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

% <u>Reserved on:06<sup>th</sup> September,2022</u> Decided on: 06<sup>th</sup> January, 2023

#### O.M.P. (COMM) 403/2019

## **RAJ KUMAR GUPTA**

Proprietor of M/s Raj Construction, E-204, Rishi Nagar, Rani Bagh, New Delhi-110034

.....Petitioner

Through: Mr. Mukesh Goel, Advocate.

versus

# M/ S NARANG CONSTRUCTIONS & FINANCIERS PVT. LTD.

409-411, N. N. Mall, Sector-3, Rohini, Delhi-110085, Through its Director Mr. Arun Rathi

....Respondent

Through: Mr. Avinash Trivedi, Ms. Ritika Trivedi, Mr. Anurag Kaushik, Advocates.

#### **CORAM:**

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HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

# J U D E M E N T

#### NEENA BANSAL KRISHNA, J.

#### **I.A. 13515/2019** (U/s 151 of CPC, 1908)

1. The present application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC") has been filed on behalf of the petitioner seeking condonation of delay of 52 days in filing the

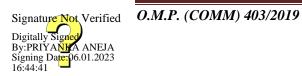


present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "A & C Act").

- It is submitted in the application that the present petition was filed for 2. the first time on 29<sup>th</sup> June, 2019. However, there was a delay of 52 days in re-filing the present petition since the file got annexed with another file, titled as Sushma vs. Gamesh Mathur RFA(OS) 31/2018, and the same could not be traced out earlier despite best efforts. Hence, the prayer is made that the delay of 52 days in re-filing the present petition be condoned.
- The respondent in its Reply has contended that the Award was made 3. on 15<sup>th</sup> March, 2019. The limitation of three months in filing the objections under Section 34 of A & C Act, 1996 expired on 13th June, 2019 and on account of the summer vacations of this Court, the objections under Section 34 of A & C Act, 1996 were filed on 29th June, 2019 i.e., on the day of re-opening of the Court.
- It is submitted that the re-filing has been done after a delay of 57 days 4. i.e., on 31<sup>st</sup> August, 2019 which is beyond the period of three months and 30 days on receipt of Award by the petitioner.
- 5. The conduct of the petitioner was hopelessly inadequate and insufficient that the initial filing of the objections by the petitioner has to be considered as non-est and of no consequence as has been held by the Division Bench of this Court in FAO(OS) 485-86/2011 dated 07<sup>th</sup> November, 2013 titled *Delhi Development Authority vs. Durga Construction* Company which has been followed by this Court in O.M.P. (COMM.) 132/2019 dated 03<sup>rd</sup> April, 2019; SKS Power Generation (Chhatisgarh Ltd.) vs. ISC Projects Private Ltd.; and O.M.P. (COMM.) 187/2019 dated 08th

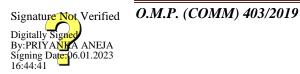
May, 2019 in Director-cum-Secretary, Department of Social Welfare vs. Sarvesh Security Services Pvt. Ltd..

- It is further asserted that the Statement of Truth has been attested by 6. the petitioner on 27<sup>th</sup> July, 2019 i.e., after the expiry of three months and 30 days on the receipt of the Award which is beyond the limitation prescribed under Section 34(3) of the A & C Act, 1996. Thus, on the last day of the limitation period, no petition with a supporting affidavit was filed before this Court. Hence, the present application along with accompanying petition under Section 34 of A & C Act, 1996 is liable to be dismissed.
- 7. Written Submissions have been filed on behalf of the respondent, wherein reliance has been placed on Delhi Delhi Development Authority vs. Durga Construction Co. 2013 SCC OnLine Delhi 4451, SKS Power Generation (Chhattisgarh) Ltd. vs. ISC Projects Private Limited 2019 SCC OnLine Del 8006, and Director-cum-Secretary, Department of Social Welfare vs. Sarvesh Security Services Pvt. Ltd. MANU/DE/1639/2019.
- 8. The petitioner in his Rejoinder has reaffirmed his assertions as made in the present application.
- 9. **Submissions heard.**
- 10. Section 34 (3) of the A & C Act, 1996 prescribes the limitation for filing the objections against the Arbitral Awards and reads as under:
  - "(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"

