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

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Reserved on: 18.12.2019

Pronounced on: 13.02.2020

+ O.M.P. (COMM) 507/2019, I.As. 17032/2019, 17033/2019

M/S.STEEL STRIPES WHEELS LTD. Petitioner

Through Mr. Deepak Sabharwal and Ms.
Shruti Sharma, Advocates.

versus

M/S.TATA AIG GENERAL INSURANCE
CO. LTD. Respondent

Through Mr. Rajshekhar Rao, Mr. Anthony
Handique, Mr. Karthik Sundar and
Ms. Rajshree Jaiswal, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J.

IA 17032/2019

1. This is an application filed by the petitioner under Section 151 of the CPC seeking condonation of delay of 53 days in re-filing the petition under Section 34 of the Arbitration and Conciliation Act, 1996 (Act).
2. It is stated in the application that the petition against the Arbitral Award dated 25.05.2019 was filed on 26.08.2019 and was subsequently re-filed after removing objections on 17.09.2019. The same was received back due to some objections and was further re-filed on 26.09.2019. It is averred in the application that after the last re-filing, no email was received from the filing counter and also there were long holidays due to

Dussehra festival and weekend etc. The counsel could not check the objections in the said period. On subsequently checking the status, it was found that the petition was lying under objection. On 15.10.2019, the counsel checked the status at the filing counter, but was informed that the file was misplaced. Thereafter, the counsel was regularly approaching the Registry and it was only on 18.10.2019 that the counsel received a call from the Registry that the file has been traced. It is averred that the delay in re-filing was due to the file being misplaced by the Registry and deserves to be condoned.

3. Learned counsel for the respondent vehemently contends that there is not only a delay in re-filing but in fact the initial filing is itself a 'non-est' filing in the eyes of law. He submits that a bare perusal of the list of objections and defects marked by the Registry is sufficient to discern that the 'papers' which were filed initially were not accompanied by a Vakalatnama signed by the counsel and the petitioner. The enrolment number of the advocates including their addresses were not mentioned and even the welfare stamp was not affixed. The Statement of Truth was not filed. The petition as well as the applications, memo of parties and the index were not signed by the petitioner and the advocate.

4. Learned counsel further submits that even as on 12.09.2019, after the petition had been re-filed, the defects raised by the Registry pointed out that none of the objections had been cleared. In fact, even the paragraph relating to the pecuniary jurisdiction of the Court was missing. He further submits that the Award was dated 25.05.2019 and the same was received by the petitioner on the same day. The statutory period of limitation of three months expired on 25.08.2019 and the extended period

of 30 days expired on 24.09.2019. Learned counsel thus argues that since the initial filing was 'non-est' and even on subsequent re-filing the defects were not cured upto a period of 120 days, the petition ought to be dismissed. He submits that Court has no power to condone the delay beyond a period of 120 days from the date of receipt of signed copy of the Award by a party.

5. Learned counsel for the respondent relies upon the judgment of the Supreme Court in the case of ***Union of India vs. Popular Construction (2001) 8 SCC 470***, for the proposition that limitation period under Section 34(3) of the Act is inelastic and strict and delay should not be condoned without sufficient cause. It is submitted that the said decision has been reaffirmed in a recent decision in the case of ***Simplex Furniture Limited vs. Union of India (2019) 2 SCC 455***. Learned counsel also relies on the judgment in ***HPL (India) Ltd. & Ors. vs. QRG Enterprises & Anr. 2017 SCC OnLine 6955***, to argue that the purpose of arbitration is a speedy disposal and early resolution of commercial disputes and the litigant should not indulge in delaying tactics. Reliance is placed on ***Delhi Transco Ltd. & Anr. Vs. Hythro Engineers Pvt. Ltd. 2012 SCC OnLine Del 3557***, for the proposition that liberal approach in condoning the delay in refiling would run counter to the intention of the Parliament which has employed a plain language and prescribe a cut off date beyond which there is no latitude for condoning the delay. Learned counsel for the respondent has also cited the judgment in the case of ***Delhi Development Authority vs. Durga Construction Co. 2013 (139) DRJ 133 [DB]***, where a Division Bench of this Court has held that the jurisdiction to condone the delay in refiling is not to be exercised liberally

