



2024:DHC:9525-DB



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

Date of decision: 10.12.2024

+ **FAO (COMM) 237/2024**

**M/S. OMAXE NEW CHANDIGARH DEVELOPERS PVT.
LTD.**

.....Appellant

Through: **Mr. Ramesh Singh, Sr. Adv.
with Mr. Mukti Bodh, Ms.
Mala and Mr. Pavan Agarwal,
Advs.**

versus

M/S. FLYBOY AVIATION PVT. LTD.

.....Respondent

Through: **Mr. Nimish Chib and Ms.
Divye Chugh, Advs.**

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 72220/2024 (Exemption)

1. Allowed, subject to all just exceptions.

FAO (COMM) 237/2024, CM APPL. 72219/2024

2. This appeal has been filed by the appellant challenging the Order dated 11.11.2024 passed by the learned District Judge (Commercial Courts)-05, South East District, Saket Courts, New Delhi, in OMP (Comm.) No. 13/2020, titled *M/s Omaxe New*



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Chandigarh Developers Pvt. Ltd. Vs. M/s Flyboy Aviation Pvt. Ltd.,
dismissing the said petition filed by the appellant herein under Section 34 of the Arbitration and Conciliation Act, 1996 (herein referred as 'Act') as being barred by limitation under Section 34(3) of the Act.

3. The learned Senior Counsel for the appellant submits that the learned Arbitrator had forwarded the Arbitral Award to the appellant at their old registered address in Jaipur, which was provided by the respondent. However, the appellant had long shifted out from the said address and was not available at the given address on the date of sending the Award. Therefore, the copy of the Award was never received by the appellant. He submits that it was only upon the receipt of notice of the Execution Petition at its new registered address of the appellant at New Delhi, that the appellant became aware of the passing of the Arbitral Award. He submits that the address of the appellant at New Delhi was always in the knowledge of the respondent, however, the same was not disclosed to the learned Arbitrator despite the learned Arbitrator seeking the same. He submits that after gaining knowledge of the passing of the Award, the appellant contacted the learned Arbitrator and obtained a signed copy of the Arbitral Award on 14.01.2020, and subsequently, filed the above-mentioned petition. He submits that even taking the limitation to start from the date of knowledge through the Execution Petition, the petition filed under Section 34 of the Act was within the prescribed period.

4. The learned counsel for the respondent, who appears on advance notice submits that, without in any manner admitting to the



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contents of the appeal, and solely to expedite the final adjudication of the petition filed under Section 34 of the Act by the appellant, the respondent would concede that the signed copy of the Award was received by the appellant only on 14.01.2020. Therefore, the petition filed under Section 34 of the Act was within the time prescribed under Section 34(3) of the Act.

5. In view of the above concession, the appeal is allowed. The Impugned Order dated 11.11.2024 is set aside. The petition filed by the appellant under Section 34 of the Act, being OMP (Comm.) No. 13/2020, is restored to its original number. The learned District Judge (Commercial Courts) is requested to expedite the adjudication thereof. The parties shall appear before the learned District Judge (Commercial Courts)-05, South East District, Saket Courts, New Delhi, on 14th January, 2025. We make it clear that no further notice of the hearing is required to be issued to the parties, as they are appearing before us and have been informed of the next date of hearing. We further clarify that we have not made any observations on the merits of the petition filed by the appellant before the learned District Judge.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 10, 2024/ss/sk

Click here to check corrigendum, if any