel filing the Appeal has the specific authorisation for the same. While submissions have been made regarding the curability of the defect of not filing a Vakalatnama, this has not



been recorded as a defect in the Log Information. Pertinently, even the defects noted by the learned Single Judge in the impugned Order in para 24 do not make any mention of the vakalatnama not being filed. Several judgements regarding Statement of Truth and Vakalatnama have been discussed and analysed in impugned judgement only to expound the general proposition of law regarding a proper filing. The relevant paragraph from the impugned judgement reads as under:

“24. The next issue that requires consideration is whether the filing was a valid filing or a non-est filing. Defects notified by the Registry, reveal that initially 64 pages were file and the major defects were; no Award; no Documents; petition not signed; Statement of Truth not filed; Affidavit filed, with verification in August 2019 and notarized on 03.09.2019.”

52. In Sravanthi Infratech Pvt. Ltd. v. Greens Power Equipment (China) Co. Ltd., it was held that defects such as not filing the Vakalatnama or Affidavit are fatal defects and a filing without these documents cannot be considered as a valid filing. Be that as it may, since such a defect has not been marked, no findings in this regard is required to be made.

Number of pages filed:

53. Interestingly, at the time of first filing on 19.07.2019, the Petition comprised of **64 pages**, which remained the same at the time of **first re-filing on 08.08.2019**. However, the number of pages at the time of **second re-filing on 04.09.2019 exponentially jumped to 2643**.

54. The Award that was subsequently filed was of only about 100 pages. There is no explanation or justification given by the appellant as to how the filing of the unsigned which was admittedly not accompanied by the Award or any documents when first filed on 19.07.2019, suddenly jumped to 2643 pages.



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Pertinently, the duly signed Petition has been filed on 04.09.2019, but has been dated 19.07.2019. Such exponential increase in number of pages leads to only one conclusion that the subsequent Petition which was filed was not only signed but had been substantially changed.

55. It is the only irresistible conclusion that can be drawn is that the initial Petition had lacked all the requisites of being a valid Petition to be considered by the Court and therefore, it has to be held that the first filing was *non-est*. **It is only on 04.09.2019 that a proper Petition conforming to all the mandatory requirements was filed by the first time.** The first date of filing, therefore, has to be taken as 04.09.2019, a date which is clearly beyond the prescribed period of 3 months and 30 days under Section 34(3) of the Act, 1996.

Curability of defects:

56. The counsel for the appellant has relied on several precedents to state that the defects pointed out by the registry are curable in nature and in view of such defects the entire pleading cannot be struck off without considering their contentions on merits.

57. The requirement of filing a complete petition has been amply emphasised in the analysis above. Such an incomplete Petition without the signatures of the petitioner, which is also unaccompanied by the impugned Award and Statement of Truth, cannot be accepted as a valid having been filed beyond the inelastic time frame of 3 months and 30 days under Section 34(3) of the Act, 1996.

58. We find it absolutely unacceptable for the parties to expect incomplete filings with such fundamental defects to be kept on hold until they are lackadaisically cured by the petitioner way after the limitation period has expired. If the arbitration related proceedings are caught in the cob web of such

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delays, the whole purpose of choosing arbitration as an alternate dispute resolution, would be rendered otiose.

Whether the Period prescribed under Section 34(3) of the Act, 1996 can be extended on establishing Sufficient reasons for delay:

59. It is pertinent to mention that while three months is given as time for filing the Objections as a matter of right, a concession of thirty more days is given but it is circumscribed by the condition that “*sufficient cause*” has to be disclosed.

60. Section 5 of the Limitation Act, 1963, though not applicable in this case, is *pari materia* to the Proviso to Section 34(3) Act, 1996 as it contains a similar pre-requisite for Condonation of Delay. The Apex Court in Sesh Nath Singh and Anr vs Baidyabati Sheoraphulli Co-operative Bank Ltd, (2021) 7 SCC 313 addressed the question of whether it is mandatory to file an application under Section 5 of the Limitation Act, 1963 for a court to grant relief under the said Section. It was observed that had such an application been mandatory, Section 5 would then have read that the Court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the Court is satisfied that the appellant/applicant had sufficient cause for not preferring the Appeal or making the application within such period. *Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. It was thus concluded, that the court has discretion to condone the delay without a formal application; however, such a relief cannot be claimed as a matter of right, by an applicant, without making out any grounds seeking condonation.*



61. Similarly, in *Proviso* to Section 34(3) of the Act, 1996 there is no mention of filing of an application seeking an extension/ condonation of the delay by 30 days. Thus, a formal application for seeking extension of time by thirty days may not be necessary but to avail the extension of time, petitioner has to establish that *sufficient reasons* can be made out from the petition itself.

