



2025:DHC:717-FB



\$~ (Full Bench)

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

*Reserved on: 19.12.2024*

*Pronounced on: 07.02.2025*

+ **FAO(OS) (COMM) 70/2024 & CM APPL. 21475/2024**

PRAGATI CONSTRUCTION CONSULTANTS ...Appellant

Through: Mr. S.S. Sastry, Mr. Brijesh  
Tiwari, Mr.Priyank Garg &  
Mr.Umesh Kr, Adv.

Versus

UNION OF INDIA & ANR. ....Respondents

Through: Mr.Shashank Garg, Sr. Adv.  
with Mr.Ripu Daman  
Bhardwaj, CGSC, Ms.Nishtha  
Jain, Ms.Aradhya Chaturvedi,  
Ms.Vidhi Gupta,  
Mr.Hussain Taqvi, Adv. for  
UOI. And Mr.Gurmail,  
XEN/C/Northern Railway.  
Ms.Suparna Jain, Mr.Dushyant  
K Kaul, Adv. for Intervenor.

+ **O.M.P. (COMM) 20/2024 & I.As. 568/2024, 570/2024,  
3462/2024 & 9732/2024**

BHARAT BROADBAND NETWORK LIMITED ...Petitioner

Through: Mr.Jayant Mehta, Sr. Adv. with  
Mr.Deepayan Mandal,  
Mr.Mridul Bansal & Mr.Naman  
Varma, Ms.Ayushi Kumar,  
Adv.

Versus

STERLITE TECHNOLOGIES LIMITED ....Respondent

Through: Mr.A.K.Thakur, Mr.Rishi Raj,  
Mr.Sujeet Kumar &  
Mr.Ningthem Oinam, Adv.  
Ms.Payal Chawla, Ms.Hina  
Shaheen & Ms.Latika Arora,



Advs. for Intervenors

**CORAM:**

**HON'BLE MS. JUSTICE REKHA PALLI  
HON'BLE MR. JUSTICE NAVIN CHAWLA  
HON'BLE MR. JUSTICE SAURABH BANERJEE**

## **J U D G M E N T**

**NAVIN CHAWLA, J.**

### **PREFACE**

1. This Full Bench has been constituted to answer the reference made by the learned Single Judge of this Court *vide* his Order dated 21.03.2024 (hereinafter referred to as 'Order of the Reference') passed in OMP(COMM) 20/2024 titled ***Bharat Broadband Network Limited v. Sterlite Technologies Limited***.

2. The relevant extracts from the Order of the Reference, which would also indicate the question of law to be determined by this Full Bench, is as under:

*"4. As far as the Statement of Truth is concerned, it is undisputed that the Statement of Truth was not filed on 27.10.2023, when the petition was first filed. However, learned counsel for the parties have drawn my attention to two Division Benches judgments, which come to different conclusions as to whether the lack of Statement of Truth constitutes a fatal defect in the original filing.*

*5. The first of these decisions is ONGC v. Sai Rama Engineering Enterprises [2023 SCC OnLine Del 63]. Mr. Jayant Mehta, learned Senior Counsel for the petitioner has drawn my attention to paragraph Nos. 30 to 35 which read as follows:*

*"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.

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 I 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 hut it would not render it non est.**"

[Emphasis supplied.]

6. In contrast, Mr. Thakur cites a later



*Division Bench judgment in ONGC V. Planetcast Technologies Ltd., [2023 SCC OnLine Del 8490], in which the Court has held as follows:*

*"40. It has been argued by the counsel for the appellant that procedural enactments ought not to be considered in such a manner that it would prevent the Court from meeting the ends of justice. The amendments effected in Commercial Courts Act, 2015 to various provisions of CPC as applicable to the commercial disputes 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. Reliance had been placed on Vidyawati Gupta V5. 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, reiterated the principle that rules or procedure are made to further the cause of justice and not to obstruct the same.*

*41. Petitions under Section 34 of the Act, 1996 fall within the jurisdiction of the Commercial Division of the High Court, making the Commercial Courts Act, 2015 applicable to such petitions. The pre requisite of filing a Statement of Truth has been emphasised in Order XI Rule 1 C.P.C. as amended under Commercial Courts Act, 2015 which reads as under:*

*—Order XI Rule 1 CPC:*

*\*\*\**

*(3) The plaint shall contain a declaration on oath from the plaintiff*



*that all documents in the power, possession, control or custody of the plaintiff, pertaining to the facts and circumstances of the proceedings initiated by him have been disclosed and copies thereof annexed with the plaint, and that the plaintiff does not have any other documents in its power, possession, control or custody.*

***Explanation.—A declaration on oath under this sub-rule shall be contained in the Statement of Truth as set out in the Appendix."***

*42. In this regard, it is pertinent to refer to Section 15A of the Commercial Courts Act, 2015 which provides for the verification of pleadings presented to the commercial courts which 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 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."*

43. Section 15A of C.P.C as amended under Commercial Courts Act, 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 by way of 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.

**44. The pre-requisite of filing the Statement of Truth has been reiterated in the case of Jay Polychem (India) Ltd & Ors. Vs. S.E. Investment Ltd. 2018 SCC OnLine Del 8848, where 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.**

45. Similarly in Director-cum-Secretary, Department of Social Welfare v. Saresh Security Services Pvt. Ltd., (2019 SCC



OnLine Del 8503), the petition was filed without a Statement of Truth. The question therefore was whether such a petition could qualify as a filing in law? This question has been a subject matter of several decisions 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.

46. Suffice is it to say, without the Statement of Truth, the filing of the petitions under Section 34 of the Act, 1996 by the petitioners becomes non-est and is reduced to a sheer futile attempt to pause the limitation period from running out. The appellant cannot claim the benefit of a non-est filing though made within the period of limitation, when the proper filing of the petition was only made after the expiry of the stipulated period of three months and thirty days. "

[Emphasis supplied.]

7. It may be mentioned that the judgment in Planetcast has noticed the earlier Judgment in Sal Rama, which has been referred to in paragraph 34, albeit in the context of filing of a copy of the award.

8. It appears to me that there is a clear conflict between the views taken by the two Division Benches. In Sal Rama, the requirement of the statement of truth has been described as "procedural" and capable of rectification. A similar argument was taken before the Division Bench in Planetcast (para 40), but rejected.





9. The question of requirement of a valid filing arises in several cases under Section 34 of the Act. The point with regard to non-filing of the Statement of Truth is one which requires authoritative clarification in view of the conflicting views taken by the Division Benches.

10. In these circumstances, I am of the view that the matter be referred to a Bench of two or more Judges, as provided for under Rule 2, Chapter II of the Delhi High Court (Original Side) Rules, 2018. The Registry is directed to place the matter before Hon'ble the Acting Chief Justice for reference of the matter to an appropriate Bench.”

(Emphasis supplied)

3. From a reading of the above, it would be apparent that the learned Single Judge of this Court was of the opinion that there is a conflict of view expressed by the two Division Benches; one in ***Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)***, 2023 SCC OnLine Del 63, which had held that the non-filing of the Statement of Truth under Order VI Rule 15A of the Code of Civil Procedure, 1908 (in short, ‘CPC’), as applicable to the Commercial Courts Act, 2015 (in short, ‘CC Act’), will not make a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, ‘A&C Act’) as “*non-est*”; and in ***Oil and Natural Gas Corporation Ltd. v. Planetcast Technologies Ltd.***, 2023 SCC OnLine Del 8490, which had held that a petition filed under Section 34 of the A&C Act without a Statement of Truth or with a Statement of Truth which is neither signed nor supported by an



affidavit, shall be “non-est’.

4. While the above Reference was pending adjudication before the Full Bench, by an Order dated 09.05.2024 passed by the Division Bench of this Court in FAO(OS)(COMM) 70/2024, titled ***Pragati Construction Consultants v. Union of India***, the question whether non-filing of the Arbitral Award itself would render a petition filed under Section 34 of the A&C Act as “non-est”, was referred also to the Full Bench, by observing as under:

*“6. The leaned counsel for the appellant submits that the filing as on 01.11.2023 was not non est. It was complete in all respects except that it was not supported by a vakalatnama and the impugned award.*

*7. The learned counsel appearing for the appellant has referred to an earlier decision of a Coordinate Bench of this Court in Oil and Natural Gas Corporation Ltd. v. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Meglia Engineering & Infrastructure Limited (Meil): 2023 SCC OnLine Del 63 and has submitted that the question whether a filing is non est must be considered by examining all defects cumulatively. It is also pointed out that this Court had held that “/« 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.” He submitted that none of the said defects could by itself be considered as fatal to the filing.*

*8. The learned counsel appearing for the respondent has countered the aforesaid submissions. He has also referred to the decision of the Coordinate Bench of this Court in Union of India v. Panacea Biotec Limited:*



2023 SCC Online Del 8491 holding that non-filing of the award would render the filing non est. It is also submitted that the rationale for the same is obvious as the grounds urged in the application to set aside the award cannot be examined in a meaningful manner if the application is not accompanied by the arbitral award. He also submitted that the entire object of reckoning the period for filing the petition after receipt of the signed copy of the award was to enable the parties seeking to challenge the same to make a meaningful challenge. Thus, it would not be in conformity with the scheme of things that an application to set aside the award be then filed without a copy of the same.