- A plain reading of Section 34(3) of the Act shows that the statutory 11. period of limitation for filing the objections against the Award is three 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 of three months.
- In the present case, admittedly, the Award was announced on 15<sup>th</sup> 12. March, 2019 and the limitation period of three months expired on 13<sup>th</sup> June, 2019. The petitioner could have claimed the benefit of additional 30 days in terms of Section 34(3) of A & C Act, 1996 i.e., upto 13<sup>th</sup> July, 2019, but it is subject to him establishing a sufficient cause for delay. The delay thus could be condoned upto a maximum of 30 additional days, ie. 13<sup>th</sup> July, 2019, on showing of sufficient cause.
- It is a well settled law that limitation does not extinguish an obligation, but merely bars the parties to take recourse of the Courts for availing the remedy as available to the parties. In an event a party fails to take expeditious steps to initiate an action within the time as specified, then the courts are proscribed from entertaining such action at the instance of the party. In Bharat Barrel and Drum Mfg. Co. Ltd. vs. ESI Corpn, (1971) 2 SCC 860, the rationale of prescribing limit was explained. It was observed that the necessity of enacting a period of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence, documentary as well as oral, to enable the defendant to contest the



claim against him; secondly to give effect to the principle that the law does not assist a person who is inactive and sleeps over his rights. The principle which forms the basis of this rule is expressed in the maxim "Vigilantibus, Non Dormientibus, Jura Subveniunt" (the law give help to those who are watchful and not to those who sleep). The object of the statues of limitation is to compel a person to exercise his right of action within a reasonable time and also to discourage and suppress stale, fake or fraudulent claims.

- 14. The Apex Court in *Union of India vs. Popular Construction*, (2001) 8 SCC 470 observed that the legislative intent of providing a strict and nonflexible limitation period should not be defeated by condoning the delay without sufficient cause. It observed that the scheme and history of the 1996 Act supports the conclusion that the time-limit prescribed under Section 34 is absolute and inextensible by Court under Section 5 of the Limitation Act. 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"
- 15. The Supreme Court thus held that the time limit prescribed under Section 34 of the Act is not extendable by the Court under Section 5 of the Limitation Act in view of the expression language of Section 34 (3) of the Act.



- 16. In <u>Simplex Infrastructure Ltd. vs. Union of India</u> 2019 (2) SCC 455, the apex Court interpreted the words "but not thereafter" occurring in Section 34 (3) of the A&C Act, and held that not a day beyond 120 days from the day of receipt of the Award can be condoned by the Court.
- 17. The Limitation Period of three 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).
- 18. The approach in condoning the delay in re-filing the petition after removal of formal defects, is generally much more liberal as is evident from the decision in *M/s. Competent Placement Services through its Director/Partner vs. Delhi Transport Corporation through its Chairman* 2011 (2) R.A.J. 347 (Del), where the Division Bench of this Court held that though the rigors of condonation the delay in re-filing are not as strict as for condonation of delay in filing, it does not mean that a party can be permitted an indefinite and unexplainable period for re-filing the petition.
- 19. Likewise, in <u>Executive Engineers vs. Shree Ram Construction and Company</u> 2011 (2) R.A.J 152, it was noted that the conduct of the party must pass the rigorous test of diligence as otherwise the purpose of prescribing the definite and un-elastic period of limitation is rendered futile. However, each case needs to be examined on its own facts and merits to ascertain whether or not to condone the delay in re-filing the objection petition when the initial filing is within the period of limitation. If the delay in re-filing is substantially beyond the period of three months and 30 days, the matter would require a closer scrutiny and adoption of more stringent norms while



considering the application for condonation of delay in re-filing.

