IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.01.2023

\+ **FAO(OS) (COMM) 324/2019, CM Nos.49024/2019 & 1785/2020**

OIL AND NATURAL GAS CORPORATION LTD. ….. Appellant

versus

JOINT VENTURE OF M/S SAI RAMA ENGINEERING ENTERPRISES (SREE) & M/S MEGHA ENGINEERING & INFRASTRUCTURE LIMITED (MEIL) ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Chetan Sharma, ASG with Mr Amitesh Chandra Mishra, Mr Abhishek Chandra Mishra, Mr Rishabh, Mr Shubham Agarwal, Ms Pratibha Yadav and Ms Elena Saleem, Advocates.

For the Respondent : Ms Kiran Suri, Senior Advocate with Mr Purvesh Buttan, Ms Aishwarya Kumar, Ms Vidushi Garg and Mr Prateek Narwar, Advocates.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE PURUSHAINDRA KUMAR KAURAV

JUDGMENT

VIBHU BAKHRU, J

1. Oil and Natural Gas Corporation Ltd. (hereafter '**ONGC**') has filed the present appeal under Section 37(1)(c) of the Arbitration and

Conciliation Act, 1996 (hereafter '**the A&C Act**') impugning a judgement dated 01.10.2019 (hereafter '**the impugned judgment**') passed by the learned Single Judge. By the impugned judgement, the learned Single Judge dismissed the appellant's application [being IA No. 4451/2019 in O.M.P. (COMM) 97/2019] seeking a condonation of delay for 27 days in filing the application under Section 34 of the A&C Act to set aside an arbitral award dated 23.10.2018 (hereafter '**the impugned award**'). Consequently, the appellant's petition under Section 34 of the A&C Act has also been dismissed as barred by limitation.

Factual Context

2. On 13.06.2014, ONGC invited tenders for the works of "*6 Pipeline Replacement Project (Assam Asset) on lumpsum turnkey basis*" (hereafter '**the Project**'). Thereafter, by a Notification of Award (NoA) dated 10.04.2015, the contract was awarded to the respondent. Subsequently, on 28.09.2015, the parties entered into a contract (hereafter '**the Contract**').

3. In terms of clause 2.2.1 of the General Conditions of Contact (GCC), the Project was to be completed within a period of twenty-one months from the date of the NoA, that is, by 09.01.2017. In terms of clause 6.3.1.1 of the GCC, the stipulated date of mechanical completion of the Project was to be achieved within twenty months from the date of the NoA, that is, by 09.12.2016. However, there were delays in execution of the Project.

4. ONGC imposed liquidated damages that were disputed by the respondent. Further disputes also arose between the parties. These disputes included disputes regarding the party responsible for the delay and non-payment of dues. The disputes were referred to arbitration in terms of the arbitration clause in the Contract.

5. The arbitral proceedings culminated with the Arbitral Tribunal delivering the impugned award. The Arbitral Tribunal found that ONGC was liable for the delay in completion of the contract and, *inter alia*, awarded a sum of ₹48,86,83,209/- in favour of the respondent.

6. ONGC received a copy of the impugned award on 23.10.2018. The period of limitation, for filing an application under Section 34 of the A&C Act for setting aside the impugned award, is three months, as provided by Section 34(3) of the A&C Act. The said period expired on 23.01.2019. On the last date of the limitation – that is, on 23.01.2019 – the appellant filed an application under Section 34 of the A&C Act purportedly to assail the impugned award. However, the file that was uploaded electronically on the filing portal did not relate to the present matter.

7. The aforesaid filing was marked defective and was returned by the Registry of this Court on 29.01.2019. The appellant claims that it found that an incorrect CD of a different matter captioned '*Reliance Infrastructure v Aravali Power Co. Pvt. Ltd.*' had been uploaded. The appellant states that it contacted the agency that handles the filing and

scanning of their documents. The said agency, again, took two to three days to complete the same.

8. The appellant states that while the application was sent for scanning, another matter captioned, '*Oil and Natural Gas Corporation Limited vs. Joint Venture of Megha Engineering & Infrastructure Limited and M/s A Plus Project & Tech (P) Limited*' was filed. Erroneously, the said filing was done in the present matter. The said application was returned as defective. The defects were cured, and the said application was correctly filed under Section 14 of the A&C Act and numbered as 'OMP(T)(Comm) No. 15/2019'. This matter was subsequently listed and disposed of by an order dated 14.02.2019 of this Court.