9. We have heard the learned counsel for the parties.

10. We have some reservations as to the proposition that non-filing of an award simplicitor would render an application filed under Section 34 of, the A&C Act non est as held by the learned Single Judge. The question whether a filing is non est must be examined from the standpoint of whether it is an intelligible filing and depends on the cumulative effect of the defects. The decision in Oil and Natural Gas Corporation Ltd. (supra) did not hold that non-filing of an award itself would render the filing as non est.

11. In the present case, it is also noticed that although the initial filing was only 111 pages and the filing on 22.12.2023 spanned over 2150 pages. However, the application as initially filed remained unaltered. The date of the application as well as the affidavit affirming the same, was not altered in any manner. It is apparent that the application was re-filed, albeit, with further documents.

12. In this view, we consider it apposite that the appeal be heard by a Larger Bench. We note that a Larger Bench has been constituted to examine the question whether a defect of non-filing the Statement of Truth along with the application would be an incurable defect



*rendering the plaint liable to be rejected.”*  
(Emphasis supplied)

**RELEVANCE OF THE QUESTION(S) OF LAW REFERRED:**

5. The above issues arise for consideration of this Court as Section 34(3) of the A&C Act prescribes a strict period of limitation for filing of a petition under Section 34 of the A&C Act and also restricts the period of delay that can be condoned by the Court.

6. Section 34(3) of the A&C Act reads as under:

***“34. Application for setting aside arbitral award.***

xxx

*(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.”*

7. The Supreme Court in ***Union of India v. Popular Construction***, 2001(8) SCC 470, held that the limitation period of 03 months plus 30 days as provided in Section 34(3) of the A&C Act is inelastic and inflexible. Therefore, any delay beyond this period cannot be condoned by the Court. The same view was reiterated by the Supreme Court in ***Simplex Infrastructure Ltd. v. Union of India***, (2019) 2 SCC 455.



8. Keeping in view the above, in ***Delhi Development Authority v. Durga Construction Co.***, 2013 SCC OnLine Del 4451, a Division Bench of this Court, while holding that consideration and parameters to be applied in cases of delay in re-filing are different from the cases of a delay in filing of a petition under Section 34 of the A&C Act, further emphasised that in certain cases where the petitions or applications filed by a party under Section 34 of the A&C Act are so hopelessly inadequate and insufficient, or they contain defects which are fundamental to the consideration of the proceedings, then, in such cases, the filing done by the party would be considered “*non-est*” and of no consequence. It was held that in such cases, the party cannot be given the benefit of initial filing and the date on which the defects are cured would have to be considered as the date of initial filing. We may quote from the Judgment 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.”*

9. Additionally, the Division Bench in ***Durga Construction Co.***



(supra) also emphasised that where the defects are only perfunctory and not affecting the substance of the petition, even though the petition is re-filed beyond the period of 3 months and 30 days, the Court has the jurisdiction to condone the said delay in re-filing. It emphasised that Section 34(3) of the A&C Act only prescribes the limitation with regard to the filing of an application to challenge the Award and has no further application on the delay in re-filing of such petition. We may quote from the Judgment as under:

*“18. In several cases, the defects may only be perfunctory and not affecting the substance of the application. For example, an application may be complete in all respects, however, certain documents may not be clear and may require to be retyped. It is possible that in such cases where the initial filing is within the specified period of 120 days (3 months and 30 days) as specified in section 34(3) of the Act, however, the re-filing may be beyond this period. We do not think that in such a situation the court lacks the jurisdiction to condone the delay in re-filing. As stated earlier, section 34(3) of the Act only prescribes limitation with regard to filing of an application to challenge an award. In the event that application is filed within the prescribed period, section 34(3) of the Act would have no further application. The question whether the Court should, in a given circumstance, exercise its discretion to condone the delay in re-filing would depend on the facts of each case and whether sufficient cause has been shown which prevent re-filing the petition/application within time.*

*19. The Supreme Court in the case of Union of India v. Popular Construction Company: (2001) 8 SCC 470 has held that the time limit prescribed under section 34 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. However, this decision would not be applicable in cases where the application under section 34 of the Act has been filed within the extended time prescribed, and there is a delay in re-presentation of the application after curing the defects that may have been pointed out. This is so because section 5 of the Limitation Act, 1963 would not be applicable in such cases. Section 5 of the Limitation Act, 1963 provides for extension of the period of limitation in certain cases where the Court is satisfied that the appellant/applicant had sufficient cause for not preferring an appeal or making an application within the specified period. In cases, where the application/appeal is filed in time, section 5 would have no application. The Supreme Court in the case of *Indian Statistical Institute v. Associated Builders*: (1978) 1 SCC 483 considered the applicability of section 5 of the Limitation Act, 1963 where the objection to an award under the provisions of the Arbitration Act, 1940 was filed in time but there was substantial delay in re-filing the same. The High Court in that case held that there was a delay in filing the objections for setting aside the award and consequently, rejected the application for condonation of delay. An appeal against the decision of the High Court was allowed and the Supreme Court rejected the contention that there was any delay in filing objections for setting aside the award. The relevant extract from the decision of the Supreme Court is reproduced below:-*

*"9. .... In the circumstances, it cannot be said that objections were not filed within time or that because they were not properly stamped the objections could not be taken as having been filed at all. Therefore, in our view, there had not been any delay in preferring the objections. The delay, if any, was in*



*complying with the directions of the Registrar to rectify the defects and refiling the objections. The delay, as we have pointed out earlier, is not due to any want of care on the part of the appellant but due to circumstances beyond its control.*

*10. The High Court was in error in holding that there was any delay in filing the objections for setting aside the award. The time prescribed by the Limitation Act for filing of the objections is one month from the date of the service of the notice. It is common ground that the objections were filed within the period prescribed by the Limitation Act though defectively. The delay, if any, was in representation of the objection petition after rectifying the defects. Section 5 of the Limitation Act provides for extension of the prescribed period of limitation if the petitioner satisfies the court that he had sufficient cause for not preferring the objections within that period. When there is no delay in presenting the objection petition Section 5 of the Limitation Act has no application and the delay in representation is not subject to the rigorous tests which are usually applied in excusing the delay in a petition under Section 5 of the Limitation Act. The application filed before the lower court for condonation of the delay in preferring the objections and the order of the court declining to condone the delay are all due to misunderstanding of the provisions of the Civil Procedure Code. As we have already pointed out in the return the Registrar did not even specify the time within which the petition will have to be represented."*

*20. It follows from the above that once an application or an appeal has been filed within*





*the time prescribed, the question of condoning any delay in re-filing would have to be considered by the Court in the context of the explanation given for such delay. In absence of any specific statute that bars the jurisdiction of the Court in considering the question of delay in re-filing, it cannot be accepted that the courts are powerless to entertain an application where the delay in its re-filing crosses the time limit specified for filing the application.”*

10. The Supreme Court in ***Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.***, (2017) 11 SCC 234, has also held that Section 34(3) of the A&C Act has no application while considering an application seeking condonation of delay in re-filing of the petition, as the said Section applies only to the initial filing of the application under Section 34 of the A&C Act. We may quote from the Judgment as under:

*“4. We find that said Section 34(3) has no application in re-filing the petition but only applies to the initial filing of the objections under Section 34 of the Act. It was submitted on behalf of the respondent that Rule 5(3) of the Delhi High Court Rules states that if the memorandum of appeal is filed and particular time is granted by the Deputy Registrar, it shall be considered as fresh institution. If this Rule is strictly applied in this case, it would mean that any re-filing beyond 7 days would be a fresh institution. However, it is a matter of record that 5 extensions were given beyond 7 days. Undoubtedly, at the end of the extensions, it would amount to re-filing.*

*5. We are not inclined to accept this contention, particularly since the petitioner has offered an explanation for the delay for the period after the extensions.”*



2025:DHC:717-FB



11. From the above, it would be evident that for purposes of stopping the period of limitation for filing of an application under Section 34 of the A&C Act, it is the date of the filing of such petition which would be relevant. If the date of the filing is within the period of 3 months, it is within the period of limitation as prescribed under Section 34(3) of the A&C Act. If the application is not filed within 3 months of the receipt of the Arbitral Award, it is beyond the period of the limitation. In such a case, delay in filing of the application under Section 34 of the A&C Act can be condoned by the Court, however, only upto a period of 30 days, and that too on sufficient cause being shown. In essence, if an application under Section 34 of the A&C Act is not filed within the period of 3 months and 30 days, the Court has no jurisdiction to condone the delay in filing of such an application, and it shall have to be dismissed for being barred by limitation.

12. The Court, however, was repeatedly confronted with a situation wherein, though the application under Section 34 of the A&C Act was filed within the period of limitation, however, after removing the defects in such filing, the application came to be re-filed only beyond the period of 3 months and 30 days as prescribed under Section 34(3) of the A&C Act. It was held that in such a situation, the power of the Court to condone the delay in re-filing of the application, will not be curtailed by Section 34(3) of the A&C Act, and the Court shall have the power to condone such delay in re-filing even though the re-filing has occurred beyond the period of 3 months and 30 days.