62. The Court could have thus, given the benefit of 30 days even without an application if sufficient cause is made out from the petition under Section 34 of the Act or is otherwise explained. In the present case, it seems that the appellants were under the impression that the first filing on 19.07.2019 was well within the time and thus, did not seek any further extension of thirty days under proviso to Section 34(3) of the Act. Moreover, once the date of filing has been held as 04.09.2019 which is beyond the prescribed mandatory period of 3 months and 30 days, no amount of explanation can make the petition maintainable.

Application for Delay in Re-filing:

63. It has been argued by the counsels for the Appellant that the date of first filing ought to be considered as the date of filing for the purposes of limitation and not the subsequent re-filings made after the removal of defects. It had been agitated that in the present case, the delay was not in filing the objections which was within the time period prescribed under Section 34(3) of the Act, but the delay was in re-filing. The question of whether the court should in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevented re-filing the petition/ application within time. The rules for condonation of delay *in re-filing are not circumscribed by Section 34 of the Act*. Moreover, the stringent rules for considering the reasons for delay under Section 34 are not strictly applicable while considering the explanation for re-



filing. Also, there is no time frame prescribed for re-filing once the filing has been done within the given time frame.

64. It was also held in Durga Construction Company (supra) that the cases of delay in re-filing are different from the cases in delay in filing in the first instance in as much as the party has already evinced its intention to take recourse to the remedies available in the Courts and also taken steps in this regard. It cannot be thus, assumed at the stage of re-filing that the party has given up its rights to avail the legal remedies. In the absence of any specific statute that limits the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the Courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing of the application.

65. As we have observed above, the date which the petitioner is claiming to be the date of filing is erroneous since the initial filing was *non-est* and the date of filing in fact has been held as 04.09.2019 i.e. the second re-filing, which is beyond the prescribed period under Section 34 of the Act, 1996. Any amount of explanation for condoning the delay thereafter is irrelevant under Section 34 of the Act, 1996.

66. The Application of the petitioner seeking condonation for delay in re-filing before the learned Single Judge is untenable since the filing itself is held as beyond the prescribed period. Undoubtedly, the Rules for delay in re-filing are not as stringent and limited by any time frame but even for re-filing, there has to first be a filing. In the present case, when the first filing itself is beyond the prescribed time and not maintainable, there can be no occasion to consider an Application of condonation of delay in re-filing.

67. For the academic purpose, we may consider the reasons given in the condonation Application explaining the delay. It reads as under:



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- “1. That the Petitioner has filed this Petition against the award dated 30.1.2019 modified by order dated 30.3.2019 passed by the Hon'ble Arbitral Tribunal and served on 24.4.2019.*
- 2. That the Petitioner has stated the facts of the case and the grounds arising therefrom in the accompanying petition and the same may be treated as part and parcel of this application.*
- 3. That the Petition was filed on 19.07.2019 following which certain defects were notified by the Registry on 22.07.2019 which required the office of the undersigned to retrieve typed copies of certain documents to cure the defects, thereby resulting in delay in refilling of the Petition. Pursuant to the delays being cured, the Petition was refiled on 04.09.2019.*
- 4. That due to the aforesaid reason, a delay of 16 days has occurred in refiling the Petition challenging arbitral award dated 30.1.2019 modified by order dated 30.3.2019 passed by Hon'ble Arbitral Tribunal.”*

68. From the reading of the entire Petition including the reasons provided in the application for condonation of delay in re-filing, no cogent reason has been disclosed by the appellant for their inability to file a complete Petition with a period of three months. Be that as it may, even if this Court was to condone the delay to the extent of granting thirty days beyond the period of three months, then too, it would be of no avail to the appellants as the first valid filing was on 04.09.2019, which is beyond the inelastic period of three months and thirty days.

Conclusion:

69. From the above discussion, it is amply established that the law has been crystallised that the requirement of the strict timeline provided in Section 34 of the Act, 1996 has to be abided by filing a complete Petition. The limitation period under Section 34 cannot be stretched by parties through dummy filings

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which cannot be construed as valid as they are *non-est*. The object of providing a narrow limitation period under Section 34 was to ensure the expeditious enforcement of Arbitral Awards. If such dummy filings are legitimised, then the whole object of providing a strict limitation period is defeated.

70. **We thus, find** that the Learned Single Judge has rightly concluded that the initial filing on 19.07.2019 was *non-est* for the reasons of being without Award, filing of unsigned Petition, subsequent substantial increase in number of pages and, Petition not supported by Statement of Truth. **The first valid filing has been done only on 04.09.2019, which is beyond the time frame prescribed under Section 34(3) of the Act, 1996 i.e. 120 days from receipt of a copy of the Award from the learned Arbitrator, which is not extendable under any circumstances.**

71. We therefore, find no merit in the present Appeal, which is hereby dismissed with pending applications, if any.

**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

DECEMBER 19, 2023/Ek/va