

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN BENCH  
AT PUNE

I.A. No. 253 of 2024  
Arising out of  
Appeal No. 30 of 2024

IN THE MATTER OF:

RAMESH SAZO GAUNS

....APPELLANT

Vrs

UNION OF INDIA & OTHERS

....RESPONDENTS

**Written Note with Case Laws and Reply to R4 Reply to Condonation  
of delay application**

1. Environmental Clearance granted to the Project Proponent on  
23/01/2024.

A defective petition was filed by Advocate's Clerk on 22/02/2024. In that  
Petition the Paras wrt brief facts and grounds were typed under the  
Heading of 'Brief Facts' about the present Project Proponent. ( **Please  
Vide Page 459 to 472 of the Reply filed by R4**). But unfortunately the  
advocate while drafting the Petition failed to delete the grounds.

grounds wrt HZL, another company. **(Please Vide the Grounds at Page 474 to Page-489 of the R4 Reply)**

If all the defects raised by the registry taken as a whole it is a non-est filing. **(Please Vide Annexure-4,5)**

Hon'ble Tribunal allowed to remove the defects, even if it is a non-est filing.**(Please Vide Annexure-9,10,11)**

Even Registry after Scrutiny did not raise any objection.

The Environmental Clearance communicated to the community on 29/01/2024. **(Please Vide Annexure-1 of the condonation of delay application)**

Considering the Bad health issue of the Appellant Advocate as Sufficient Cause, Hon'ble Tribunal granted time to file this matter. **(Please Vide Annexure-9 of the condonation of delay application)**

The Appellant and his advocate in good faith tried their level best to collect technical data, Maps, photos, expert opinion to strengthen the grounds of the Appeal. Sufficient Cause under S.16 of NGT Act should be construed liberally.

This Appeal filed on 22/04/2024.

In a similar matter, delay was condoned. **(Please Vide Annexure-12)**

In the facts and circumstances stated above, there is 53 days delay in filing the Appeal, and there is sufficient cause to condone the delay in filing the Appeal.

**2. In a Judgement pronounced by Hon'ble High Court of Delhi, in the matter of O.M.P. (COMM) 302/2019 & I.A. 475/2022 VICEROY ENGINEERING ..... Petitioner Viceroy Engineering vs Smiths Detection Veecon Systems ... on 4 December, 2023,**

at the outset, though a wrong Company Petition was filed, later delay was condoned.

1. "The issues that arise for consideration are whether the petition is liable to be dismissed, due to the initial filing being non est and whether the delay in filing and re-filing of the petition has been sufficiently explained.

2. The factual matrix reveals that initially a petition assailing the impugned award was filed with the Registry of this Court on 29.06.2019, i.e., the first day of reopening after the summer vacations. The e-log of the said petition reveals that Registry had raised certain objections. Apparently, instead of filing the petition in the appropriate format, a company petition had been filed. Petitioner concedes that the petition filed on 29.06.2019 was non est.

3. Notably, the present petition was filed on 10.07.2019. Registry again raised defects albeit different from the earlier ones. Petitioner cleared the defects on 30.07.2019. Another set of defects were pointed out on

31.07.2019 which were cleared on 01.08.2019. Lastly, the defects were pointed out on 02.08.2019, which were cleared on the same day.”

**3. In the same Judgement pronounced by Hon’ble High Court of Delhi, in the matter of O.M.P. (COMM) 302/2019 & I.A. 475/2022 VICEROY ENGINEERING ..... Petitioner Viceroy Engineering vs Smiths Detection Veecon Systems ... on 4 December, 2023,**

Hon’ble High Court passed the Order in following manner and condoned the delay.

10. The issue in question arose in the case of Oriental Insurance Company Ltd. v. AIR India Ltd.<sup>8</sup> The Division Bench opined that a non est filing would be the one where the filing is without any signatures of either of the parties or its authorised and appointed counsel. It was further opined that if the petition is signed by the party and its counsel, and is accompanied by a Vakalatnama duly signed by both, the filing cannot be called non est. The right to file objections under Section 34 was further held to be a valuable right.

11. The issue again resurfaced in Oil and Natural Gas Corporation Ltd. v. Joint Venture of M/s. SaiRama Engineering Enterprise (SREE) and M/s. Megha Engineering and Infrastructure Ltd.

(MEIL)<sup>9</sup>. The Division Bench opined thus:-

2015 SCC OnLine Del 11455 2021 SCC OnLine Del 3186 2021  
SCC OnLine Del 5139 Judgement dated 09.01.2023 in  
FAO(OS)(COMM) 324/2019 "xxx

31. We are unable to concur with the view that the minimum threshold requirement for an application to be considered as an application under Section 34 of the A&C Act is that, each page of the application should be signed by the party, as well as the advocate; the vakalatnama should be signed by the party and the advocate; and it must be accompanied by a statement of truth. And, in the absence of any of these requirements, the filing must be considered as non est. It is

essential to understand that for an application to be considered as non est, the Court must come to the conclusion that it cannot be considered as an application for setting aside the arbitral award.