9. The appellant refiled the application on 20.02.2019, which too was defective and the Registry of this Court returned the same for refiling. The appellant re-filed the application on 22.02.2019 but that filing was only an index spanning ten pages. The appellant re-filed the application on 23.02.2019 but that too was found to be defective. Finally, the appellant cured the defects and re-filed the application on 25.02.2019.

10. The application under Section 34 of the A&C Act [being OMP (COMM) 97/2019] was listed on 13.03.2019. On that date the respondent raised a preliminary objection that the petition was barred by limitation. The appellant submitted an affidavit dated 18.03.2019 explaining the various reasons for re-filing and delay.

11. The matter was thereafter taken up by the learned Single Judge on 11.07.2019 and the counsel appearing on behalf of the appellant filed a personal affidavit setting out the sequence of events that had caused the delay.

12. Three separate affidavits narrating the entire sequence of facts from 13.12.2018 (when the instructions to draft objections were received) to 25.02.2019 (when the Petition was finally registered for listing) were filed by the counsel appearing on behalf of the appellant on 18.07.2019.

The Impugned Judgement

13. The learned Single Judge whilst analysing the matter, observed that the following three crucial issues arose for consideration.

> "a) Whether the petition is filed within the statutory period of 3 months prescribed under section 34 (3) of the Act.
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> b) In the alternate; whether the petition was filed within the extended period of 30 days under the Proviso.
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> c) Whether the filing in the first or the second instance is a '*non est*' filing."

14. The learned Single Judge relied on the decision in ***Union of India v Popular Construction Co.: 2001 (8) SCC 470***, wherein the Supreme Court of India held that the legislative intent in providing a strict and non-flexible limitation period should not be defeated by condoning the delay, without "*sufficient cause*". The court noted that in ***Simplex Infrastructure Limited v. Union of India: 2019 (2) SCC 455***, which cites ***Union of India v. Popular Construction Co.*** (*supra*), the Supreme Court had emphasized the importance of limitation in filing an application under Section 34 of the A&C Act.

15. The learned Single Judge found that the period of delay in filing the application to set aside the impugned award under Section 34 of the A&C Act was beyond the period of thirty days that could be condoned in terms of the proviso to Section 34(3) of the A&C Act. The Court, thus, held that it had no jurisdiction to condone the delay. The said conclusion of the learned Single Judge is premised on the finding that the application filed by the appellant prior to 25.02.2019, was not proper and did not qualify to be considered as an application under Section 34 of the A&C Act. According to the learned Single Judge, the filings done on 20.02.2019 or on 22.02.2019 could not be considered as valid and were required to be treated as *non est*.

Reasons and Conclusion

16. The only questions that fall for consideration of this Court are whether the filings done by the appellant prior to 25.02.2019 are

required to be considered as *non est*; and if not, whether the delay in filing the petition ought to be condoned.

17. At the outset, it is relevant to state that there is no cavil with the proposition that this Court does not have the jurisdiction to condone the delay in filing of the application to set aside an arbitral award beyond the period of thirty days, as specified under the proviso to Section 34(3) of the A&C Act. As noted above, the impugned judgement is premised on the basis that the appellant had failed to file any such application within the period of three months and a further thirty days, from the receipt of the impugned award.

18. The appellant states that it received the impugned award on 23.10.2018. Therefore, the period of three months available to the appellant to assail the impugned award expired on 23.01.2019. The further period of thirty days – being the period that could be condoned by the Court – expired on 22.02.2019. It was the appellant's case that it had filed the petition on 23.01.2019, within the specified period of limitation.

19. As a matter of fact, the appellant had uploaded certain documents on 23.01.2019 at 03:45 p.m. The Registry of this Court had acknowledged the said filing by an e-mail sent at 03:49 p.m. on 23.01.2019. The appellant claims that it was subsequently discovered that an incorrect file had been electronically uploaded on 23.01.2019. The file that was uploaded related to a case captioned "*Reliance Infrastructure v. Aravali Power Co. Pvt. Ltd.*". Thus, it is not in dispute that the said filing cannot be considered as filing of an application under

Section 34 of the A&C Act, assailing the impugned award. Admittedly, no such application was filed on 23.01.2019.

20. The appellant, thereafter, uploaded another file at 3.10. p.m on 04.02.2019. The record indicates that this filing was also not an application under Section 34 of the A&C Act, seeking to set aside the impugned award. Admittedly, the application filed on 04.02.2019 was one under Section 14 of the A&C Act and related to another dispute, which had no bearing on the appellant's challenge to the impugned award. The said application under Section 14 of the A&C Act was defective. The defects were cured and that application under Section 14 of the A&C Act was registered as OMP(T)(COMM) 15/2019. The said application was, thereafter, disposed of by an order dated 14.02.2019. Thus, undisputedly, the appellant had not filed any application under Section 34 of the A&C Act to set aside the impugned award on 04.02.2019.