13. The Court was, however, also confronted with situations



wherein, the Court, on considering the nature of the application initially filed under Section 34 of the A&C Act within the period of 3 months or within the period of 3 months and 30 days (which is the maximum condonable period for filing of an application under Section 34(3) of the A&C Act), formed an opinion that the application so filed was lacking the basic attributes of an application under Section 34 of the A&C Act and was, therefore, “*non-est*”. In such a case, it was held that the date of re-filing of the application would be considered as the date of the first filing of the application under Section 34 of the A&C Act, and the period of limitation shall stop running only on that date, with no benefit being extended to the applicant of the initial date of filing of the application for the purposes of limitation under Section 34(3) of the A&C Act. In such a case, if the date of re-filing of the application was beyond the period of 3 months and 30 days, as prescribed under Section 34(3) of the A&C Act, the application shall be considered as being not only barred by time, but also, as being filed beyond the maximum period by which the delay in filing can be condoned.

14. Though not in relation to the A&C Act, in *Sunny Abraham v. Union of India*, (2021) 20 SCC 12, the Supreme Court has held that the term “*non-est*” conveys the meaning of something that is treated to be not in existence because of some legal lacuna in the process of creation of subject instrument which goes beyond remedial irregularity. It refers to a case where a legal instrument is deemed to be not in existence because of certain fundamental defects in its issuance and subsequent action cannot revive its existence and rectify



acts done in pursuance. Such instruments are treated as invalid, that is, what is non-existent in the eyes of law and cannot be revived retrospectively.

15. The prime consideration in such cases, therefore, is as to what is or what is not a “*non-est*” filing of the application under Section 34 of the A&C Act, and this is what has been referred in the above two proceedings to us for adjudication; one is on the effect of the absence or defect in the Statement of Truth (in OMP(COMM) 20/2024), and the other of the effect of non-filing of the Arbitral Award (in FAO(OS)(COMM) 70/2024).

#### **SUBMISSIONS OF THE PARTIES:**

16. Mr. Jayant Mehta, the learned senior counsel appearing for the petitioner in OMP(COMM) 20/2024, titled *Bharat Broadband Network Limited v. Sterlite Technologies Limited*, has submitted that Order VI Rule 15A of the CPC, as applicable to the CC Act, which mandates the filing of the Statement of Truth, in fact, has no application as far as an application under Section 34 of the A&C Act is concerned. He submits that the said provision applies only to a “pleading”, which is defined in Order VI Rule 1 of the CPC to mean a “plaint” or the “written statement”. As the application filed under Section 34 of the A&C Act challenging an Arbitral Award is not in form of a “plaint”, Order VI Rule 15A of the CPC, shall have no application thereto. Placing reliance on the Judgment of the Supreme Court in *P. Kasilingam & Ors. v. P.S.G. College of Technology & Ors.*, 1995 Supp(2) SCC 348, he submits that the use of the word



“mean” in Order VI Rule 1 of the CPC indicates that the definition is exhaustive and consequently, cannot be extended to a “pleading” beyond a “plaint” or a “written statement”. He submits that the CC Act uses the expressions “Application”, “Suit”, and “Appeal”, distinctly from one and another, and as held by the Supreme Court in *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizvi & Anr.*, (2012) 13 SCC 61, the use of distinct expressions in law refers to matters which are distinct from one another. The application filed under Section 34 of the A&C Act, therefore, cannot be equated to a pleading under Order VI Rule 1 of the CPC, to which alone Order VI Rule 15A of the CPC applies.

17. Mr. Mehta further submits that the Statement of Truth, as required under Order VI Rule 15A of the CPC, is only a verification of pleadings, and an absence thereof, is only a procedural defect, curable at a later stage. Therefore, even where the application under Section 34 of the A&C Act is filed without a Statement of Truth, or is filed with a Statement of Truth which is not properly signed or attested, it would only be a curable defect and would not make the application filed under Section 34 of the A&C Act as “non-est”. In support of his submission, he places reliance not only on the Judgment of this Court in *Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)* (supra), which is a subject matter of the Reference, but also on the Judgment of the Supreme Court in *Vidyawati Gupta & Ors. v. Bhakti Hari Nayak & Ors.*, (2006) 2 SCC 777; of this Court in *Prayag Polytech Pvt. Ltd & Anr. v. Raj Kumar Tulsian*, 2023 SCC OnLine Del 6058,



and in *Unilec Engineers Ltd. HPL Electric and Power Ltd.*, 2023 SCC OnLine Del 5162; of the Calcutta High Court in *Harji Engineering Works Pvt. Ltd v. Hindustan Steelworks Construction Ltd.*, 2021 SCC OnLine Cal 2457; and, of the Bombay High Court in *Haier Telecom (India) Pvt. Ltd. v. Drive India Enterprise Solutions Ltd.*, 2018 SCC OnLine Bom 2829.

18. Placing reliance on the Judgment of the Supreme Court in *Uday Shankar Triyar v. Ram Kalewar Prasad Singh & Anr.*, (2006) 1 SCC 75, he submits that procedural defects and irregularities which are curable, should not be allowed to defeat substantial rights or cause injustice. He submits that the objections filed under Section 34 of the A&C Act is the only remedy available to a party against the Arbitral Award, and same should not be defeated on mere procedural irregularities.

19. Placing reliance on the Judgment of the Supreme Court in *PASL Wind Solution Pvt. Ltd. v. GE Power Conversion India Pvt. Ltd.*, (2021) 7 SCC 1, he submits that the A&C Act is a self-contained exhaustive Code. He submits that Section 34 of the A&C Act does not prescribe a format or compulsory requirements of an application filed thereunder, and in absence thereof, the Court should not assume certain conditions to be pre-requisites to such an application, non-compliance whereof would make such an application “*non-est*”.

20. He submits that even, the Delhi High Court (Original Side) Rules, 2018 (hereinafter referred to as the ‘DHC Rules’) do not prescribe any format or essential requirements of an application under Section 34 of the A&C Act. Therefore, in absence of such stipulation,



2025:DHC:717-FB



it would not be justified to non-suit a litigation by prescribing some procedural requirement as an essential element, absence whereof makes the application filed “*non-est*”.

21. On our pointed query of what may or may not constitute an essential pre-requisite to an application filed under Section 34 of the A&C Act, he fairly produced before us two charts of precedents where the Courts have held certain essential attributes of an application under Section 34 of the A&C Act, absence whereof would make an application filed under Section 34 of the A&C Act to be declared as “*non-est*”, while on the other hand where the Courts have held the absence of certain requirements to be only procedural in nature and, therefore, curable, thus not warranting the filing to be declared as “*non-est*”. We reproduce these charts as under:



A

**CHART ON BEHALF OF THE PETITIONER REFLECTING JUDGMENTS WHERE THE INITIAL FILING WAS HELD TO BE NON-EST**

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing/Defective)	Vakalatnama (Non-Filing/Defective)	Petition (Unsigned/Unauthorized Signing)	Affidavit (Non filing/Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleading/ Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
19-10-2016	Sravanthu Infratech Private Limited v. Greens Power Equipment (China) Co. Ltd., 2016 SCC Online Del 5645 (Para 14)			✓	✓	✓					Non-Est	1. Not a valid filing in the absence of Vakalatnama, affidavit and signatures of the party. NOTE: Dismissed on the ground of conduct by the party in removing the defects on subsequent re-filings
04-05-2018	ITDC Vs Rajiv Kumar Saxena, 2018 SCC Online Del 8847 (Para 3 & 6)			✓		✓	✓				Non-Est	Section 34 petition filed initially held to be not valid filing
07-05-2018	Jay Polychem Vs S. E. Investment, 2018 SCC Online Del 8848 (Para 6)		✓		✓	✓					Non-Est	It was held that a statement neither signed nor supported by an affidavit was not an application under Sec 34
03-04-2019	SXS Power Generation (Chhattisgarh) Ltd. V. ISC Projects Pvt Ltd., 2019 SCC Online 8006 (Paras 11,18)	✓		✓	✓	✓	✓				Non-Est	The Court did not expressly use the term "non-est" but dismissed the condonation of delay in Refiling, <i>inter alia</i> , on the ground that only a bunch of papers (29 pages) were filed within limitation
25-09-2019	Director cum Secretary Vs Sarvesh Security Services, 2019 SCC Online Del 8503 (Para 3, 5 & 6)		✓	✓	✓	✓				✓	Non-Est	Held to be an invalid filing since petition not signed by neither petitioner
13-02-2020	Steel Stripes wheels Ltd. Vs Tata AIG General Insurance Co. Ltd., (2020 SCC Online Del 2079) (Para 14 & 21)		✓	✓							Non-Est	<ul style="list-style-type: none"> <li>Shoddy filing since Vakalatnama filed twice made first one defective.</li> <li>Different paginations rendering the petition non-est.</li> <li>Petition initially filed was held to be barred by limitation since first filing cannot be said to be a valid filing.</li> <li>Held: Initial filing invalid</li> </ul>
13-02-2020	SPML Infra Vs Graphite India Ltd., OMP (Comm) 494 of 2019 (Para 18)	✓	✓	✓	✓	✓					Non-Est	Petition not accompanied with Vakalatnama, Statement of Truth, duly signed or attested and not signed on all pages would cumulatively render the filing non-est.