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

33. It is also necessary that the application be signed by the party or its authorised representative. The affixing of signatures signify that the applicant is making the application. In the absence of such signatures, it would be difficult to accept that the application is moved by the applicant.

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

cease to be an application merely because the applicant has not complied with certain procedural requirements.

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

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

xxx

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

41. We may also add that in given cases there may be a multitude of defects. Each of the defects considered separately may be insufficient to render the filing as non est. However, if these defects are considered cumulatively, it may lead to the conclusion that the filing is non est. In order to consider the question whether a filing is non est, the court must address the question whether the application, as filed, is intelligible, its filing has

been authorised; it is accompanied by an award; and the contents set out the material particulars including the names of the parties and the grounds for impugning the award.

xxx"

12. The aforesaid opinion was reiterated by a Coordinate Bench of this Court in *Ambrosia Corner House Pvt. Ltd. v. Hangro S. Foods*<sup>10</sup> and by this Court in *Ravi Batra v. New IFS Cooperative Housing Society Ltd.*<sup>11</sup>

13. In the above backdrop, this Court proceeds to examine the defects pointed out by the Registry from time to time. On 12.07.2019, the Registry pointed out following defects:-

"Defect Marked by Registry on 12.07.2019 Total 174 pages filed without bookmarking and without complete pagination;

Petition is not maintainable as per pecuniary jurisdiction;

Affidavits and statement of truth not attested.

2023 SCC OnLine Del 517 2023 SCC OnLine Del 4556

Highlighting/bold and underline not allowed in the Petition;

In addition to the E-filing it is mandatory to file hard copies of the fresh matters."

14. On the aspect of what would amount to non est filing, respondent's reliance on the decision in *National Highway Authority of India (Supra)*, is found misplaced as in the said case, the petition was filed without the approval of competent authority. The petition was not even accompanied by the award. Further, in view of the subsequent exhaustive decision of the Division Bench in *ONGC (Supra)* extracted hereinabove, this Court is of the opinion that looking into the nature of defects pointed out by the Registry on 12.07.2019, the petition filed on 10.07.2023 cannot be termed as invalid or non est. The defects were procedural and curable. Petitioner has further explained that the increase in number of pages in the subsequent filing was on account of filing of true-typed copies of documents. For instance, true-typed copies of TDS certificates alone resulted in an increase of 50 pages.

15. Coming to the second aspect i.e., whether the petitioner has satisfactorily explained the delay in filing and re-filing the petition. Pertinently, petitioner has filed the captioned application thereby explaining that the 90 days' period to file the petition expired on 15.06.2019. The petition could not be filed from 15.06.2019 to 30.06.2019 as the Registry of the Court was closed on account of summer vacations. The Registry was closed for non-urgent filing. The petitioner became aware of the objections raised by the Registry to the initial filing only on 04.07.2019 whereafter, the present petition was filed on 10.07.2019 with a delay of 25 days. The Court while considering an application for condonation of delay should be liberal and justice oriented. Proviso to Section 34(3) of the A&C Act vests discretion in the Court to condone the delay for a further period not exceeding 30 days. The delay of 25 days, in the opinion of the Court has been satisfactorily explained by the petitioner and is thus condoned.
16. Now, the question remains whether delay in re-filing is satisfactorily explained and whether the non-removal of the objections raised within a period of 7 days would render the subsequent re-filing to be considered as a fresh filing thereby adding further days to the delay.
17. Chapter IV of Delhi High Court (Original Side) Rules, 2018 provides that defects pointed out by the Registry are to be removed within the stipulated period of time. The relevant portion of the Rules is extracted below:-

"xxx

3. Defective pleading/document - (a) Upon scrutiny, if any pleading(s)/document(s) are found defective, the Deputy Registrar/Assistant Registrar, Incharge of the Filing Counter, shall specify the objection(s), a copy of which will be kept for the Court Record, and return for removal of objection(s) and re-filing within a time not exceeding 7 days at a time and 30 days in aggregate. On every re-filing caveat clearance shall be taken. In addition, the party must again serve the corrected copy upon the caveator(s) who had a valid caveat at the time of the first filing.

(b) If the pleading(s)/document(s) are not taken back for removal of objection(s) within 30 days time allowed under sub-

Rule (a), it shall be listed before the Court for appropriate orders.

The 30 days' period for the purpose of (a) and (b) above, shall commence from the date when the Registry raises the objections on the pleading/document filed.