in view of the provisions of the Act which are to ensure that proceedings are concluded expeditiously and that delay in re-filing cannot be permitted to frustrate the object of the Act. Reliance is also placed on the judgment of this Court in ***Oil & Natural Gas Corporation Ltd. vs. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & M/s Megha Engineering & Infrastructure Limited (MEIL) 2019 SCC Online Del 10456***, to argue that if the initial filing has certain vital defects and documents such as proper Vakalatnama, Statement of Truth etc. are not filed along with the petition under Section 34 of the Act, it is a non-est filing.

6. Learned counsel for the petitioner confronted with this, submits that the petition was initially filed on 22.08.2019 i.e. 88th day from the passing of the Award and was, therefore, within the statutory period of limitation of three months. He further submits that the petition was a proper filing as it was accompanied by duly signed Vakalatnama by the petitioner and the advocates and accompanied by a Board Resolution. Learned counsel further submits that all the requisite documents including the impugned Award were filed. Statement of Truth duly notarized was filed and the petition was signed by the petitioner and the advocate on the last page.

7. Learned counsel for the petitioner refutes the contention of the respondent and submits that there is only a delay in re-filing and that too, on account of the fault of the Registry, as they had misplaced the file. It is denied that the filing was 'non-est'. Learned counsel relies on the judgments in the case of ***Sunair Hotel Ltd. vs. VLS Finance Ltd. 2017 SCC OnLine Del 7803***, ***Uday Shankar Triyar vs. Ram Kalewar Prasad***

Singh & Anr. (2006) 1 SCC 75, Delhi Development Authority vs. Durga Construction Co. (2013) 139 DRJ 133 to contend that delay in re-filing has to be looked at more liberally than the delay in initial filing and the courts should be slow in dismissing a petition on account of delay in re-filing.

8. Learned counsel distinguishes the judgments relied upon by the respondent on the ground that in the said cases a bunch of papers was filed without affidavits, Vakalatnama, documents and the Award. The petition lacked signatures of the advocate and the petitioner. Statement of Truth was not filed. Whereas, it is submitted, in the present case, all requisite compliances were made during the initial filing itself and some of the defects pointed out were cleared on re-filing. It is thus prayed that the delay of re-filing be condoned and the petition be admitted to hearing.

9. I have heard the learned counsels for the parties and examined the record of the case including the defect sheet handed over by learned counsel for the respondent, during the arguments.

10. The statutory limitation period for filing objections to an Arbitral Award under Section 34 (3) of the Act is three months. The delay in filing the petition can be condoned in the discretion of the Court, in case the petition is filed within a extended period of 30 days, but not thereafter. In order to seek condonation of delay, the petitioner is required to satisfy the Court that it was prevented by a sufficient cause from approaching the Court within the three months limitation period.

11. In the present case, the Award is dated 25.05.2019 and the same was admittedly received by the petitioner on the same day. The three months statutory period of limitation expired on 25.08.2019 and the thirty

days extended period expired on 24.09.2019. Two issues arise for consideration in the present petition. The first issue is whether the petition was filed within the statutory period of limitation and if so, whether it was a proper filing in the eyes of law. The second issue that arises is as to whether delay in re-filing the petition could be condoned in case a proper petition was filed within a period of 120 days under Section 34 (3) of the Act.