- 20. In <u>Indian Statistical Institute vs. Associated Builders</u> (1978) 1 SCC 483, the objections were filed within time but were not properly stamped. The Supreme Court held that delay if any, was not due to any want or care on the part of the appellants, but due to circumstances beyond its control and held that there was no delay in preparing the objections.
- 21. The core question which has been considered time and again in the various judgements is whether the first filing, even though filed within the prescribed limitation period, can be considered a valid filing in case, it suffers from inherent defects. In case, it is found to have inherent defects, such filing has been held as non-est and the date of re-filing has been considered as the first date of filing. However, where the defects have been found to be only formal in nature, then the date of first filing is considered as the date to reckon for the purpose of limitation. Rigors of interpretation for condonation of delay of 30 days beyond the initial 3 months while considering the filing have been held to be much more stringent while the rules for condonation of delay in re-filing does not suffer from the same rigors of interpretation. It is, therefore, of great importance to understand what amounts to formal defects or fundamental defects. What are the formal defects or fundamental defects can be understood from the various cases as discussed below.
- 22. Rule 5(3) of the Delhi High Court Rules states that if the Memorandum of Appeal is filled, the Deputy Registrar may permit the removal of objections within 7 days. In *Ashok Kumar Parmar Vs. D.C. Sankhla*, 1995 RLR 85, the Single Judge of this Court held that, looking at the language of the Rules framed by the 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 eyes 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 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.

- 23. The Division Bench upheld this view in <u>D.C Sankhla Vs. Ashok Kumar</u> 1995 (1) AD (New Delhi) 753 by upholding the decision of the Single Judge and observing that the date on which the plaint is presented ,even though with defects, would be the date for the purpose of the Limitation Act. Rule 1 and 2 of Delhi High Court (Original Side) Rules, 1967 do not even remotely suggest that the re-filing of the plaint after removal of the defects would be the effective date of the filing of the plaint for purpose of the Limitation Act.
- 24. While the law in regard to the filing of the objection petition within three months plus 30 days is absolute as has been discussed above, the practice being followed in the Courts shows that there are essentially two stages of filing viz.
  - (i) the initial or the first filing; and
  - (ii) re-filing, in case certain objections are found at the time of first filing.
- 25. In <u>Oil and Natural Gas Corporation Ltd. (ONGC) vs. Joint Venture of Sai Rama Engineering Enterprises and Infrastructure Limited</u> 2019 SCC OnLine Delhi 10456, the defects as noted in the initial findings were that affidavits were not attested nor signed; the Court Fee was short; the petition was neither signed nor dated. *Vakalatnama* was not executed and the



signatures of the Advocates were missing. Statement of Truth was not filed. The memo of parties did not give the complete details about the e-mail address, etc. There was no book marking, volumes of the documents were to be made. Hard copies were not filed and index was directed to be paginated.

- 26. At the time of **re-filing** it was found that none of the defects as noted at the time of filing were cured. 10 pages of index were filed which did not cure the earlier defects. It was held that such filing was in fact *non-est* as it failed to meet the basic requirements of any pleadings and such a *non-est* filing cannot stop limitation and cannot be a ground to condone the delay. Thus, when a petition is filed under Section 34 of the A&C Act in order to be termed 'a properly filed petition', it must fulfill 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.
- 27. In the case of <u>Oil and Natural Gas Corporation Ltd. vs. Planetcast Technologies Ltd.</u>, 271 (2020) DLT 474, this Court explained the rationale behind insisting on these fundamental compliances while filing a petition, which it held were not far to seek. *Vakalatnama* is an authority which authorizes an Advocate to act on behalf of a party and to carry out certain acts on his behalf. The Statement of Truth accompanying a petition or an application is sworn by the deponent who states an oath that the contents of the accompanying petition have been drafted under his instructions and are



true and correct to his knowledge or belief. The Affidavit so filed has to not only be signed but also attested and filed along with the petition. This is also a requirement under the Commercial Courts Act, 2015.

