



\$~58

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **FAO(OS) (COMM) 42/2025, CM APPL. 17317/2025 & CM APPL. 17318/2025**  
**KGF COTTONS PVT LTD** .....Appellant

Through: Ms. Liza Arora, Adv.

versus

**HALDIRAM SNACKS PVT LTD** .....Respondent  
Through:

**CORAM:**  
**HON'BLE MR. JUSTICE C.HARI SHANKAR**  
**HON'BLE MR. JUSTICE AJAY DIGPAUL**

**JUDGMENT (ORAL)**  
**25.03.2025**

%

**AJAY DIGPAUL, J.**

**CM APPL. 17318/2025**

1. Exemption allowed subject to all just exceptions.
2. The application stands disposed of.

**FAO(OS) (COMM) 42/2025 & CM APPL. 17317/2025 (Stay)**

3. The present dispute arises from a contractual relationship between the Appellant, KGF Cottons Pvt. Ltd.<sup>1</sup>, and the Respondent,

---

<sup>1</sup> "KGF", hereinafter



Haldiram Snacks Pvt. Ltd.<sup>2</sup>, stemming from the importation of crude palm oil (edible grain) by KGF through its orders placed with Coral Products Pvt. Ltd.<sup>3</sup>, a company that was amalgamated with Haldiram on 25 April 2014.

4. Between January 2011 and May 2013, KGF placed multiple orders with CPPL for the importation of crude palm oil from foreign suppliers, with deliveries made to Kakinada, Telangana. The goods imported by CPPL in response to these orders were sold to KGF through various High Seas Sales Agreements (HSSAs). The Appellant, KGF, asserts that during the course of these transactions, payments were made as per the invoices raised by CPPL, and the Appellant fulfilled all its financial obligations under the HSSAs.

5. However, the Respondent claims that an outstanding balance of Rs. 8,49,40,929.91/- remained unpaid by KGF as of 31 May 2013. This claim was based on an acknowledgment letter allegedly signed by KGF on the same date, confirming the outstanding liability. KGF denies the existence of this acknowledgment letter and the alleged debt, asserting that the payments made to CPPL exceeded the invoiced amounts. Specifically, KGF claims that it had overpaid CPPL by Rs. 6,90,88,320/- and is entitled to a refund, with adjustments made for commission.

6. On 25 April 2014, CPPL was amalgamated with Haldiram under a scheme approved by this Court, which became effective



through a Court order in Company Petition No. 66 of 2014. However, KGF contends that it was never informed of the amalgamation, and consequently, the Appellant was unaware that any obligations or liabilities under the HSSAs would be transferred to Haldiram following the merger.

7. On 8 June 2016, the Respondent, invoking Clause 15 of the High Seas Sales Agreement, issued a legal notice to KGF, claiming an outstanding amount of Rs. 2,09,18,103.91/-. The notice further invoked the arbitration clause in the HSSAs, proposing the appointment of a sole arbitrator to adjudicate the disputes between the parties.

8. Thereafter, KGF responded to the said notice on 20 June 2016, rejecting the liability and the request to initiate arbitration, thereby denying the existence of the debt and challenging the Respondent's demand.

9. As the parties could not reach an agreement on the appointment of an arbitrator, the Respondent filed Arbitration Petition No. 540/2016 under Section 11(6) of the Arbitration and Conciliation Act, 1996, before this Court on 23 August 2016, seeking the appointment of a sole arbitrator.

10. On 18 April 2017, this Court referred the matter to the Delhi International Arbitration Centre<sup>4</sup> for the appointment of an arbitrator

---

<sup>3</sup> "CPPL", hereinafter

<sup>4</sup> "DIAC", hereinafter



in accordance with the DIAC rules, while preserving the right of the parties to raise their respective contentions before the appointed arbitrator. Thereafter, Justice K. S. P. Radhakrishnan (Retd.) was appointed as the Sole Arbitrator.

**11.** On 25 May 2017, the Respondent submitted its Statement of Claims before the Sole Arbitrator, seeking recovery of Rs. 2,09,18,103.91/- as the principal amount, along with interest at the rate of 18% per annum, totalling Rs. 1,46,48,403.72/-. The Respondent further sought future and *pendente lite* interest at the same rate, along with litigation costs.

**12.** The Appellant filed its Counter Claim on 30 June 2017, disputing the claims of the Respondent and asserting that it had overpaid CPPL by Rs. 6,90,88,320/- and was thus entitled to a refund. The Appellant also raised objections regarding the jurisdiction of the arbitration proceedings, asserting that no part of the cause of action arose in Delhi; instead, it arose in Hyderabad.

**13.** Over the course of the arbitration proceedings, the parties exchanged numerous pleadings and documents. In the proceedings, KGF repeatedly contested the amount owed, the applicability of interest rates, and the alleged jurisdiction of the Delhi courts over the dispute. Despite these contentions, on 31 March 2023, the Sole Arbitrator rendered an award in favour of the Respondent, deciding all 10 issues in the Respondent's favour. The award directed KGF to pay a total amount of Rs. 2,09,18,103.91/- as the principal amount, Rs. 1,46,48,403.72/- as interest, and Rs. 16,73,039.28/- towards litigation



costs. Furthermore, the Respondent was awarded interest at the rate of 12% per annum from the date of the award until payment or realization.