12. A perusal of the log information as well as the defect sheet handed over by the counsel for the respondent reveals the following facts. The petition was initially filed on 22.08.2019. This was within the three months statutory period. However, the defects raised by the Registry clearly revealed that the Statement of Truth filed by the petitioner was not in accordance with the requirement of the Commercial Courts Act, 2015. It had blanks and the signatures of the deponent were not identified by the counsel. It needs to be noted here that there are two Statements of Truth available on the record of this Court. One, Statement of Truth was handed over in Court which is stated by the petitioner to have been filed along with the petition when it was initially filed and bears the attestation date of 22.08.2019. It is this Statement of Truth which on a bare perusal had blanks in paragraph 6 and does not even bear the signature of an Advocate, identifying the deponent. The other Statement of Truth is available at page 140 of the present petition. The said Statement of Truth has been verified on 24.10.2019. Since the first statement of truth is incomplete, it cannot be taken cognizance of. Insofar as the second document is concerned, the date of verification being 24.10.2019, the same could not have been filed along with the petition. Assuming that

the said Statement of Truth is complete in its format, the filing of the said Statement of Truth cannot inure to the advantage of the petitioner as the 120 days period under Section 34(3) of the Act expired on 24.09.2019. It is thus clear that the petition was unsupported by a Statement of Truth when initially filed during the limitation period.

13. The defect sheet generated by the Registry further reveals that the Vakalatnama dated 22.08.2019 was not properly executed inasmuch as it was without a welfare stamp and the Advocates signing the Vakalatnama did not mention their addresses, mobile numbers and enrolment numbers. In fact, there are two Vakalatnamas available on the record of this Court. The first Vakalatnama is dated 22.08.2019 and the other Vakalatnama is dated 19.11.2019. Firstly, this Court does not understand as to why two Vakalatnamas have been filed by the petitioner and nor was the counsel for the petitioner in a position to explain the reason behind this. This Court also finds that the Authorized Signatory in the second Vakalatnama is different from the one in the earlier Vakalatnama. This Court has no reason to disbelieve the initial defects raised by the Registry regarding the manner of execution of the Vakalatnama in the absence of any substantial evidence shown by the petitioner to the contrary. Thus the petition when initially filed was unsupported by a proper Vakalatnama. This is fortified by the fact that a second Vakalatnama was indeed filed. This, however, was after 120 days. Court notices that the first Vakalatnama as now available on Court record contains details, which according to the defects raised by the Registry at the time of first filing were missing. The only inference that can be, *prima facie*, drawn is that these details were filled in subsequently. Supreme Court in the case of **Uday Shankar Triyar vs.**

Ram Kalewar Prasad Singh & Anr. (2006) 1 SCC 75, has highlighted the importance and relevance of filing a properly executed Vakalatnama along with a petition in the following words:

“21. We may at this juncture digress and express our concern in regard to the manner in which defective vakalatnamas are routinely filed in courts. Vakalatnama, a species of power of attorney, is an important document, which enables and authorises the pleader appearing for a litigant to do several acts as an agent, which are binding on the litigant who is the principal. It is a document which creates the special relationship between the lawyer and the client. It regulates and governs the extent of delegation of authority to the pleader and the terms and conditions governing such delegation. It should, therefore, be properly filled/attested/accepted with care and caution. Obtaining the signature of the litigant on blank vakalatnamas and filling them subsequently should be avoided. We may take judicial notice of the following defects routinely found in vakalatnamas filed in courts:

(a) Failure to mention the name(s) of the person(s) executing the vakalatnama and leaving the relevant column blank.

(b) Failure to disclose the name, designation or authority of the person executing the vakalatnama on behalf of the grantor (where the vakalatnama is signed on behalf of a company, society or body) by either affixing a seal or by mentioning the name and designation below the signature of the executant (and failure to annex a copy of such authority with the vakalatnama).

(c) Failure on the part of the pleader in whose favour the vakalatnama is executed, to sign it in token of its acceptance.

(d) Failure to identify the person executing the vakalatnama or failure to certify that the pleader has satisfied himself about the due execution of the vakalatnama.

(e) Failure to mention the address of the pleader for purpose of service (in particular in cases of outstation counsel).