B

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing /Defective)	Vakalatnama (Non-Filing/ Defective)	Petition (Unsigned/ Unauthorised Signing)	Affidavit (Non filing /Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleading/ Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
04-06-2020	Indira Gandhi National Open University Vs Sharat Das & Associates Ltd., OMP (COMM) 26/2019, (Para 5, 49)		✓	✓	✓	✓	✓				Non-Est	241 pages filed initially - 1305 pages filed in re-filing
17-06-2020	ONGC vs. Planetcast Technologies Ltd., 2020 SCC OnLine Del 2083 (Para 34)	✓	✓	✓	✓		✓		✓		Non-Est	The Ld. Single Judge held that the Statement of Truth, Vakalatnama and Award are vital documents, absence of which would render the Petition under Section 34 'bunch of papers' and hence, non-est
27-07-2020	Three C Universal Developers Pvt. Ltd. vs. Horizon Crest India Real Estate, 2020 SCC Online Del 2798 (Para 42)		✓	✓	✓	✓		✓			Non-Est	Initial filing highly deficient - particularly without valid authorizations
26-11-2021	Oriental Insurance Co. Ltd. Vs Air India Ltd., 2021 SCC OnLine Del 5139	✓	✓	✓	✓	✓					Non-Est	Filing non-est if petition not accompanied with signatures of party/counsel and Vakalatnama
04-07-2022	Ircon International Ltd. Vs Recon Engineers India Pvt. Ltd., OMP (Comm) 488 of 2019 (Para 15)	✓	✓	✓		✓	✓				Non-Est	It is also material to note that the petition as filed on 13.09.2019 was not accompanied by the impugned award or the vakalatnama. The filing as on 13.09.2019 cannot be considered as a valid filing
04-07-2022	Executive Engineer National Highway Division Vs. S&P Infrastructure Developers (P) Ltd., 2023 SCC Online Del 1859 (Para 14)	✓		✓	✓		✓				Non-Est	<ul style="list-style-type: none"> <li>Amending the petition doesn't mean curing a defect</li> <li>Award not filed in initial filing</li> </ul>
13-01-2023	ITDC Vs Bajaj Electricals Ltd., 2023 SCC OnLine Del 158	✓	✓		✓	✓	✓				Non-Est	Initial Filing non-est but defects cured within the extended period of 30 days
27-01-2023	Ircon International Ltd. Vs PNC-Jain Construction Co., 2023 SCC Online Del 534 (Para 30)			✓		✓				✓	Non-Est	<ul style="list-style-type: none"> <li>4 months taken to cure the defects</li> <li>Absence of Vakalatnama, appropriate affidavits, etc. render the filing as invalid</li> </ul>



C

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing/Defective)	Vakalatnama (Non-Filing/Defective)	Petition (Unsigned/Unauthorised Signing)	Affidavit (Non filing/Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleadings/Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
30-01-2023	NHAI Vs KNR Constructions, 2023 SCC Online Del 519	✓	✓		✓	✓	✓				Non-Est	
30-01-2023	Bhramanupra Crckers & Polymer Ltd. vs Rajshkhar Construction Pvt. Ltd., 2023 SCC Online Del 516 (Para 16)	✓	✓							✓	Non-Est	Award and Statement of Truth Mandatory for a valid section 34 petition filing.
01-09-2023	AV Industries Vs. Neo Neon Electrical Pvt. Ltd., 2023 SCC Online Del 5397 (Paras 35,36)		✓								Non-Est	A Commercial suit decided ex parte was challenged in appeal on the ground that the suit had not been filed with Statement of Truth. Appellate Court held that since the Statement of Truth had not been filed with the plain "or any time later at all" the "plain" was non-est. Matter Remanded back to Single Judge for reconsideration in light of ORNGC vs. Sair Rama
11-12-2023	Indira Gandhi National Open University Vs Sharat Das (DB), 2023 SCC Online Del 7915		✓	✓	✓	✓	✓				-	Matter Remanded back to Single Judge for reconsideration in light of ORNGC vs. Sair Rama
19-12-2023	ONGC vs. Flametcast Technologies Ltd., 2023 SCC OnLine Del 8490	✓	✓	✓	✓	✓	✓		✓		Non-Est	Limitation under Section 34 cannot be stretched through dummy filings - as they are non-est
19-12-2023	Union of India Vs Finance Biosci. Limited, 2023 SCC OnLine Del 8491 (DB) (Para 24)	✓				✓	✓			✓	Non-Est	<ul style="list-style-type: none"> <li>84 pages filed</li> <li>First filing a dummy filing since the contents of the petition were changed on subsequent filing</li> </ul>
28-07-2024	Delhi Development Authority v. Gammon Engineers & Contractors Private Limited, 2024 SCC OnLine 5154 (Para 6)	✓				✓					Non-Est	Section 34 Petition unaccompanied with award has to be treated as no filing in the eyes of law; in other words, non-est

A

**INDEX ON BEHALF OF THE PETITIONER REFLECTING JUDGMENTS WHERE THE INITIAL FILING WAS HELD TO BE VALID**

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing/Defective)	Vakalatnama (Non-Filing/Defective)	Petition (Unsigned/Unauthorised Signing)	Affidavit (Non filing / Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleading/Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
03-02-2006	Vidwani Gupta & Ors. v. Bhakti Hari Nayak & Ors., (2006) 2 SCC 777								✓		Valid	
07-09-2018	Haier Telecom (India) Pvt. Ltd. v. Drive India Enterprise Solutions Ltd., 2018 SCC OnLine Bom 2829 (Para 6)		✓								Valid	Held that the non-verification of Pleadings in a particular manner would not affect the stoppage of time for filing of suit - curable defect
14-09-2021	Haji Engineering Works Pvt. Ltd. v. Hindustan Steelworks Construction Ltd., AIR 2021 Cal 18 (Para 17)		✓								Valid	Written Statement filed without Statement of Truth - Held that Statement of Truth is a procedural requirement - Rules of Procedure cannot be given precedence in a manner so as to defeat the substantive rights of the parties
06-01-2023	Raj Kumar Gupt Vs Narang Constructions, 2023 SCC Online Del 40 (Para 50-51)		✓			✓	✓				Valid	<ul style="list-style-type: none"> <li>Non-attestation of the affidavit a curable defect.</li> <li>Proceedings of Tribunal led to increase in no. of pages</li> </ul>
09-01-2023	ONGC Vs Joint Venture of Sai Rama Engineering Enterprise, 2023 SCC Online Del 63 (Para 33-35 & 40)											<ul style="list-style-type: none"> <li>Non-Filing of affidavit or SOT defective but not a non-est filing. Such defects are procedural and curable</li> <li>Filing of a duly executed vakalatnama necessary but their absence would not render the filing non est.</li> <li>Signing of petition necessary.</li> <li>Court fee also a curable defect</li> </ul>
30-01-2023	Ambrosia Corner House Private Limited Vs Hangro S Foods, 2023 SCC Online Del 517 (Para 19)	✓				✓	✓			✓	Valid	<ul style="list-style-type: none"> <li>Award had to be filed in separate document as INDEX IV. However, the same was not filed accordingly.</li> <li>Still held the first filing as not a non-est</li> </ul>



B

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing/Defective)	Vakalatnama (Non-Filing/Defective)	Petition (Unsigned/Unauthorised Signing)	Affidavit (Non filing / Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleading/Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
06-07-2023	Ravi Batra Vs New IFS Cooperative Group Housing Society Ltd., 2023 SCC Online Del 4556 (Para 9)		✓		✓							• All such defects not fundamental to render the filing invalid or non-est NOTE: Finding contradictory as defect is raised pertaining to signing of the petition, however, it is held that no defect was raised to that effect.
17-08-2023	Unilec Engineers Ltd. v. HPL Electric & Power Ltd., 2023 SCC Online Del 5162 (Para 24 & 25)		✓								Valid	No Statement of Truth with Written Statement - Permission to file Statement of Truth granted subject to a cost of Rs. 10,000/-
04-12-2023	Viceroy Engineering Vs Smiths Detection Vecon Systems Private Limited, 2023 SCC Online Del 7654		✓								Valid	Initially the Sec 34 petition was filed in the format of Company Petition which was admittedly non-est. Later filed in correct format with some defects. The said filing was declared as valid
12-12-2023	Bliss Habitat Pvt. Ltd. Vs. Indiabulls Housing Finance Limited, 2023 SCC Online Del 7871 (Para 22 & 30)		✓			✓					Valid	Not a non-est filing since - Stiped petition was intelligible - Accompanied with award, Statement of truth and affidavits. - Only procedural defects were filed
24-01-2024	Saniya Goel v. BKR Capital Pvt Ltd. & Ors., 2024 SCC Online Del 593 (Para 12)		✓		✓						Valid	Written Statement be not taken off the record
10-05-2024	Kailash Chand Gian Chand Jain V. Union of India, 2024 SCC Online Del 3598 (Para 17)		✓				✓				Valid	Petition cannot be considered as non-est just because it was not accompanied by a Statement of Truth
05-07-2024	Boston Scientific India Pvt Ltd. v. Advanced Medtech Solutions Pvt Ltd., 2024 SCC Online Del 4656 (Para 14)		✓		✓						Valid	Defects pointed out by the Registry were curable
01-08-2024	Rajesh Wadhawan v. Naveen Sabharwal, 2024 SCC Online Del 5187 (Para 29-30)		✓								Valid	Written Statement not signed on each page and also not accompanied with Statement of Truth - Permitted to file defect-

C

Date of Judgment	Case Name	Non-Filing of Award	Statement of Truth (Non-Filing/Defective)	Vakalatnama (Non-Filing/Defective)	Petition (Unsigned/Unauthorised Signing)	Affidavit (Non filing / Defective)	Substantial Increase in Pages / Non-Filing of Documents	Changes in Contents of the Petition after filing	No Verification of Pleading/Petition	Insufficient Court Fee	Non-est or Valid Filing	Remarks
												free copy of Written Statement subject to a cost of Rs. 35,000
09-09-2024	Prime Interlobe (P) Ltd Vs Super Milk Products Pvt Ltd., 2024 SCC Online Del 6365 (Paras 7, 8)										Valid	Relied upon Sai Rama, defects not so fatal to render the filing as non-est.