**14.** Aggrieved by the arbitral award, KGF filed a petition bearing OMP (COMM) 426/2023 under Section 34 of the Arbitration and Conciliation Act, 1996, before this Court on 25 July 2023, seeking to challenge the award on various grounds, including the contention that the award was unjust and contrary to the evidence presented during the arbitration.

**15.** However, the initial delayed filing of the petition on 25 July 2023 was filed after 116 days of the award and it was marred by certain defects as it lacked the award copy and other documents. This led to it being marked defective by the registry on the same date.

**16.** The petition was filed again on 7 October 2023 and the same defects were again notified by the Registry. The matter was finally re-filed on 10 October 2023 after rectifying all the defects. The Appellant subsequently filed additional affidavits to explain the delay in filing and re-filing the petition.

**17.** On 8 January 2025, the learned Single Judge of this Court dismissed the petition as time-barred, holding that it was filed beyond the prescribed period under Section 34 for challenging an arbitral award, which is three months. The initial filing on 25 July 2023 lacked the necessary documents, rendering it a *non-est* filing. Consequently, the learned Single Judge did not delve into the merits of the case and



dismissed the petition solely on the ground of limitation, ruling that the filing was *non-est*.

**18.** Aggrieved by the dismissal of the petition, KGF has filed the present appeal bearing FAO(OS)(COMM) 42/2025 under Section 37 of the Arbitration and Conciliation Act, 1996, seeking to set aside the judgment passed by the learned Single Judge. The following reliefs are sought:

- “(a) Call for the entire record pertaining to Arbitration Case Ref. No. DIAC/1671/05-2017, titled “*Haldiram Snacks Pvt. Ltd. v. KGF Cottons Pvt. Ltd.*” passed by the Ld. Sole Arbitrator, Justice K. S. P. Radhakrishnan (Retd.) at Delhi International Arbitration Centre (DIAC);
- (b) Set aside the impugned Judgment dated 08.01.2025 passed by the Ld. Single Judge of this Hon’ble Court in O.M.P. (COMM) No. 426/2023 as well as the impugned arbitral award dated 31.03.2023, passed by the Ld. Sole Arbitrator in Arbitration Case Ref. No. DIAC/1671/05-17, titled “*Haldiram Snacks Pvt. Ltd. v. KGF Cottons Pvt. Ltd.*”;
- (c) Award cost of the proceedings in favour of the Appellant and against the respondent;
- (d) Pass any other or further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

**19.** This appeal is directed against judgment dated 8 January 2025, passed by a learned Single Judge of this Court in OMP (COMM) 426/2023 whereby the learned Single Judge has dismissed the petition filed by the appellant under Section 34 of the Arbitration and Conciliation Act, 1996 as being barred by time, as the original filing by the petitioner was unaccompanied by the Arbitral Award and therefore *non-est* filing.



20. The issue in controversy is no longer *res integra*, as it stands settled by the judgment of a Full Bench of this Court rendered recently in *Pragati Construction Consultants v UOI*<sup>5</sup> of which the relevant paragraphs may be extracted thus:

“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 in force, or the Arbitral Award is in conflict with the public policy of India. Under sub-section (2-A) 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. case, SPML Infra Ltd. v. Graphite India Ltd., Air India Ltd. case, Reacon Engineers (India) (P) Ltd. case, Executive Engineer National Highway Division v. S&P Infrastructure Developers (P) Ltd., ITDC v. Bajaj Electricals Ltd., NHAI v. KNR Constructions Ltd., Brahmaputra Cracker and Polymer Ltd. case, Union of India v. Panacea Biotec Ltd., DDA v. Gammon Engineers & Contractors (P) Ltd., Container Corp. of India Ltd. v. Shivhare Road Lines, and Good Health Agro Tech (P) Ltd. v. Haldiram Snacks (P) Ltd..

61. Even in both the judgments which led to the present reference, that is, in Sai Rama Engg. Enterprises case, and in Planetcast Technologies Ltd. case, 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 Sai Rama Engg. Enterprises case as under : (SCC OnLine Del para 32)

“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. case, the requirement of filing of the impugned arbitral award was reiterated as under : (SCC OnLine Del para 37)

“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 (P) Ltd. v. Hangro S. Foods*, 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.* case, by observing as under : (SCC OnLine Del para 36)

“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 (P) Ltd. v. Hangro S. Foods*<sup>42</sup>. 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 (P) Ltd. case*<sup>42</sup> are, therefore, clearly distinguishable.”  
(emphasis supplied)

65. Reference to provisions of Order 41 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 Pragati Construction Consultants v. Union of India is answered accordingly by holding that filing of the arbitral award under challenge, is an essential prerequisite 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”.*

*(emphasis supplied)*

21. Thus, the Full Bench has held in ***Pragati Construction*** (*supra*) that a Section 34 petition unaccompanied by the arbitral award, is *non est*. No case is made out for interference with the impugned judgment of the learned Single Judge.

22. Accordingly, the appeal is dismissed in *limine*.

**AJAY DIGPAUL, J.**

**C.HARI SHANKAR, J.**

**MARCH 25, 2025/AS**

[Click here to check corrigendum, if any](#)