21. The appellant filed an application assailing the impugned award for the first time on 20.02.2019 at 11:39 a.m. The application and other documents uploaded on the said date, comprised of 6,313 pages. The said filing was acknowledged by the Registry of this Court by an e-mail sent at 11.40 a.m. on 20.02.2019.

22. The said application was defective and this was communicated by the Registry of this Court to the appellant on 21.02.2019. The soft copy of the application, as filed by the appellant on 20.02.2019, has been retrieved and placed on record by the Registry of this Court. The appellant had uploaded two files on 20.02.2019. The first comprised of

an Index running into ten pages. The said Index was dated 19.02.2019 and was signed by the advocate of the appellant. The second file uploaded was a comprehensive file, which included an Index, an application under Section 34 of the A&C Act, statement of truth, affidavits supporting the application, other applications, impugned award, and documents. The file uploaded comprised of 6,313 pages. The Index was duly singed on behalf of the appellant by one Sudhir Kumar, DGM (Mech.) Onshore Engineering, ONGC, as well as the appellant's advocate. Both, the authorised representative of the appellant as well as the appellant's advocate had also signed other documents such as the urgent application and the memo of parties. The application under Section 34 of the A&C Act was signed on each page by the authorised representative of the appellant. The said petition clearly set out the grounds on which the impugned award is assailed. It is material to note that the said petition was also accompanied by an affidavit, which was signed by the deponent and also duly verified. However, the said affidavit was not attested. The authorised representative had also filed a duly signed statement of truth by way of an affidavit. However, the said affidavit was not attested. It was also accompanied by a *vakalatnama*, which was signed by the authorised representative of the appellant.

23. The aforesaid filing was found to be defective, *inter alia*, because the affidavits and the statement of truth by way of an affidavit were not attested and the *vakalatnama* was not stamped. In addition to the

aforesaid defects, there were other minor defects, which were duly notified to the appellant.

24. The appellant re-filed the application on 22.02.2019. However, the filing done on that date is of no consequence. It comprised of only ten pages of Index.

25. The appellant again re-filed the application on 23.02.2019. Some of the defects were cured. The affidavits were attested and the date of 20.02.2019 was stamped on the affidavits. However, the body of the affidavits continued to reflect that they were affirmed on 19.02.2019. The *vakalatnama* was also stamped. However, this filing was also marked as defective as there were various other defects. The application was returned for re-filing.

26. The appellant cured all defects and re-filed the petition on 25.02.2019.

27. The learned Single Judge found that the period of delay in filing the application under Section 34 of the A&C Act was beyond the period of thirty days that could be condoned in terms of the proviso to Section 34(3) of the A&C Act. The Court, thus, held that it had no jurisdiction to condone the delay. The conclusion of the learned Single Judge is premised on the finding that prior to 25.02.2019, the appellant had not filed a proper application, which could qualify to be considered as an application under Section 34 of the A&C Act. The Court held that the filings done on 20.02.2019 or on 22.02.2019 were required to be treated as *non est*.

28. At this stage, it is relevant to refer to the reasons that persuaded the learned Single Judge to hold that the applications filed on 20.02.2019 and on 23.02.2019, were *non est*. Paragraph 43, 44, 45 and 46 of the impugned judgement reads 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:
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> a) Each page of the Petition as well as the last page should be signed by the party and the Advocate;
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> b) Vakalatnama should be signed by the party and the Advocate and the signatures of the party must be identified by the Advocate;
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> c) Statement of Truth/Affidavit should be signed by the party and attested by the Oath Commissioner;
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> 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.
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> 45. In several cases, of course, the defects may only be perfunctory and may not affect the filing of the petition, e.g. the documents may be illegible or the margins may not be as per the required standards etc. These defects are certainly curable and if the petition is filed with such like defects, it cannot be termed as a non-est petition.
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> 46. Examined in the light of the above-mentioned judgments and the provisions of Section 34(3) of the Act, the filing of the petition on 20.02.2019 was a non-est filing and cannot stop limitation as clearly even the affidavits were not signed and not attested besides a few other objections."

29. We may, at this stage, point out a factual error, although it is not of much relevance. The applications under Section 34 of the A&C Act filed on 20.02.2019 and 23.02.2019 were accompanied by signed affidavits. However, the affidavits supporting the application filed on 20.02.2019 were not attested. Then the finding that the affidavits

accompanying the application filed on 20.02.2019 was not signed is erroneous.

