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

+ O.M.P. (COMM) 42/2024, I.As. 1367-69/2024

DEPARTMENT OF TRANSPORT GOVT OF NCT OF DELHI

..... Petitioner

Through: Mr. Darpan Wadhwa, Sr. Adv. with  
Mr. Vanshay Kaul, Mr. Sameer  
Vashisht, ASC, GNCTD, Ms.  
Neelakshi Bhadoria, Advs.

versus

GREEN CITY TRANSPORT CORPORATION PVT LTD

..... Respondent

Through: Mr. Manan Joshi, Mr. Pranav Menon,  
Mr. Aryan Verma, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE DINESH KUMAR SHARMA**

**ORDER**

**20.02.2024**

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**I.A. 1370/2024**

The present application has been filed on behalf of petitioner under Section 34(3) of the Arbitration and Conciliation Act seeking condonation of delay of 23 days in filing the petition.

The award in the present case was passed on 29.08.2023.

Learned senior counsel submits that the petition in this case was initially filed on 20.12.2023 and after the removal of defect, the petition was finally filed on 16.01.2024.

Learned counsel submits that the petition has been filed within 120 days. However, the delay occurred after 3 months as provided under Section



34(3) of the Arbitration and Conciliation Act as the petitioner is a government organization and there was difficulty in getting the authorization and approvals.

Learned counsel for the respondent has opposed the same and has submitted that it is a well settled law that the government cannot be treated differently. Learned counsel submits that the reasons given in the application are not sufficient.

The log sheet filed by the registry on the record indicates that the petition was filed on 20.12.2023 and on 21.12.2023 certain objections were noted.

I have gone through the same and I consider that the objections are procedural in nature and in *ONGC Ltd. v. Saw Pipes Ltd.*, (2003) 5 SCC 705 the division bench of this court has inter alia held as under:

*“30. We concur with the learned Single Judge that certain defects are curable and do not render the application as non est. However, the nature of certain defects is such that it would not be apposite to consider the defective application as an application under Section 34 of the A&C Act, to set aside an arbitral award. Undisputedly, every improper filing is not non est.*

*31. We are unable to concur with the view that the minimum threshold requirement for an application to be considered as an application under Section 34 of the A&C Act is that, each page of the application should be signed by the party, as well as the advocate; the Vakalatnama should be signed by the party and the advocate; and it must be accompanied by a statement of truth. And, in the absence of any of these requirements, the filing must be considered as non est. It is essential to understand that for an application to be considered as non est, the Court must come to the conclusion that it cannot be considered as an application*



*for setting aside the arbitral award.*

*32. It is material to note that Section 34 of the A&C Act does not specify any particular procedure for filing an application to set aside the arbitral award. However, it does set out the grounds on which such an application can be made. Thus, the first and foremost requirement for an application under Section 34 of the A&C Act is that it should set out the grounds on which the applicant seeks setting aside of the arbitral award. It is also necessary that the application be accompanied by a copy of the award as without a copy of the award, which is challenged, it would be impossible to appreciate the grounds to set aside the award. In addition to the above, the application must state the name of the parties and the bare facts in the context of which the applicants seek setting aside of the arbitral award.*

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*40. It is relevant to note that the affidavits accompanying the application filed on 20.02.2019 were signed but not attested and to that extent, the defects as pointed out are not accurate. It is clear from the above, that none of the defects are fundamental as to render the application as non-est in the eyes of law. All the defects, as pointed out, are curable defects. It is settled law that any defect in an affidavit supporting pleadings can be cured. It is seen from the record that the filing was also accompanied by an executed Vakalatnama, however, the same was not stamped. It is also settled law that filing of a Court fee is necessary, however, the defect in not filing the Court fee along with the application can be cured. In view of above, we are unable to accept that the application, as filed on 20.02.2019 or thereafter on 23.02.2019, was non est.”*

Learned counsel for the respondent submits that the defects mentioned are not procedural and pertains to the root of the matter.



However, I respectfully disagree with the contentions. As per the Log Sheet, the defects are with respect to page numbering being missing in the index, court fees and one time pf fees to be paid and specified pecuniary value to be given in the paragraph pertaining to the pecuniary jurisdiction, bookmarking to be done as per the norms of the Online Portal of Delhi High Court and complete details of the counsel to be provided as per the Chapter 3- Form of Pleading, Rule 2 of Delhi High Court (Original Side) Rules, 2018. Hence, it is evident that the defects in the present case are not fundamental in nature and can be termed as curable or procedural in nature as has been pointed out.

In view of the law laid down where the courts have taken a liberal view in refilling. I consider that if the defects are procedural in nature as in the present case, a liberal view can be taken, and the same can be allowed.

Hence, the delay is condoned.

In view of the above, the present application stands disposed of.

**O.M.P. (COMM) 42/2024**

Learned senior counsel for the petitioner submits that the tabular chart has already been filed.

Learned counsel for the respondent submits that he has received the tabular chart just now and seeks time to file response.

Let the response be filed within two weeks with an advance copy to the learned counsel for the petitioner.

List on 03.04.2024.

**DINESH KUMAR SHARMA, J**

**FEBRUARY 20, 2024/AR..**