22. On the other hand, Mr. A. K. Thakur, the learned counsel appearing for the respondent in OMP(COMM) 20/2024, by placing reliance on the Judgment of this Court in *Planetcast Technologies Ltd.* (supra), reiterates that non-filing of a Statement of Truth is a fundamental defect in the application filed under Section 34 of the A&C Act, which cannot be cured later. In absence of a Statement of Truth, the application filed under Section 34 of the A&C Act would be considered “*non-est*” and would not stop the period of limitation from running. In support, he places reliance on the Judgments of this Court in *Director-cum-Secretary, Department of Social Welfare v. Sarvesh Security Services Pvt. Ltd.*, 2019 SCC OnLine Del 8503; *Jay Polechem (India) Ltd. & Ors. v. S.E. Investment Ltd.*, 2018 SCC OnLine Del 8848; and, in *Ircon International Ltd. v. Reacon Engineers (India) Pvt. Ltd.*, 2022 SCC OnLine Del 1860.

23. He also sought to distinguish the Judgments relied upon by Mr. Mehta by submitting that the same are in relation to commercial suits and not with respect to the applications under Section 34 of the A&C Act.

24. He submits that the necessity of the Statement of Truth, especially for an application under Section 34 of the A&C Act, cannot be undermined as the intention of the Legislature is to expedite the arbitration and the adjudication of any challenge to the Arbitral Award. In the Statement of Truth, the objector therefore has to, on affidavit, state that the objector has filed all the documents in its power and possession and has not concealed any documents from the Court, which alone can expedite the adjudication of such an



application. Therefore, the importance of the Statement of Truth cannot be undermined or be treated as merely procedural in nature.

25. He further submits that in the present case, not only was the Statement of Truth not filed by the applicant, but there were also substantial changes made in the application that was filed initially under Section 34 of the A&C Act. He drew our attention to the changes made by the applicant to its application under Section 34 of the A&C Act initially filed by it. We are intentionally refraining ourselves from narrating the same, as we shall confine ourselves only to the question of law to be adjudicated without going into the merits of two cases before us. The factual matrix shall have to be considered by the concerned Benches upon the question of law being answered by us in this Judgment. Suffice here to say, the learned counsel for the respondent has submitted that where there are substantial changes made in the application post its initial filing, it shall be considered as a new application and the period of limitation shall stop only when the application with all its changes is eventually filed to be listed before the Court.

26. Mr.S.S. Sastry, the learned counsel appearing for the appellant in FAO(OS)(COMM) 70/2024, submits that the appellant has been non-suited by the learned Single Judge on the ground of non-filing of both the Impugned Arbitral Award and the *Vakalatnama* executed in favour of the learned counsel for the appellant with the initial application filed under Section 34 of the A&C Act.

27. As far as the non-filing of the Arbitral Award is concerned, he submits that Section 34 of the A&C Act does not mandate filing of the



Arbitral Award which is in challenge. He submits that wherever the Legislature required the Impugned Order to be necessarily filed, it has specifically stipulated the same in the provision itself, like in Order XLI Rule 1 of the CPC and Section 423 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS').

28. He submits that even the DHC Rules do not prescribe that the Impugned Arbitral Award has to be necessarily filed along with an application under Section 34 of the A&C Act. He submits that, therefore, the filing of the Impugned Arbitral Award cannot be considered as an essential condition, absence whereof shall render the application so filed to be declared as “*non-est*”.

29. Placing reliance on the charts filed by Mr. Jayant Mehta, Mr. S.S. Sastry submits that it has consistently been held that non-filing of the *Vakalatnama* is a curable defect and not filing the same would not make the application to be declared as “*non-est*”.

30. He submits that even otherwise, the same counsel, who was appearing for the appellant before the Arbitrator, had filed the application before this Court. Placing reliance on the Judgment of the Supreme Court in *Uday Shankar Triyar* (supra), he submits that in such a situation, non-filing of *Vakalatnama* is not a fatal defect.

31. Controverting the above submission, Mr. Shashank Garg, the learned senior counsel appearing for the respondent in FAO(OS)(COMM) 70/2024, submits that this Court has almost consistently held that non-filing of the Impugned Arbitral Award, would make the application filed under Section 34 of the A&C Act as “*non-est*”, as without the same, the Court would be in no position to



appreciate a challenge thereto. He submits that it would, therefore, be a basic and bare minimum requirement of an application filed under Section 34 of the A&C Act. For this, he places reliance on the Judgments of this Court in ***SKS Power Generation (Chhattisgarh) Ltd. v. ISC Projects Pvt. Ltd.***, 2019 SCC OnLine Del 8006; ***Brahamputra Cracker and Polymer Ltd. v. Rajshekhar Construction Pvt. Ltd.***, 2023 SCC OnLine Del 516; ***Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)*** (supra); ***Union of India v. Panacea Biotec Ltd.***, 2023 SCC OnLine Del 8491, ***Planetcast Technologies Ltd.*** (supra), ***Union of India v. NCC Ltd.***, 2024 SCC OnLine Del 5878; and, ***Steel Authority of India v. JSC Cryogenmash***, 2024 SCC OnLine Del 3271.

32. On the question of non-filing of the *Vakalatnama*, he submits that an application filed under Section 34 of the A&C Act is not an appeal against the Arbitral Award. He submits that, therefore, a comparison drawn by the learned counsel for the appellant with Order XLI Rule 1 of the CPC and Section 423 of the BNSS is not apposite. He submits that on the other hand, this Court has, in various Judgments, held that non filing of a *Vakalatnama* would make the application under Section 34 of the A&C Act as “*non-est*”. In support, he places reliance on the judgment of ***SKS Power Generation (Chhattisgarh) Ltd.*** (supra).

33. He submits that as this Full Bench is to determine the question of law of what would render an application filed under Section 34 of the A&C Act to be declared as “*non-est*” filing, he would also make a



reference to other attributes that such an application must possess, which according to him are mandatory and absence whereof would make an application to be declared as a “*non-est*” filing.

34. He submits that the Statement of Truth, signature of the party on the application, and proper prayer clause, are mandatory requirements of a petition under Section 34 of the A&C Act. He submits that where the grounds of the challenge to an Arbitral Award are later changed in a substantial manner, the earlier filing would be treated as “*non-est*”.

35. As we are to determine the question of law in these References, we also allowed other counsels, who wished to assist us, to intervene and make submissions on the same.

36. Ms. Payal Chawla, Advocate, submits that filing of a Statement of Truth is mandatory. She submits that while Order VI Rule 15(1) of the CPC, which is applicable to the ‘Ordinary Civil Suit’, may be directory in nature. The Legislature having introduced Order VI Rule 15A of the CPC for commercial disputes of a specific value, the same has to be treated as mandatory in nature and not as an empty formality or a curable defect.

37. She submits that similarly, the signature of a party challenging the Arbitral Award, or its pleader, is also mandatory for a petition filed under Section 34 of the A&C Act. In support, she places reliance on the Judgments of this Court in *Sarvesh Security Services* (supra); *Joint Venture of Sai Rama Engineering Enterprises & Megha Engineering & Infrastructure Ltd. (Meil)* (supra); *Planetcast Technologies Ltd.* (supra); and, in *Oriental Insurance Co. Ltd. v. Air*





*India Ltd.*, 2021 SCC OnLine Del 5139.

38. She submits that the same strict rule, however, shall not apply to a case of non-filing of *Vakalatnama*, which according to her, is a curable defect. In support, she places reliance on the Judgments in *Kodi Lal v. Ahmad Hasan Ch. and 32 Ors.* 1945 SCC OnLine Oudh CC 22, *Uday Shankar Triyar* (supra); *Bihar State Electricity Board v. Bhowra Kankanee Collieries Ltd.*, 1984 (Supp) SCC 597; and, *Shastri Yagnapurushdasji & Ors. v. Muldas Bhundardas Vaishya & Anr.* 1966 SCC OnLine SC 198.

39. She submits that filing of the Impugned Arbitral Award would also be mandatory, as held by this Court in *Brahamputra Cracker and Polymer Ltd* (supra).

40. She submits that while an application under Section 34 of the A&C Act must contain the grounds of challenge to the Arbitral Award, minor modifications therein, correcting typographical errors or adding a few words or correcting a few mistakes, can be made during the re-filing. However, in view of Paragraph 6 of the Statement of Truth, the total pages of a pleading cannot be changed.

41. Mr. Dushyant K Kaul, Advocate, also intervened and was heard on the question of law. He reiterated the submission of Mr. Jayant Mehta, the learned senior counsel appearing for the petitioner in OMP(COMM) 20/2024 and submitted that Order VI Rule 15A of the CPC applies only to “pleadings”, which in terms of Order VI Rule 1 of the CPC is only a “plaint” or a “written statement”. He submits that the same is distinct from an “application” under Section 34 of the A&C Act and, therefore, Order VI Rule 15A of the CPC would not be



applicable to such an application.