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 filling 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.

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.

34. In addition to the above, other material requirements are such as, the application is to be supported by an affidavit and a statement of truth by virtue of Order XI, Section 1 of the Commercial Courts Act, 2015. It is also necessary that the filing be accompanied by a duly executed *vakalatnama*. This would be necessary for an advocate to move the application before the court. Although these requirements are material and necessary, we are unable to accept that in absence of these requirements, the application is required to be treated as *non est*. The application to set aside an award does not cease to be an application merely because the applicant has not complied with certain procedural requirements.

35. It is well settled that filing an affidavit in support of an application is a procedural requirement. The statement of truth by way of an affidavit is also a procedural matter. As stated above, it would be necessary to comply with these procedural requirements. Failure to do so would render an application under Section 34 of the A&C Act to be defective but it would not render it *non est*.

36. In ***Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors.: (2006) 2 SCC 777***, the Supreme Court set aside the order of the Division Bench of the Calcutta High Court treating the suit instituted as *non est* for want of compliance with the requirements of Order 6 Rule 15(4) of the Code of Civil Procedure, 1908, which requires a person verifying the pleadings to furnish an affidavit in support of the pleadings. The Supreme Court after noting various decisions held as under :-

> "49. In this regard we are inclined to agree with the consistent view of the three Chartered High Courts in the different decisions cited by Mr Mitra that the requirements of Order 6 and Order 7 of the Code, being procedural in nature, any omission in respect thereof will not render the plaint invalid and that such defect or omission will not only be curable but will also date back to the presentation of the plaint. We are also of the view that the reference to the provisions of the Code in Rule 1 of Chapter 7 of the Original Side Rules cannot be interpreted to limit the scope of such reference to only the provisions of the Code as were existing on the date of such incorporation. It was clearly the intention of the High Court when it framed the Original Side Rules that the plaint should be in conformity with the provisions of Order 6 and Order 7 of the Code. By necessary implication reference will also have to be made to Section 26 and Order 4 of the Code which, along with Order 6 and Order 7, concerns the institution of suits. We are ad idem with Mr Pradip Ghosh (sic) on this score. The provisions of sub-rule (3) of Rule 1 Order 4 of the Code, upon which the Division Bench of the Calcutta High Court had placed strong reliance, will also have to be read and understood in that context. The expression "duly" used in sub-rule (3) of Rule 1 Order 4 of the Code implies that the plaint must be filed in accordance with law. In our view, as has been repeatedly

expressed by this Court in various decisions, rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. Both in Khayumsab [(2006) 1 SCC 46 : JT (2005) 10 SC 1] and Kailash [(2005) 4 SCC 480] although dealing with the amended provisions of Order 8 Rule 1 of the Code, this Court gave expression to the salubrious principle that procedural enactments ought not to be construed in a manner which would prevent the Court from meeting the ends of justice in different situations.

50. The intention of the legislature in bringing about the various amendments in the Code with effect from 1-7-2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order 4 and Order 6 Rule 15, are also geared to achieve such object, but being procedural in nature, they are directory in nature and non-compliance therewith would not automatically render the plaint non est, as has been held by the Division Bench of the Calcutta High Court.

51. In our view, such a stand would be too pedantic and would be contrary to the accepted principles involving interpretation of statutes. Except for the objection taken that the plaint had not been accompanied by an affidavit in support of the pleadings, it is nobody's case that the plaint had not been otherwise verified in keeping with the unamended provisions of the Code and Rule 1 of Chapter 7 of the Original Side Rules. In fact, as has been submitted at the Bar, the plaint was accepted, after due scrutiny and duly registered and only during the hearing of the appeal was such an objection raised.

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> 54. We have, therefore, no hesitation in holding that the Division Bench of the Calcutta High Court took a view which is neither supported by the provisions of the Original Side Rules or the Code nor by the various decisions of this Court on the subject. The views expressed by the Calcutta High Court, being contrary to the established legal position, must give way and are hereby set aside."

37. It is, thus, necessary to bear in mind the distinction between the procedural requirements that can be cured and those defects that are so fundamental that the application cannot be considered as an application under Section 34 of the A&C Act, at all.

38. In the facts of the present case, the application filed on 23.01.2019 was not an application assailing the impugned award. That filing was clearly *non est*. Similarly, as the application filed on 04.02.2019 also related to another matter, which could not be considered as an application assailing the impugned award. The filing on 22.02.2019 was only 10 pages of an Index. This too could not be construed as an application; however, the application filed on 20.02.2019 and 23.02.2019 cannot be construed to be *non est*.