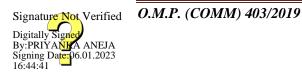
- 28. In the case of Jay Polychem (India) Ltd & Ors. Vs. S.E. Investment Ltd. 2018 SCC OnLine Del 8848, this Court while dealing with non-filing of Statement of Truth held that a Statement which is neither signed nor supported by an affidavit cannot be considered as an application under Section 34 of the Act. The Petition thus filed without the Statement of Truth is non-est.
- 29. In Union of India v. Bharat Biotech International Limited being OMP(COMM) 399/2019, decided by this Court on 18.03.2020, it was observed that at the time of filing the petition initially, no court fee was affixed, Vakalatnama was undated, accompanying Statement of Truth was incomplete and lacked critical information, and the supporting affidavit made reference to documents which were not annexed to the petition. The even more glaring defect was that, at the time of initial filing, the copy of the Award was not annexed with the petition. It was held that, it was incomprehendible as to how a petition is seeking to assail an Order, an Award in this case, without even annexing a copy of the award thereof can be claimed as valid filing, and that too without moving an application seeking an exemption from filing the copy of the impugned Award. The original petition initially filed, contained only 83 pages while subsequently more than 350 pages of documents were added to the petition. It was held that it was a *non-est* filing and the defects could not be underplayed as 'trivial' and were rather of such gravity that it would render the original filing as a mere dummy filing.

- 30. In light of the above case law, it needs to be considered in the present case as to whether the first filing which was within the prescribed period of limitation, was non-est or suffered from the formal defects which were rectified at the time of re-filing.
- The first filing was done on 29th June, 2019, immediately on the re-31. opening of this Court after summer vacation. The Registry gave a notice for the following defects on 03<sup>rd</sup> July, 2019:
  - "Total 94 pages filed without complete bookmarking. **Tribunal** should not be made a party. Statement of truth not attested. **Affidavit not attested.** In addition to the e-filing, it is mandatory to file hard copies of the fresh matters filed under Sections 9, 11 and 34 of the ARB. ACT 1996 with effect from 22.10.2018 but the same was not filed along with the e-filing. The petition was accordingly returned for re-filing on 04th July, 2019."
- The first re-filing was done on 31st August, 2019, and the defects were 32. noted on 02<sup>nd</sup> September, 2019 are as under:

"Following defects are found." [9, 96, 97, 6, 98, 201, 202, 207, 209, 210, 212, 214, 216, 224, 234, 237, 304, 305, 318, 215, 235, 245, 253]"

- "Total 297 pages filed. Court fee be paid. Master Index Format be followed strictly. Delay in filing. Certificate be filed as per format. Please correct the bookmarking. Hard file be submitted."
- The petition was re-filed for the second time on  $06^{th}$  September, 2019 33. and the defects noted on 07<sup>th</sup> September, 2019 were as under:

"Total 297 pages filed. E-court fee receipt no. be entered at the time of filing. Master index format be followed strictly. Hard file be submitted."



- 34. The re-filing was done on 24<sup>th</sup> September, 2019 and then on 25<sup>th</sup> September, 2019. Eventually, the re-filing was accepted on 25<sup>th</sup> September, 2019 and the case was sent before this Court.
- 35. The short question is whether in light of the case laws as discussed above, the petitioner has been able to establish a ground for condonation of delay in refilling the petition. The entire issue hinges on the determination of whether the first filing on 29<sup>th</sup> June, 2019 (which was admittedly within the period as prescribed under Section 34 of A & C Act, 1996) can be considered as a filing or is it a *non-est* filing. The main objections taken to the first filing were that the Statement of Truth and the Affidavit were not attested and the number of pages at the time of first re-filing were increased to 297 pages from 94 pages.