(f) Where the vakalatnama is executed by someone for self and on behalf of someone else, failure to mention the fact that it is being so executed. For example, when a father and the minor children are parties, invariably there is a single signature of the father alone in the vakalatnama without any endorsement/statement that the signature is for “self and as guardian of his minor children”. Similarly, where a firm and its partner, or a company and its director, or a trust and its trustee, or an organisation and its office-bearer, execute a vakalatnama, invariably there will be only one signature without even an endorsement that the signature is both in his/her personal capacity and as the person authorised to sign on behalf of the corporate body/firm/society/organisation.

(g) Where the vakalatnama is executed by a power-of-attorney holder of a party, failure to disclose that it is being executed by an attorney-holder and failure to annex a copy of the power of attorney.

(h) Where several persons sign a single vakalatnama, failure to affix the signatures seriatim, without mentioning their serial numbers or names in brackets. (Many a time it is not possible to know who have signed the vakalatnama where the signatures are illegible scrawls.)

(i) Pleaders engaged by a client, in turn, executing vakalatnamas in favour of other pleaders for appearing in the same matter or for filing an appeal or revision. (It is not uncommon in some areas for mofussil lawyers to obtain signature of a litigant on a vakalatnama and come to the seat of the High Court and engage a pleader for appearance in a higher court and execute a vakalatnama in favour of such pleader.)

We have referred to the above routine defects, as Registries/offices do not verify the vakalatnamas with the care and caution they deserve. Such failure many a time leads to avoidable complications at later stages, as in the present case. The need to issue appropriate instructions to the Registries/offices to properly check and verify the vakalatnamas filed requires emphasis. Be that as it may.”

14. The shoddy manner in which the present petition has been filed and re-filed is further evident from the fact that the date of signing the petition is 12.09.2019 and the dates appearing on the other documents such as the Memo of Parties, urgent application, notice of motion are all different from each other, being 21.10.2019, 12.09.2019, 28.11.2019 respectively. The Statement of Truth as already noted above is attested at Chandigarh on 24.10.2019. Insofar as the applications are concerned, it is seen that the application for delay in re-filing the petition is dated 21.10.2019 while the affidavit accompanying is attested on 19.10.2019. The application for exemption from filing certified and clear copies of the orders is dated 22.08.2019 and the supporting affidavit is attested on 24.10.2019, at Chandigarh. The dates are being referred for the reason that the period of 120 days available to a party under Section 34(3) of the Act has in the present case expired on 24.09.2019 and most of the dates revealed that a

complete and proper petition was not filed within the said period. Thus, in my view, the filing of the present petition is ‘non-est’.

15. There are now a plethora of judgments by this Court wherein parameters of a proper filing have been laid down. To refer a few, in the case of **Ashok Kumar Parmar vs. D.C. Sankhla, 1995 RLR 85**, it has been 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.”

16. In **Delhi Development Authority vs. Durga Construction Co. 2013 (139) DRJ 133 [DB]**, a Division Bench of this Court held 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....”

17. In ***O.M.P.(COMM) 470/2015 titled Sravanthi Infratech Private Limited Vs. Green Power Equipment (China) Co. Ltd.*** decided on 19.10.2016, it was held as under:

“12. Significantly it is pointed out that on 10th July, 2015 when the petition was first 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.

18. In ***Jay Polychem (India) Ltd. & Ors. vs. S.E. Investment Ltd.***, reported in ***2018 V AD (Delhi) 581***, a coordinate Bench of this Court was dealing with a petition which was neither signed on behalf of the petitioner nor supported by signed and attested affidavits. The Court held as under:

“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: MANU/SC/0613/2001: (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.”

19. A coordinate Bench of this Court in the case of ***Director- cum-Secretary, Development of Social Welfare vs. Sarvesh Security Services Pvt. Ltd.***, reported as **2019 SCC OnLine Del 8503** held that:

“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 decision 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.”