39. The defects as noted by the Registry in the filing log relating to the application filed on 20.02.2019 reads as under: -

> "TOTAL 6313 PAGES FILED. CAVEAT REPORT BE OBTAINED. COURT FEE BE PAID. AFFIDAVITS NOT ATTESTED NOT SIGNED. PLEASE CORRECT THE BOOKMARKING. VOLUMNS OF DOUCMENTS BE MADE. IN ADDITION TO THE E-FILING, IT IS MANDANTORY 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. ORIENTATION OF DOCUMENTS BE CORRECT. PLEASE CORRECT THE BOOKMAKRING. ALL INDEXES BE PAGINATED."

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*.

41. 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.

42. In the given facts, the first question – whether the application filed on 20.02.2019 and 23.02.2019 can be considered as *non est* – is answered in the negative.

43. The second question to be addressed is whether in the given facts of the case, the delay in filing the application was liable to be condoned. Ms. Suri, learned counsel appearing for the respondent, contended that the appellant had failed to render any explanation regarding failure to file the application within the given period of three months. She submitted that although the petitioner has mentioned certain grounds for delay that had occurred after 23.01.2019, it had failed to render any explanation for the period prior to that date.

44. It is settled law that the party requesting the court to condone the delay in respect of filing any application, petition or appeal, must explain the reasons for the delay. The delay has to be explained on a day-to-day basis. In the given circumstances, the party must explain the reasons as to why it was prevented from filing an application under Section 34 of the A&C Act within the given period of three months after receipt of the award.

45. In the facts of this case, the appellant has not provided any explanation as to why the application was not filed during the period of three months for the simple reason that, according to the appellant, the application was filed within the stipulated period of three months. As stated above, the filing of 23.01.2019 was, considered as a *non est*. The appellant has explained that the incorrect file had been erroneously

uploaded on 23.01.2019. The appellant is required to explain the delay in filing the application and the reasons that had prevented it from doing so, within the stipulated period. Since the appellant's explanation is that it had erroneously uploaded an incorrect file within the period of limitation, there is no occasion for the appellant to provide any further explanation for the period prior to 23.01.2019.

46. The learned counsel for the appellant has filed an affidavit providing an explanation with regard to the erroneous filing on 23.01.2019 and the reasons that had occasioned the delay, thereafter. He has affirmed that he had received the instruction around 13.12.2018 to file the application under Section 34 of the A&C Act. He and his colleagues had drafted the application, which was reviewed and settled by him on 21.01.2019. He had then instructed his junior colleagues and his clerk to coordinate with the authorised representative of the appellant for filing the application under Section 34 of the A&C Act. The application was filed on 23.01.2019, but it was found that a wrong CD had been used and therefore, an incorrect file was uploaded on the portal of the Registry of this Court. This was discovered subsequently. He conceded that there was a lapse on his part and on the part of his office for not immediately re-fling the correct file. He has explained that at the material time, the other clerk who handles filing before the Supreme Court and the High Court was on leave as his father was unwell.

47. The counsel has further affirmed that his colleagues had again prepared a file and uploaded the same on 04.02.2019 but this too related to another matter but with a similar cause title. According to him, after

the said error was discovered, it was found that the complete arbitral record was not available and therefore, it was necessary to file a separate application seeking exemption from filing the complete arbitral record. The said process had taken some time. The learned counsel for the appellant fairly stated across the bar that he was responsible for ensuring that the correct file was uploaded. However, he was pre-occupied on account of his father being admitted to the ICU. He also stated that his father had expired subsequently. In the given circumstances, he could not oversee filing of the application.

48. In our view, the explanation provided by the learned counsel sufficiently explains the delay in filing the application under Section 34 of the A&C Act. There is also a minor delay in re-filing the petition.

49. We concur with the learned Single Judge that the court is not required to be liberal in condoning the delay in filing the application under 34 of the A&C Act. The legislature's intent is clearly reflected in the language of the proviso of Section 34(3) of the A&C Act. The Court can condone a delay for a maximum period of thirty days and that too after being satisfied that the applicant was prevented from filing the application within the stipulated period of three months after receipt of the award. However, given the explanation provided by the learned counsel, we are of the view that the delay has been adequately explained.

50. The appeal is accordingly, allowed. The impugned judgement is set aside.

51. The appellant's application under Section 34 of the A&C Act [O.M.P. (COMM) 97/2019] is remanded to the learned Single Judge to consider the same on merits.

VIBHU BAKHRU, J

PURUSHAINDRA KUMAR KAURAV, J

JANUARY 09, 2023
RK/Ch