42. He submits that even otherwise, non-filing of the Statement of Truth is a curable defect and would not render an application filed under Section 34 of the A&C Act without the same, to be declared as “*non-est*”. In support, he places reliance on the Judgments of this Court in *Kailash Chand Gain Chand Jain v. Union of India*, 2024 SCC OnLine Del 3598; *CEPCO Industries Pvt. Ltd. v. Tewari Restaurant Pvt. Ltd.*, 2023 SCC OnLine Del 87; and, in *Prayag Polytech Pvt. Ltd & Anr.* (supra).

43. He further submits that a challenge to an Arbitral Award may not necessarily be a “commercial dispute” as defined under the CC Act, and therefore, there cannot be two different yardsticks for the necessary compliances to be made while filing an application under Section 34 of the A&C Act; one being for challenge to an Award under the CC Act, while the other being challenge to an Award which does not qualify as a “commercial dispute” of a specific value. He submits that therefore, filing of the Statement of Truth cannot be considered as an essential pre-requisite to an application under Section 34 of the A&C Act.

44. Ms.Hina Shaheen, Advocate, also intervened, and submitted that though the A&C Act was amended on more than one occasion, the requirement of filing of the Impugned Arbitral Award was not mandated. She submits that this in itself would imply that the non-filing of the Impugned Arbitral Award would not make an application filed under Section 34 of the A&C Act to be declared as “*non-est*”. She reiterates that where the Legislature wants for a party to



necessarily file the Impugned Judgment or Order, it expressly provides the same. She places reliance on Order XLI Rule 1 of the CPC and Section 423 of the BNSS to support her contention.

45. She further reiterated the submissions that were made by Mr. Jayant Mehta, the learned senior counsel appearing for the petitioner in OMP(COMM) 20/2024.

### **ANALYSIS AND FINDINGS:**

46. We have considered the submissions made by the learned counsels.

47. As is noted hereinabove, Section 34(3) of the A&C Act prescribes a strict period of limitation within which a challenge to an Arbitral Award can be filed. It also restricts the power of the Court to condone the delay in filing the same, by providing that a delay of not more than 30 days can be condoned by the Court. For this, there are different parameters that are to be adopted while considering a delay in filing of a petition under Section 34 of the A&C Act as against a delay in re-filing of the same. While for a delay in filing, the power of the Court is restricted and it cannot condone a delay of beyond 30 days, however, the power of the Court for condoning the delay in re-filing is not so restricted and a delay in re-filing of the application, even if it is of a period of more than 30 days, can be condoned.

48. In answering the question referred to us, we must also keep in mind the two cardinal principles that are applicable to a petition under Section 34 of the A&C Act;





Court has held that the term “*non-est*” refers to a legal instrument that is treated to be not in existence in the eyes of the law as it goes beyond remedial irregularities. Therefore, for an application filed under Section 34 of the A&C Act to be declared as “*non-est*”, it must be beyond remedial irregularities in the eyes of law.

52. Section 34 of the A&C Act reads as under:

*“34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*

*(2) An arbitral award may be set aside by the Court only if—*

*the party making the application [establishes on the basis of the record of the arbitral tribunal that]—*

*a party was under some incapacity, or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*

*Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or*

*(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such*



*agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or*

*(b) the Court finds that—*

*the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or  
the arbitral award is in conflict with the public policy of India.*

*[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—*

*the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*

*it is in contravention with the fundamental policy of Indian law; or*

*it is in conflict with the most basic notions of morality or justice.*

*Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]*

*(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:*

*Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.*

*(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.*

*(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.*

*(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.*

*(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”*

53. Further, a reading of the above provision would show that it does not expressly lay down a format or specify the essential requirements that an application filed under Section 34 of the A&C Act must meet or comply with. It simply lays down the grounds on which the Arbitral Award may be set aside by a Court.

54. Similarly, even the DHC Rules do not lay down the necessary requirements of an application under Section 34 of the A&C Act. A Division Bench of this Court in *Air India* (supra) taking note of the above, observed as under:

*“10. Pertinently, under the relevant High Court Rules, there is no clear and definite guideline to show as to when a petition -when*



*originally filed, would be considered as non-est, or otherwise. The nature of defects - which would render an initial filing as non-est, is not clearly set out. Therefore, it would not be fair to a party - who files a petition before a Court, to be told that his initial filing was non-est due to certain defects. That declaration or pronouncement by the Court - in each case, would be subjective and ad-hoc.”*

55. However, in our view, the above cannot mean that there are no mandatory requirements of an application under Section 34 of the A&C Act, and that a challenge to an Arbitral Award may be made in any form or manner, and the Court would be helpless even if the application filed is not intelligible at all or lacks even the very basic attributes and form of an application. Taking a crude example, let us assume that an application is filed challenging an Award dated 01.01.2025 on 03.01.2025, annexing therewith a copy of some other Arbitral Award totally unconnected with the proceedings, without signatures of the applicant or his advocate, without affidavit, without *Vakalatnama*, without any grounds of challenge, without back-ground of facts, etc., however, clearly saying that the application is under Section 34 of the A&C Act challenging the Arbitral Award dated 01.01.2025. The application also bears the required Court Fee. Would this be a filing that would stop the limitation under Section 34(3) of the A&C Act from running? Our answer has to be in the negative. Accepting such a suggestion, in our view, would negate the restriction of limitation that has been placed under Section 34(3) of the A&C Act. It will be like mocking the system of the Court and the provisions





of the A&C Act and the legislative intent behind it. The Courts, to answer such situation, have devolved the concept of “*non-est*” filing or a filing not recognised by law.

56. Having held the above, we now need to consider as to what those basic and essential ingredients of an application under Section 34 of the A&C Act are.

### **NON-FILING OF THE ARBITRAL AWARD**

57. As noted hereinabove, a challenge to an Arbitral Award is maintainable on very limited grounds; it is not in form of an appeal against the Arbitral Award.

58. Section 34(2)(a) of the A&C Act states that an Arbitral Award may be set aside by the Court only if the party making the application “*establishes on the basis of the record of the Arbitral Tribunal*” that a party was under some incapacity; or the Arbitration Agreement is not valid; or the party making the application was not given proper notice of appointment of an Arbitrator or the arbitral proceedings; or was otherwise unable to present its case; or the Arbitral Award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration for it contains a decision on matters beyond the scope of submission to arbitration; or the composition of the Arbitral Tribunal or the arbitral procedure, was not in accordance with the agreement of the parties. The Court may under Section 34(2)(b) of the A&C Act, also set aside an Arbitral Award if it finds that the subject matter of the dispute is not capable of settlement by arbitration under the law for the time being enforced, or the Arbitral Award is in



conflict with the public policy of India. Under Sub-Section 2A of Section 34 of the A&C, an Arbitral Award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the Award is vitiated by patent illegality “*appearing on the face of the Award*”.

59. In our opinion, none of the above conditions can be satisfied unless the Arbitral Award under challenge is placed before the Court. Therefore, filing of the Arbitral Award under challenge along with the application under Section 34 of the A&C Act is not a mere procedural formality, but an essential requirement. Non-filing of the same would, therefore, make the application “*non-est*” in the eyes of the law.

60. In fact, we find that this Court has almost consistently held that non-filing of the Arbitral Award would make the petition “*non-est*”. Reference in this regard may be made to: *SKS Power Generation (Chhattisgarh) Ltd.*, (supra), *SPML Infra Ltd. v. Graphite India Ltd.*, 2020 SCC OnLine Del 2808, *Air India Ltd.*, (supra), *Reacon Engineers India Pvt. Ltd.*, (supra), *Executive Engineer National Highway Division v. S&P Infrastructure Developers (P) Ltd.*, 2022 SCC Online Del 1859, *ITDC v. Bajaj Electricals Ltd.*, 2023 SCC Online Del 158, *NHAI v. KNR Constructions*, 2023 SCC Online Del 519, *Brahamputra Cracker and Polymer Ltd.* (supra), *Panacea Technologies Ltd.*, (supra), *Delhi Development Authority v. Gammon Engineers & Contractors Private Limited*, 2024 SCC Online Del 5154, *Container Corp. of India v. Shivhare Road Lines*, 2024 SCC Online Del 5490, and, *Good Health Argo Tech Pvt. Ltd. v. Haldiram Snacks Pvt. Ltd.*, 2024 SCC Online Del 6050.



61. Even in both the Judgments which led to the present Reference, that is, in *Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)* (supra), and in *Planetcast Technologies Ltd.* (supra), both the Division Benches have held that the filing of the Impugned Arbitral Award is not an empty procedural requirement and is, therefore, absolutely essential. We may first quote from *Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)*, (supra) as under:

*“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.”*

*(Emphasis Supplied)*

62. In *Planetcast Technologies Ltd.* (supra), the requirement of filing of the Impugned Arbitral Award was reiterated as under:

*“37. Therefore, it has been consistently held that non filing of the Award along with the Petition under Section 34 of the Act, 1996 is a*



*fatal defect, making such filing as non-est. The objections under Section 34 must be on justiciable grounds as prescribed under Section 34(2) as such grounds can be ascertained only by referring to the Award made by the learned Arbitrator. **The filing of an Award is not an empty procedural requirement since sans the Award, the Court is left absolutely clueless to comprehend the grounds taken in the objection Petition and thereby unable to decide whether the Petition merits Notice to be issued or out-right rejection.** In the absence of the Award, the grounds on which the objections have been taken cannot be appreciated and considered if they are within the scope of Section 34(2) and thus, such filing of objections without the impugned Award render the entire objections incomprehensible for consideration under Section 34 of the Act.”*

*(Emphasis Supplied)*

63. Consequently, we have no hesitation in holding that for an application under Section 34 of the A&C Act, non-filing of the Impugned Arbitral Award is a fatal defect, making the application “non-est”.