#### A. Non-attestation of Statement of Truth and Affidavit:

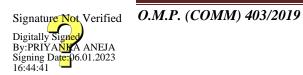
- 36. The first question is whether such non-attestation of affidavit/statement of truth, but signed, is a procedural defect or goes to the core of making the affidavit non-admissible and non-existent in the eyes of law.
- 37. Section 26 of CPC deals with institution of suits which prescribes as below:
  - "26. **Institution of Suits** (1) every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.
  - (2) In every plaint, facts shall be proved by affidavit."
- 38. It may be noted that sub rule (2) of Section 26 was inserted by way of the amendments that were given effect from 01.07.2022.



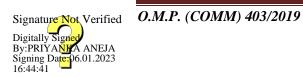
- 39. Order IV of the Code deals with institution of suits and Rule 1 thereunder (which was also introduced by the Amendment Act, 1999 w.e.f. 01.07.2002) provides for the commencement of the suit as below:
  - "1. Suit to be commenced by plaint.- (1) Every suit shall be instituted by presenting a plaint in duplicate tot eh Court or such officer as it appoints in this behalf.
  - Every plaint shall comply with the rules contained in *Order VI and VII, so far as they are applicable.*
  - The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in subrules (1) and (2)"
- 40. On a conjoint reading of the aforementioned Section, it clearly emerges that the suit is to be instituted upon a presentation of the plaint or in such a manner as maybe prescribed in the CPC and the facts in the plaint are to be proved by affidavit. The provision applicable for institution of plaint are mutatis mutandis applicable to the objections filed under Section 34, which is the nature of a petition and are required to comply with the requirements as specified under Order VI Rule 1 as well as Order VI Rule 15 of CPC.
- 41. Section 15A of the Commercial Courts Act, 2015 reads as under:

# "15A. Verification of pleadings in a commercial dispute. -

- (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.

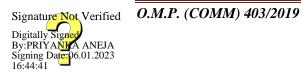


- (3) Where a pleading is amended, the amendments must be verified in the form and manner referred to in sub-rule (1) unless the Court orders otherwise.
- (4) Where a pleading is not verified in the manner provided under sub-rule (1), the party shall not be permitted to rely on such pleading as evidence 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."
- 42. Section 15A, 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 in 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.
- The re-filing was done by the petitioner on 31<sup>st</sup> August, 2019. 43. Incidentally, the Statement of Truth and Affidavit got verified and attested on 27<sup>th</sup> July, 2019 i.e., beyond the additional 30 days from 13<sup>th</sup> June, 2019 as is permitted under Section 34(3) of the A & C Act, 1996.
- In the case of Kailash vs. Nankhu (2005) 4 SCC 480, the Supreme 44. Court had observed that unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in such a manner that would leave the Court helpless to meet the extraordinary situations in the ends of justice. Merely because a provision of law is couched in a negative language thereby giving it a mandatory character, the same would not become mandatory and that



directions contained are only directory in nature and not mandatory, being procedural law.

- 45. This aspect came up for consideration in the case of *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 were considered, reiterated the principle that rules or procedure are made to further the cause of justice and not to obstruct the same. It was held that a procedural enactment ought not to be considered in such a manner that it would prevent the Court from meeting the ends of justice in different situations. In regard to the amendments introduced by the Amendment Act 46 of 1999, it was observed that the intention of the legislature in bringing about the various amendments in the Code w.e.f. 01.07.2002 were aimed at eliminating the procedural delays in the disposal of civil matters. The amendments effected to Section 26, Order IV and Order VI Rule 15 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. To take such a stand would be too pedantic and would be contrary to the accepted principles involving interpretation of statues.
- 46. Notary attestation is a basic procedure of authentication in which the document bears the notary stamp of a notary public. The attestation is a kind of confirmation about the genuineness of a person who has signed the document and verification that proper process has been followed.



