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

+ O.M.P. (COMM) 189/2024, I.A. 9505/2024

GREENFRA ENGINEERING PVT.LTDPetitioner

Through: Mr. Pankaj Bhagat & Mr. Sadre
Alam, Advs.

versus

WADIA TECHNO ENGINEERING SERVICES LTD.....Respondent

Through: Mr. Shambo Nandy, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

03.12.2025

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1. This is a petition seeking to set aside the impugned Award dated 11.05.2023 passed by the Arbitral Tribunal.
2. The petition seems to have been filed on 09.08.2023 i.e. within 90 days. As per the filing log handed over in Court today, the objections were raised on 18.08.2023.
3. Objection No. 8 is relevant and reads as under:
“8. Description of any other defects: Total 8 pages filed shows an index only without pagination, no petition filed, no I.A. filed, no vakalatnama filed, no award filed, no documents filed, cannot raise objections.”
4. A perusal of the above objection shows that only 8 pages were filed which only show the index, there was no petition, no I.A., no vakalatnama, no award, no documents. Hence, the Registry was unable to raise any



objections.

5. The said defects were only removed on 23.04.2024 i.e. after a period of 8 months from the initial filing.

6. Even though the statement of truth is dated 02.08.2023, but the same does not help the petitioner as the objection above recorded shows that no documents were filed and /or no petition was also filed.

7. The submission in para 6 of the Statement of Truth reads as under:

“6. I say that the pleadings in the present case comprise a total of 88 pages, each of which has been duly signed by me.”

8. The same is also an incorrect statement as the objection noted by the Registry shows that the bunch of papers filed with the Registry comprised only of 8 pages.

9. Even though the delay in re-filing is to be construed liberally but the objections marked by the Registry show that the first filing was a total non-est filing.

10. Learned Counsel for the petitioner has placed reliance on the following observations in ***Pragati Construction Consultants v. Union of India, 2025 SCC OnLine Del 636*** which read as under:

“94. Though not referred to us, however, as the learned counsels for the parties assisting us have made submissions on the various other defects, like the non-filing or defect in filing a vakalatnama, unsigned application under Section 34 of the A&C Act, substantive increase in pages for non-filing of the documents, changes made in the contents or grounds of the application at the time of refiling, or the application being without or with improper verification, or there being no court-fee



filed or insufficient court-fee being filed at the time of initial filing of an application under Section 34 of the A&C Act, or there being blanks in any of the pleadings filed at the time of the initial filing, we shall briefly discuss these defects as well.

95. In this regard, it needs no emphasis that procedural defects cannot be allowed to triumph the substantive rights of a party, particularly since in view of our aforesaid observations, Section 34 of the A&C Act is the only remedy for a party aggrieved by an arbitral award. The said right, therefore, should not be negated on procedural technicalities and hence, for describing an application under Section 34 of the A&C Act as non est, a more liberal view in favour of the party filing the same should be taken. Mere procedural errors or defects, thus, would not render the filing of an application under the Section 34 of the A&C Act to be treated as a non est filing. Even in general law, objections like the pleadings not being properly signed on each and every page, or there being a defect in the affidavit, or verification, are treated as procedural and curable defects. Standalone, therefore, they cannot be treated as defects which would make an application filed under Section 34 of the A&C Act to be declared as non est. It is only cumulatively, and that too only after the court finds that the above defects have been left by the petitioner while filing the application under Section 34 of the A&C Act with a mala fide intent of only stopping the period of limitation from running, without there being an actual initial intention of having



the application listed before the court for hearing, the court may still find the application so filed to be non est. Needless to state, it would surely depend on the facts and circumstances in each case; and there cannot be a straitjacket formula to determine whether any of the abovementioned defects or combination thereof or how many such defects would render an application filed under Section 34 of the A&C Act to be declared as non est.

96. Similar are our observations as far as the changes in the contents of the application under Section 34 of the A&C Act are concerned. It is only where the court finds that the application originally filed by the petitioner has been substantially changed at the time of removal of defects, that the court may form an opinion that the original application, as filed, was never intended to be the final application or one which should be listed before the court. Hence, making of minor changes, or even addition or deletion of few facts or grounds, or adding documents, would not ipso facto make the application originally filed to be declared as non est. Eventually, it would be the intent of the party that would have to be deciphered by the court from its conduct. Be that as it may, if the court finds that the intent was only to stall the limitation from running, and, as some courts have held that only a “bunch of papers” had been filed, that the court would be free to declare such filing to be non est.”

11. The reliance placed on the above observations is misplaced. The Division Bench in **Pragati Construction Consultants (Supra)** was



dealing with cases where certain procedural defects occurred at the time of initial filing such as absence of a vakalatnama, defects in verification, incomplete court fee, unsigned pleadings, or omission to file some documents which were nevertheless considered curable irregularities, provided that the petition under Section 34 was filed. The Court emphasised that a liberal approach must be adopted so that minor procedural lapses do not defeat a party's substantive right to challenge an arbitral award.

12. However, the present case stands on a completely different footing. What was presented before the Registry on 09.08.2023 was not a petition suffering from curable defects; it was merely a sheaf of eight pages containing only an index, with no petition, no documents, no vakalatnama, no award, and no accompanying application. This goes far beyond the category of procedural defects contemplated in ***Pragati Construction Consultants (Supra)***. There was, in substance, no filing of a Section 34 petition at all. The initial filing was therefore a non-est filing, and the petitioner cannot seek the benefit of the liberal approach.
13. Even thereafter the petitioner has taken 8 months to cure the defects.
14. In view of the above, the petition is dismissed and disposed of.

JASMEET SINGH, J

DECEMBER 3, 2025/DM