64. We may, herein, itself note that the only Judgment which may be read as dispensing with the requirement of filing of the Arbitral Award was in *Ambrosia Corner House Pvt. Ltd. v. Hangro S Foods*, 2023 SCC OnLine Del 517, of which one of us namely (Navin Chawla, J) was the author. However, the same has been rightly distinguished by the Division Bench of this Court in *Planetcast Technologies Ltd.* (supra), by observing as under:

*“36. To further clarify the law on the indispensable requirements while filing a*



*Petition under Section 34 of the Act, 1996, it is pertinent to refer to the judgment of the Single Bench of this Court in Ambrosia Corner House Private v. Hangro S Foods, 2023 SCC OnLine Del 517. It has been widely misconstrued that the said judgment recognised the filing of a Petition under Section 34 of the Act, 1996 to be valid even though it was not accompanied by the Award. However, the perusal of the judgment itself makes it evident that the impugned Award had not been e-filed in a separate folder as was required under the Delhi High Court (Original Side) Rules, 2018. In those peculiar circumstances, the objections were entertained and the first filing was not found to be non-est. Clearly, it is not as if the Award had not been filed along with the objections under Section 34 of the Act. The facts as involved in Ambrosia Corner House (supra) are, therefore, clearly distinguishable.*

*(Emphasis Supplied)*

65. Reference to provisions of Order XLI Rule 1 of the CPC and Section 423 of the BNSS has been made to contend that these provisions specifically direct filing of a copy of the impugned decree/order along with the appeal, while Section 34 of the A&C Act does not mandate the filing of the Impugned Award, therefore, by necessary implication filing of the said Award is not mandatory. We do not find any force in this submission. The A&C Act is a complete Code in itself and drawing such implications from other Statutes may not be apposite. There is no warrant in the A&C Act to draw the implication, as sought for.

66. We, therefore, have no hesitation in holding that filing of the copy of the Impugned Award, which is under challenge, is a bare



minimum, rather, mandatory requirement for an application under Section 34 of the A&C Act. Further, non-filing of the same would make such an application “*non-est*” in the eyes of law, thereby, not stopping the period of limitation from running.

67. The Reference in FAO(OS)(COMM) 70/2024 titled *Pragati Construction Consultants v. Union of India* is answered accordingly by holding that filing of the Arbitral Award under challenge, is an essential pre-requisite for filing the application under Section 34 of the A&C Act, and in absence thereof, the filing of the said application will be treated as “*non-est*”.

### **NON-FILING OR DEFECTIVE FILING OF THE STATEMENT OF TRUTH**

68. This now brings us to the Reference in OMP(COMM) 20/2024, which is whether the non-filing of the Statement of Truth or a defect therein would also render an application filed under Section 34 of the A&C Act to be considered as “*non-est*”. Our answer to the same is in the negative, for the reasons that we shall elaborate hereinunder:

69. Order VI Rule 15 of the CPC, as applicable to an ordinary Civil Suit, reads as under:

*“Order VI*

*xxx*

#### ***15. Verification of pleadings.—***

*(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court*



*to be acquainted with the facts of the case. (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.*

*(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.*

*(4) The person verifying the pleading shall also furnish an affidavit in support of his pleadings.”*

70. In *Vidyawati Gupta* (supra), the Supreme Court, while considering an appeal from the order of the Division Bench of the Calcutta High Court wherein it was held that in absence of an affidavit under Order VI Rule 15(4) of the CPC the Suit filed was *non-est*, allowed the appeal, holding as under:

*“48. While we have noted and considered the views expressed by this Court in Iridium India Telecom Ltd. [(2005) 2 SCC 145] and P.S. Sathappan case [(2004) 11 SCC 672] with which we respectfully agree, regarding the primacy of the Original Side Rules framed under the letters patent over the provisions of the Code in case of conflict, in the instant case, no such conflict has surfaced which necessitates a reference thereto. Although, Mr Mitra did urge that matters relating to the ordinary original civil jurisdiction of the Calcutta High Court would be governed by the Original Side Rules, which would prevail over the provisions of the Code, he also accepted the position that a plaint which is presented in the original side will have to comply with the requirements of Orders 6 and 7 as*



*incorporated by way of reference in Rule 1 of Chapter 7 of the Original Side Rules. What is in controversy is whether a person presenting such plaint after 1-7-2002, would also be required to comply with the amended provisions of Order 6 Rule 15 of the Code.*

*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.*

*52. Considering the aforesaid contention, even though the amended provisions of Order 6 are attracted in the matter of filing of plaints in the Original Side of the Calcutta High Court on account of the reference made to Order 6 and Rule 1 of Chapter 7 of the Original Side Rules, non-compliance therewith at the initial stage did not render the suit non est. On account of such finding of the Division Bench of the Calcutta High Court, not only have the proceedings before the learned Single Judge been wiped out, but such a decision has the effect of rendering the proceedings taken in*



*the appeal also non est.”*

71. A reading of the above Judgment would show that while the provisions of the CPC have been held to be introduced with an object of expediting the adjudication of the proceedings, they being procedural in nature, are in fact directory and not mandatory, and non-compliance thereto would not make the filing ‘*non-est*’.

72. Moreover, Section 16 of the CC Act states that the provision of the CPC as specified in the Schedule appended thereto shall stand amended in the application to any “suit” in respect of a commercial dispute of a specified value. Additionally, one of the provisions introduced in the CPC as far as commercial disputes of a specified value are concerned, is Order VI Rule 15A of the CPC, which reads as under:

*“Order VI*

*xxx*

***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.”*

73. We find that a Division Bench of this Court in ***Prayag Polytech Pvt. Ltd & Anr.*** (supra), in relation to a suit relating to a commercial dispute of a specified value, has held that a plaint which is not verified by a Statement of Truth in a format prescribed under Order VI Rule 15A of the CPC, though may not be permitted to be read in evidence, however, at the same time, the plaint itself cannot be struck off or rejected for the lack thereof as it would be a curable defect. The Division Bench, however, hastened to add that whether the delay in filing of a Statement of Truth could be condoned and/or defect could be allowed to be cured, will depend on the facts and circumstances of each case before the Court involved and are to be considered on the objective factors such as the stage of proceedings and judicial determination as to law of limitation, if any.

74. As far as application of the above provision to Section 34 petition is concerned, let us note the provision of Section 10 of the CC Act, which specifically prescribes that a commercial dispute of a specified value, and if it is an international commercial arbitration, it shall be heard and disposed of by a Commercial Division or a Commercial Court, as the case may be. Section 10 of the CC Act is reproduced herein below:



***“10. Jurisdiction in respect of arbitration matters.***

*Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and--*

*(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*

*(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*

*(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.”*

75. So what entails from the above provision of the Section 10 of the CC Act is that it does not merely vest jurisdiction in a Commercial Division or a Commercial Court, as the case may be, but also attracts the procedure applicable to such Courts. Therefore, Order VI Rule 15A of the CPC shall also be applicable to an application filed under



Section 34 of the A&C Act in such cases. The submission of the learned counsels that Order VI Rule 15A of the CPC, insofar as it uses the word “pleading”, which in terms of Order VI Rule 1 of the CPC would mean only a “plaint” or a “written statement”, thereby excluding from its applicability an application filed under Section 34 of the A&C Act, is flawed and, therefore, cannot be accepted. Resultantly, taking into account the provisions of Section 10 of the CC Act, the provision of Section 16 of the CC Act read with Order VI Rule 15A of the CPC are very much applicable even to an application under Section 34 of the A&C Act.

76. Even otherwise, applying the general principles applicable to Order VI Rule 15A of the CPC that is applicable to a Suit involving a commercial dispute of a specified value, we are of the opinion that while the non-filing of the Statement of Truth or defect therein is curable in nature, thereby not making the application filed under Section 34 of the A&C Act to be “*non-est*”, however, at the same time, while determining the question of condonation of delay in filing or re-filing of the application under Section 34 of the A&C Act, the Court shall remain cognizant of and shall also take into consideration the non-filing or nature of defect in filing the Statement of Truth along with the initial filing of the application under Section 34 of the A&C Act, and of the time taken to rectify this defect in the filing. No doubt, the Court shall only thereafter, depending on the facts of each case, including the other defects in the initial filing or re-filing, as the case maybe, determine whether such delay is to be condoned or not.

77. In *Planetcast Technologies Ltd.* (supra), the Court was



2025:DHC:717-FB



considering an appeal against an order where a learned Single Judge had *inter alia* held that an application under Section 34 of the A&C Act must be accompanied with at least a Statement of Truth, *Vakalatnama* and the Award impugned, and in absence of all these vital documents, cumulatively, it can only be said that a 'bunch of papers' has been filed. As far as the issue of non-filing of the Statement of Truth is concerned, the learned Single Judge discussed the same only to point out that even at the time of re-filing of the application under Section 34 of the A&C Act, the Statement of Truth and other objections pointed out earlier had not been removed. The Court, therefore, found that the delay in re-filing was also unreasonable.

78. In appeal, the Division Bench placing reliance on the earlier Judgment of this Court in *Jay Polechem (India) Ltd.* (supra) and in *Sarvesh Security Services Pvt. Ltd.* (supra) held that the affidavit of Statement of Truth is mandatorily required to be filed alongwith the petition in order to produce a document worth considering under the law.