20. This Court recently, in the case of ***Oil & Natural Gas Corporation Ltd. vs. Joint Venture of M/s Sai Rama Engineering Enterprises (SREE) & M/s Megha Engineering & Infrastructure Limited (MEIL)*** **2019 SCC Online Del 10456**, has laid down certain vital parameters which need to be complied with before a petition can be termed as proper petition, which are as under:

43. The common thread that runs in the aforesaid judgments is that ‘non-est’ filing cannot stop limitation and cannot be a ground to condone delay. Thus, for a petition filed under Section 34 of the Act to be termed as a ‘properly’ filed petition must fulfill certain basic parameters such as :

- a) Each page of the Petition as well as the last page should be signed by the party and the Advocate;*
- b) Vakalatnama should be signed by the party and the Advocate and the signatures of the party must be identified by the Advocate;*
- c) Statement of Truth/Affidavit should be signed by the party and attested by the Oath Commissioner;*

44. This in my view is the minimum threshold that should be crossed before the petition is filed and can be treated as a petition in the eyes of law. The rationale behind insisting on these fundamental compliances to be observed while filing a petition, is not far to seek. Vakalatnama is an authority which authorizes an Advocate to act on behalf of a party as a power of attorney and to carry out certain acts on his behalf. Therefore, the vakalatnama is the first

step and a precursor to the preparation of a petition. The Statement of Truth accompanying a petition or an application is sworn by the deponent who states on oath that the contents of the accompanying petition have been drafted under his instructions and are true and correct to his knowledge or belief. Surely, this affidavit must be signed after the petition is made and the attestation must also be done on the affidavit when the petition is filed. This is also a requirement under the Commercial Courts Act, 2015. The petition needs to be signed by the Advocate as well as the party before the same is filed as this would indicate that both have read the petition and there is authenticity attached to the pages filed in the Registry. If these basic documents are not annexed or the signatures as required are absent, one can only term the documents which are filed as a 'bunch of papers' and not a petition.

47. When the petition was filed on the 22.02.2019 at 4 p.m., the defects were marked during the checking on 23.02.2019 at 11.24 a.m. Only 10 pages of Index was re-filed. The Code numbers of the defects marked shows that when the petition was refiled on 22.02.2019 except for defect bearing 'Code No. 214', none of the earlier defects marked on the 21.02.2019 and 22.02.2019 were cleared. The defects marked qua the filing of 22.02.2019 were (a) Caveat report not obtained; (b) Petition/applications were neither signed nor dated; (c) Court fees was short/missing; (d) the vakalatnama was not duly executed lacking the Court fees and signatures etc. of the Advocates; (e) Statement of Truth was not filed as per the format under the Commercial Courts Act; (f) The Memo of parties did not contain sufficient details like the parentage, mobile number, email address etc.; (g) Advance copy was not served under the provisions of Section 34(5) of the Act. This was apart from several

other defects which were marked earlier but not cured by the petitioner. Thus, even this filing can be only termed as 'non-est' filing."

21. The log information and the defect sheet indicate that most of the vital defects were cleared by the petitioner only on 20.11.2019 when the petition was re-filed. Thus, it is on this date, the petition can be treated to have been properly filed and since this is the date which has to be reckoned as the date of fresh filing, the petition being filed beyond 120 days is barred by limitation under Section 34(3) of the Act. It has been held by the Supreme Court in the case of ***Simplex Infrastructure Limited vs. Union of India 2019 (2) SCC 455***, that the Court has no power to condone the delay in filing the petition under Section 34(3) of the Act beyond a period of 120 days.

22. Since the present petition was not a proper petition and the defects were cured after a period of 120 days, in view of the law laid down by the Supreme Court in ***Simplex Infrastructure (supra)***, the present petition deserves to be dismissed. The relevant para of the judgment is 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.”

23. Since the petition is beyond the limitation period in its initial filing, the delay in re-filing cannot be condoned. Thus, the judgment in the case of *Sunair Hotel (supra)* relied upon by the petitioner will be of no help to the petitioner. In view of the above, the application for condonation of delay in re-filing is dismissed.

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24. In view of the order passed in the application above, the petition along with the application filed herewith, is dismissed with no order as to costs.

JYOTI SINGH, J

FEBRUARY 13th, 2020

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