(c) If the pleading(s)/document(s) are filed beyond the time allowed under sub-Rule (a) it shall be accompanied with an application for condonation of delay in re-filing.

xxx"

18. Filing of the petition under Section 34 of the Act has strict timelines. The timelines have been held to be inflexible beyond the total period of 120 days, provided the petitioner explains the delay of 30 days beyond the permissible time limit of 90 days. Once the petition has been found to be filed within the extended permissible time limit, would the Court be equally strict if the objections are not removed within the time granted by the Registry. Pertinently, in the context of present petition, Registry raised objections thrice. As noted above the objections were not of such a nature as would render the filing non est. Pertinently, the Registry had not declined registration of the petition. Even if the Registry declines registration, the Court has ample power to condone the delay in re-filing. This power has to be exercised liberally although cautiously to avoid delay by an unscrupulous litigant. In the opinion of the Court, respondent's contention that one set of objections, if not removed within a period of 7 days, should result in the drastic consequence of petitioner being non suited, especially when the entire objections were removed within a total aggregate period of 30 days, is baseless and merits rejection.

19. At this stage the Court also takes note of the decision in Northern Railway v. Pioneer Publicity Corporation Pvt. Ltd.<sup>12</sup>, wherein the Supreme Court clarified that Section 34 of the A&C Act has no applicability to re-filing of the petition. The Court negated the

contention that re-filing beyond (2017) 11 SCC 234 7 days would amount to fresh institution. The relevant extract reads as under:-

"xxx

4. ...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. xxx"

20. Although the respondent has cited number of authorities but in view of the settled law, each one of them need not be gone into. Resultantly, the application is allowed, and the delay is condoned.

4. **In Sridevi Datla Vrs. Union of India and others, 2021(5) SCC 321, in a similar case Hon'ble Supreme Court Condoned the delay.**

“Approach of the court in considering the application for condonation of delay

22. What constitutes “sufficient cause” in terms of Section 16 of the NGT Act?

While it is unexceptionable for the Project Applicant to argue that the Limitation Act is per se inapplicable to proceedings under the NGT Act, given that the basic, and outer period of limitation for filing an appeal have been enacted, nevertheless, what constitutes sufficient cause, is left to the discretion of the tribunal. Here, the court discerns a surfeit of authority on what the term denotes, and the general approach of the court, in dealing with delay.

23. In *G. Ramegowda v. Land Acquisition Officer*<sup>15</sup>, speaking for this court, Venkatachaliah, J summarized the position in the following terms:

“14. The contours of the area of discretion of the courts in the matter of condonation of delays in filing appeals are set out in a number of pronouncements of this Court. See *Ramlal v. Rewa Coalfields*

*Ltd.* [AIR 1962 SC 361 : (1962) 2 SCR 762] , *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR

1006] , Concord of India Insurance Co. Ltd. v. Nirmala Devi [(1979) 4 SCC 365 : 1979 SCC (Cri) 996 : (1979) 3 SCR 694] , Mata Din v. A. Narayanan [(1969) 2 SCC 770 : (1970) 2 SCR 90]

and Collector (LA) v. Katiji [(1987) 2 SCC 107 : 1989 SCC (Tax) 172] , etc.

There is, it is true, no general principle saving the party from all mistakes of its counsel. If there is negligence, deliberate or gross inaction or lack of bona fides on the part of the party or its counsel there is no reason why the opposite side should be exposed to a time-barred appeal. Each case will have to be considered on the particularities of its own special facts. However, the expression 'sufficient cause' in Section 5 must receive a liberal construction so as to advance substantial justice and generally delays in preferring appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of the delay."

24. Much later, in *Esha Bhattacharjee v. Raghunathpur Nafar Academy*<sup>16</sup> this court referred to a large number of previous judgments<sup>17</sup> , and observed that adoption of a strict standard of proof sometimes fails to protect public justice and it may result in public mischief. Other decisions have highlighted that there cannot be a universal formula to judge whether sufficient cause has, or has not been shown and the exercise is

necessarily fact specific; in *Improvement Trust v. Ujagar Singh*<sup>18</sup>, the court held:

“16. While considering [an] application for condonation of delay no straitjacket formula is prescribed to come to the conclusion if sufficient and good grounds have been made out or not.”

25. The court also emphasized that each case has to be balanced on the basis of its facts and the surrounding circumstances in which the parties act and behave.

26. Yet another dimension to the issue was highlighted in *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*<sup>19</sup>, where the court underlined a distinction between a case where the delay is inordinate, and a case where the delay is of few days and that in the former case the consideration of prejudice to the other side will be a relevant factor; in the latter case, no such consideration arises. After noticing that a liberal and justice-oriented approach needs to be taken, it was stated that the court, equally should be sensitive to the fact that “the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.”