79. As far as *Jay Polechem (India) Ltd.* (supra) is concerned, the Court was considering a petition under Section 34 of the A&C Act, which was neither signed on behalf of the petitioners therein, nor supported by signed and attested affidavits. It was in those facts that the Court held that the application filed therein under Section 34 of the A&C Act was a *non-est* filing. Similarly, in *Sarvesh Security Services Pvt. Ltd.* (supra), the application filed under Section 34 of the A&C Act neither bore the signatures of the petitioner therein, nor was



accompanied with an affidavit of the petitioner; and there was even no *Vakalatnama* from the petitioner authorizing the counsel to sign the same. Therefore, in view of the cumulative effect of all the defects in the application filed initially, it was declared as a *non-est* filing.

80. The view of the Court in *Planetcast Technologies Ltd.* (supra), that mere non-filing of the Statement of Truth would make the application filed under Section 34 of the A&C Act to be declared as a *non-est* filing, therefore, is not correct.

81. Now we will enumerate the various judgments cited before us, to deal with them, as below.

82. In *Steel Strives Wheels Ltd.* (supra), the Court was again considering an application wherein though the Statement of Truth was filed alongwith the application under Section 34 of the A&C Act, there were blanks, therein also the *Vakalatnama* had not been properly executed. It was under these circumstances that the Court found that the application under Section 34 of the A&C Act had been filed in 'shoddy manner'. The Court had also relied upon the Judgment of the Division Bench of this Court in *Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Ltd. (Meil)* (supra), which has been discussed by us hereinabove, as far as the issue on hand is concerned.

83. Similarly, in *SPML Ltd.* (supra) also, the Court was confronted with an application under Section 34 of the A&C Act which was filed without a *Vakalatnama*, a signed petition and a Statement of Truth. It was in those facts that the Court held that the application filed was *non-est*.



84. In *Indira Gandhi National Open University v. Sharat Das & Associates (P) Ltd.*, 2023 SCC OnLine Del 7915 also, the Court was confronted with an application filed under Section 34 of the A&C Act which contained only 29 pages with blanks, it had no signatures of the petitioners or its authorised representative, and there was no *Vakalatnama* filed authorizing the Advocate to file ‘the said bunch of papers’. So much so, the Arbitral Award was also not annexed. These led the Court to hold that the filing of the application was ‘*non-est*’.

85. In *Three C Universal Developers (P) Ltd. v. Horizon Crest India Real Estate & Ors.*, 2020 SCC OnLine Del 2798, a learned Single Judge of this Court held that the absence of supporting affidavit/Statement of Truth/*Vakalatnama* is a fatal defect which has an effect on the application filed under Section 34 of the A&C Act to be declared as *non-est*. Similar is the view of this Court in *Air India* (supra).

86. In *Reacon Engineers (India) Pvt. Ltd.* (supra), the application filed under Section 34 of the A&C Act was not accompanied by a copy of the Impugned Award and other documents. Further, a Statement of Truth was also not filed. It was in those facts that the Court held the application to be a *non-est* filing.

87. Contrarily, in *Bajaj Electricals Ltd.* (supra) and *KNR Constructions* (supra), the learned Single Judge of this Court held that for an application filed under Section 34 of the A&C Act to be termed as ‘properly’ filed, it must fulfil the basic parameters, such as, each page of the petition as well as the last page should be signed by the party and the Advocate; *Vakalatnama* should be signed by the parties





and the Advocates, and the Statement of Truth should be signed by the parties and attested by the Oath Commissioner. However, as we are not in agreement with the view expressed in either of the aforesaid judgments, we shall be dealing with the other ingredients, which have been described by the learned Single Judge as to be compulsory, hereinbelow separately.

88. In *Brahmaputra Cracker and Polymer Ltd.* (supra) also, the Court was again confronted with a situation where even the copy of the Impugned Award had not been filed. As far as the non-filing of the Statement of Truth is concerned, the learned Single Judge of this Court observed that the Statement of Truth serves a salutary purpose of evaluating whether a petition filed under Section 34 of the Act has been instituted within the period prescribed. The learned Single Judge also held that a petition which is un-accompanied with the Statement of Truth, or Impugned Award should not be lightly countenanced especially where the same is merely presented in order to stall the limitation period prescribed under Section 34(3) of the A&C Act.

89. In *Sharat Das* (supra), the order had been passed by consent of the parties for remanding the matter back to the learned Single Judge for considering if the application filed under Section 34 of the A&C Act could be described as *non-est*.

90. In *Shivhare Road Lines* (supra), the Court was again confronted with a large series of defects, including non-filing of the Impugned Award and on those series/facts. Dealing with those, the Court held that the application under the Section 34 of the A&C Act was *non-est*.



91. As far as *A V Industries v. Neo Neon Electrical (P) Ltd.*, 2023 SCC OnLine Del 5397 is concerned, the Division Bench of this Court was considering an appeal against a final decree passed by the learned Trial Court, in favour of the plaintiff therein. This was the case wherein the Division Bench, after emphasizing on the fact that the Statement of Truth was neither filed with the plaint nor even any time later at all; held that the plaint itself was *non-est* and could not have been read in evidence. In our opinion, this judgment therefore cannot be read to mean that the non-filing of the Statement of Truth is a non-curable defect, and cannot be cured at any time later. Moreso, once it is held by us hereinabove that it is a curable defect. Merely due to non-filing of the Statement of Truth, the plaint and, in our case an application filed under Section 34 of the A&C Act, cannot be described as *non-est*.

92. We have considered the facts of each case cited before us in support of the plea that the non-filing of the Statement of Truth would render the application filed under Section 34 of the A&C as *non-est*, only to highlight that except in two cases that is, in *Bajaj Electricals Ltd.* (supra), and in *KNR Constructions* (supra), (which are of the same learned Single Judge), the Courts in other cases were confronted with the facts where apart from the absence of the Statement of Truth, there were other defects as well. It is those cumulative defects which led to the Courts to form an opinion that the application filed by the petitioners therein was merely to stall the period of limitation from running and therefore, the application so filed was treated as *non-est*. In fact, as discussed by us hereinabove, since even a plaint filed



without the Statement of Truth has been held to be a curable defect, it would not render such plaint to be *non-est*.

93. We, therefore, answer the Reference in OMP(COMM) 20/2024 before us by holding that while filing of the Statement of Truth is essential, at the same time, merely because of non-filing of the same, or a defect in the same, an application filed under Section 34 of the A&C Act cannot be treated as *non-est*. It is only where the non-filing of the Statement of Truth, or the defect in filing the same, is accompanied with other defects in the application so filed, makes the Court to form an opinion that the only intent of the petitioner filing the same was to stall the limitation, can an application filed under Section 34 of the A&C Act be described as *non-est*. The application filed with the Statement of Truth or with defects therein, if accompanied with other defects, which cumulatively leads the Court to form an opinion that the initial filing was not done with a *bona fide* intent but only to stop the period of limitation, or that the non-filing or defect in filing of the Statement of Truth was not a *bona fide* error, the Court will be free to declare such filing to be *non-est*.

**OTHER DEFECTS:**

94. Though not referred to us, however, as the learned counsels for the parties assisting us have made submissions on the various other defects, like the non-filing or defect in filing a *Vakalatnama*, unsigned application under Section 34 of the A&C Act, substantive increase in pages for non-filing of the documents, changes made in the contents or grounds of the application at the time of re-filing, or the



2025:DHC:717-FB



application being without or with improper verification, or there being no court fee filed or insufficient court fee being filed at the time of initial filing of an application under Section 34 of the A&C Act, or there being blanks in any of the pleadings filed at the time of the initial filing, we shall briefly discuss these defects as well.

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



to be *non-est*. Needless to state, it would surely depend on the facts and circumstances in each case; and there cannot be a straight jacket formula to determine whether any of the above-mentioned defects or combination thereof or how many such defects would render an application filed under Section 34 of the A&C Act to be declared as *non-est*.

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

**CONCLUSION:**

97. We summarise our answer to the Reference, as under:

- a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would



make the said application liable to be treated and declared as *non-est*, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;

- b) Mere non-filing of the Statement of Truth or a defect in Statement of Truth being filed, that is, including with blanks or without attestation, would not *ipso facto*, make the filing to be *non-est*. However, if accompanied with other defects, the Court may form an opinion, based on a cumulative list of such defects, that the filing was *non-est*;
- c) Similarly, non-filing or filing of a defective *Vakalatnama*; the petition not being signed or properly verified; changes in the content of petition being made in form of addition/deletion of facts, grounds, or filing of additional documents from arbitral record, or filing with deficient court fee, each of these defects, individually would not render to filing of an application under Section 34 of the A&C Act to be treated and declared as *non-est*. However, presence of more than one of such defects may, in the given set of facts involved in a case, justify the conclusion of the Court that filing of the application was never intended to be final and therefore, is liable to be declared *non-est*.

98. Subject to the Orders of Hon'ble the Chief Justice and the



2025:DHC:717-FB



Judge-in-Charge (Original Side), let OMP (COMM) 20/2024 and FAO(OS)(COMM) 70/2024 be now listed before the Roster Bench(s), on 19<sup>th</sup> February, 2025.

**NAVIN CHAWLA, J**

**REKHA PALLI, J**

**SAURABH BANERJEE, J**

**FEBRUARY 07, 2025/Arya/RN/SG/IK/VS**