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Arb.O.P.(Com.Div.) No.354 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2025

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THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Arb.O.P.(Com.Div.) No.354 of 2021

M/s.Oriental Cuisines Pvt. Ltd.
Rep. by its COO, Ramanarayanan.V
Having its office at No.74, Cathedral Road
Chennai 600 086

.. Petitioner

Vs.

Sricharan Foods
Rep. by its Proprietor
Lavanya W/o.D.Komateswar
151, V.S.Industrial Estate
Perungudi, Chennai 600 096
Office at 71 and 73, Bay Watch, Vettuvankeni
East Coast Road, Chennai 600 041

.. Respondent

Petition filed under Section 34(2)(iv) of the Arbitration and Conciliation Act, 1996, to set aside the arbitration award passed in O.P.No.1 of 2016 dated 23.11.2018, passed by the sole Arbitrator in the dispute between the petitioner and the respondent.

For Petitioner : Mr.Vijayan Subramanian
For Respondent : Mr.M.Sivavarthan
Senior Counsel



Arb.O.P.(Com.Div.) No.354 of 2021

ORDER

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This application has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as “the Act”), challenging the arbitration Award dated 23.11.2018, passed by the sole Arbitrator in O.P.No.1 of 2016.

2.The petitioner entered into a Concessionaire Agreement with the respondent on 04.02.2015, permitting the respondent to run a vegetarian restaurant under the name “Sricharan Foods” at M/s.Tata Reality & Infrastructure Ltd., Info Park at Ramanujam IT City, Taramani, OMR, Chennai. As per Clause 1.1., the term of the agreement came into effect from 01.02.2015 till 31.12.2015.

3.A dispute arose between the parties and as a result, the matter was referred to the sole Arbitrator.

4.The sole Arbitrator, through an Award dated 23.11.2018, directed the petitioner to pay a sum of Rs.11,26,960/- together with interest at the rate of 18% p.a. from the date of claim till the date of realisation and proportionate cost, as per the cost memo filed by the respondent/claimant. The counter claim



Arb.O.P.(Com.Div.) No.354 of 2021

made by the petitioner was also rejected. Aggrieved by the same, the present petition was filed under Section 34 of the Act.

5. When the petition was taken up for hearing today, the learned counsel for the respondent raised a preliminary objection on the very maintainability of this petition. The learned counsel submitted that admittedly, there was a delay of 352 days in paying the deficit court fee and that the said delay came to be condoned by the learned Master and it was contended that such delay could not have been condoned, since it was beyond the powers of the Court. To substantiate this submission, the learned counsel relied upon the order passed by this Court in A.Nos.4872 and 4874 of 2025 dated 23.10.2025.

6. Per contra, the learned counsel for the petitioner, by relying upon the judgment of the Delhi High Court in ***Northern Railway Vs. M/s.Pioneer Publicity Corporation Pvt. Ltd. & Another*** reported in ***2015 SCC OnLine Del 11646*** submitted that it was only a delay in re-presentation and when the papers were re-presented, the deficit court fee was also paid and such delay in re-presentation will not come within the purview of Sub-Section 3 of Section 34 of the Act.

7. This Court carefully considered the submissions made on either side.



Arb.O.P.(Com.Div.) No.354 of 2021

WEB COPY

8.It is seen from the records that the Award was passed by the sole Arbitrator on 23.11.2018. A petition under Section 34 of the Act was filed on 20.02.2019, by paying a meager Court fee of Rs.100/-. On 26.02.2019, the said petition was returned by the Registry pointing out all the defects. The papers were re-presented in the Registry on 01.12.2020, along with applications to condone the delay of 352 days in re-presentation and to condone the delay of 352 days in paying the deficit court fee. Even while calculating the delay, the petitioner had specifically excluded the period covered under the COVID-19 lockdown. These applications were allowed by the learned Master, by an order dated 11.01.2021, without issuing any notice to the respondent, by imposing a meager cost and on payment of the cost, the main petition was numbered on 20.04.2021.

9.Preliminary objection has been made by the respondent on the maintainability of this petition, on the ground that the payment of deficit Court fee, can be condoned only for maximum period of 120 days (90days + 30days) and beyond that period, there is no jurisdiction, even for the Court to condone the delay, in line with Sub-Section 3 of Section 34 of the Act.



10.I had an occasion to deal with the said issue in A.Nos.4872 and 4874

of 2025 dated 23.10.2025 and the relevant portion is extracted hereunder :

”29. All the above judgments make it clear that filing of a petition with deficit Court fee cannot be construed as proper presentation of the petition. If such presentation of the petition has to be regularized, the deficit Court fee must be paid within the limitation period prescribed under Section 34(3) of A and C Act. If the same is not done, the Court is divested of its power to condone the delay in the light of mandate prescribed under Section 34(3) of A and C Act. In other words, improper presentation of the petition by paying deficit Court fee, does not arrest the limitation period prescribed under sub-section (3) of Section 3 of A and C Act, unless the deficit Court fee is paid within the limitation period prescribed in that provision. If the limitation period is crossed, an application filed thereafter to condone the delay in paying the deficit Court fee cannot even be entertained, since it goes beyond the power of the Court which is circumscribed under Section 34(3) of A and C Act.”

11.When the above order was passed by this Court, I had placed specific reliance upon the judgment of Apex Court that has been relied upon by the learned counsel for the petitioner in the case of ***Northern Railway Vs. Pioneer Publicity Corporation reported in (2017) 11 SCC 234*** and also after taking into consideration of the earlier judgments, the order was passed by this Court.

12.The ratio that can be deduced from the above order is that the deficit Court fee must be paid within the limitation period prescribed under Section 34(3) of the Act and if the same is not done, the Court is divested of its power to condone the delay, in the light of the mandate prescribed under Sub-Section 3 of



Arb.O.P.(Com.Div.) No.354 of 2021

Section 34 of the Act. Under such circumstances, the order passed by the learned Master in condoning the delay, even without issuing notice to the respondent, must be construed as *non est* in the eye of law.

13.In the light of the above discussion, the preliminary objection raised by the respondent is upheld and this Court holds that the present petition should not have been entertained, since it goes beyond the power of the Court itself circumscribed under Sub-Section 3 of Section 34 of the Act. Accordingly, this petition stands dismissed. No costs.

04.12.2025

gya

Index : Yes/No

Neutral Citation : Yes/No



Arb.O.P.(Com.Div.) No.354 of 2021

To

Mrs.Lavanya
W/o.D.Komateswar
Proprietor
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Arb.O.P.(Com.Div.) No.354 of 2021
N. ANAND VENKATESH, J.

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