The court then held that:

“24. What colour the expression ‘sufficient cause’ would get in the factual matrix of a given case would largely depend on bona fide nature of the

explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.”

27. It is evident that the term sufficient cause is relative, fact dependant, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.

28. Keeping these principles in mind, it is relevant to consider whether the NGT’s refusal to exercise discretion, in the facts and circumstances of this case, was erroneous. The court is conscious of the fact that exercise of discretion, per se, is a fact dependent one, and considerable latitude should be given to the court or tribunal of the first instance, in the performance of that task. Nevertheless, as decided, cases and judgments have shown that the exercise of discretion does at times, call for appellate scrutiny by this court. This is one such. The appellant pleaded that since

the documentation attendant to the clearance granted to the Project Applicant was voluminous, and expert as well as professional legal advice of the kind necessary to approach the NGT was not available in the State of Andhra Pradesh, the procuring of relevant documents, and correspondence with counsel in Delhi and drafting of the appeal entailed some delay.

29. This court is of the opinion that there is merit in the appellant's argument. The respondents, especially, the project applicant, had urged that the appellant is an interested party, and cannot be called a public-spirited citizen, because she had opposed acquisition of land for the airport and therefore, was able to access legal advice at the High Court stage. There is, in our opinion, nothing in the NGT Act which excludes parties who would be directly affected by a project, that has

environmental repercussions, from accessing the tribunal (NGT). Likewise, characterizing the nature of legal advice that can be accessed for challenging land

acquisition, as similar to a challenge to environmental clearance which involves application of mind to technical issues in a detailed manner, would be unfair and simplistic. Scientific or technical support – apart from expert professional legal advice is necessary, if the NGT were to be approached. In these circumstances, this court is of the opinion that given

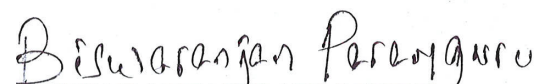
the mandate of the NGT Act, the exercise of discretion, as was done in this case, to reject the appeal by dismissing the application for condonation of delay, on the ground that no sufficient cause was shown, was erroneous and based on a narrow reading of the law. An appeal to the NGT in such matters is no ordinary matter; it has the potential of irrevocably changing the environment with the possibility of likely injury. Application of judicial mind by an independent tribunal in such cases, at the first appellate stage, is almost a necessity.

30. In view of the foregoing findings, this court is of the opinion that the impugned order of NGT has to be and is, therefore set aside. The delay in filing the appeal before the NGT is hereby condoned; the parties shall now appear and proceed to argue the appeal on its merit, which shall then be disposed in accordance with law.

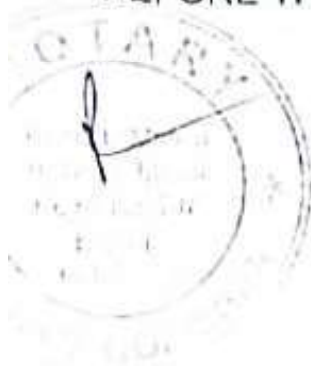
The appeal is allowed. There shall be no order on costs.”

In the facts and circumstances stated above, kindly condoned the delay.

Dated 23/09/2024



**Biswaranjan Paramguru**  
**Advocate**  
**Counsel for the Appellant**



BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN  
ZONE BENCH AT PUNE

I.A. No.253/2024

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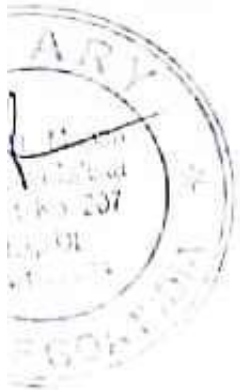
UNION OF INDIA & OTHERS

....RESPONDENTS

AFFIDAVIT

I, Ramesh Sazo Gauns, aged about 73 years, S/o: Sazo Gauns, the above named deponent, residence of H No. 1724, Paz Wada, Near Hira Talkies Theatre, Bicholim, North Goa, State: Goa, PIN: 403504 do hereby solemnly affirm and declare as under:

2. That, I state that, I have read and understood the contents of this 'Proof Of Service' filed in this Present Appeal which has been drafted under my instructions and I state that the contents of the same are true to the best of my knowledge and belief, and have been read over and explained to me in my vernacular language.



*[Signature]*  
DEPONENT

VERIFICATION

Verified on 23/09/2024 that the contents of the above present affidavit are true and correct to my knowledge and belief. No part of it is false and nothing material has been concealed there from.

*[Signature]*  
DEPONENT



VERIFIED BEFORE ME BY  
Shri Ramesh Sarda  
Gauins No. BSCM/2024  
23<sup>rd</sup> 19 September 2024  
3630/2024

*[Signature]*  
23/9/2024  
ADVOCATE &  
ENCHOLIST