- 47. Section 68 of the Indian Evidence Act, 1872 speaks how a document which is required to be attested can be proved. According to this Section, a document required by law to be attested shall not be used as evidence unless one attesting witness at least is examined to prove its execution. This also establishes that the attestation is more of a procedural requirement for establishing the authenticity of a document.
- 48. Section 84 of the Indian Evidence Act, 1872 raises a presumption as to the authority of the notary public. It provides that if a document contains the signature of the notary public, no further evidence needs to be produced before the Court since it is an official act done by the notary public done in discharge of official duty. Attestation is thus, in the realm of presumptions as to the genuineness of the document for the purpose of evidence as defined under Section 84 of the Indian Evidence Act, 1872. This further reinforces the presumption that attestation is more of a procedural requirement and does not impact the validity of the document itself.
- 49. The effect of non-attestation of the affidavit filed in respect of the plaint was considered in *Alka Kasana vs. Indian Institute of Technology* (2015) SCC OnLine Delhi 11455, and it was held that Order VI CPC does not provide for or envisage any consequence for non-compliance of the provisions contained therein. The inevitable inference is that Order VI CPC is a provision that signifies the date on which a suit is deemed to have been instituted for purposes of limitation. The original side Rules of High Court of Delhi specifies the manner in which the plaint is required to be scrutinized and stipulates the timeline granted to the plaintiff to cure the defects/objections, if any, raised by the Registry at the time of scrutiny. The introduction of the Clause providing for an affidavit in respect of the

pleadings by the Amendment Act of 1999 was only to hasten the process of disposal of a suit by fixing the responsibility on a party who initiates the suit. However, the said object and reason cannot be interpreted to hold that the plaint itself can be rejected mechanically without examining the merits of the case. It was thus, held that non-attestation of the accompanying affidavit was a mere irregularity that was capable of being cured and cannot be treated as fatal to the institution of the suit.

50. In light of the above discussions, the objection of the non-attestation of the affidavit cannot make the first filing as *non-est*. It only suffered a defect which was curable and was in fact cured at the time of first re-filing on 31.08.2019.

### **B.** Increase in number of pages:

- 51. The Registry at the time of first filing, had noted that initially 94 pages were filed, but on 31.08.2019 at the time of re-filing, 297 pages were filed. The perusal of the record shows that initially 94 pages that included the Award (34 pages), had been filed along with Objections and other documents. However, the pleadings and the evidence recorded in the proceedings before the Arbitrator which is total 297 pages has been filed subsequently. Essentially, it is the detailed proceedings before the Arbitrator which had been filed in addition to the Award which stood filed at the initial stage. This explains the increase in the number of pages. The fundamental requirement of filing the copy of the Award was satisfied at the time of first filing itself.
- 52. For the reasons as discussed above, it is held that the first filing on 29.06.2019 was valid filing and was not *non-est* and there was no delay in filing of the Objections which was well within the time.



- 53. Thereafter, 52 days have been taken for rectification of the defects which were noticed at the time of re-filing. The record shows that the refiling has been done on 31.08.2019, 06.09.2019, 24.09.2019 and 25.09.2019. The log information as stated and the conduct of the petitioner shows that he had been promptly taking steps for rectification of the defects as were being pointed out by the Registry from time to time. The parameters for condoning of delay at the time of re-filing of the objections is liberal and is not governed by the stringent interpretations that may be required at the time of the objections within the prescribed period of three months as has been observed in the case of M/s. Competent Placement Services through its Director/Partner (supra) and Executive Engineers (supra).
- 54. In the circumstances as explained above, the delay of 52 days in rectification and re-filing is hereby condoned.

# O.M.P. (COMM) 403/2019 & I.A. 13513/2019

List before the Roster Bench on 23<sup>rd</sup> January, 2023.

(NEENA BANSAL KRISHNA) JUDGE

**JANUARY 06, 2023** S.Sharma

