



2025:DHC:271



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

Date of decision: 08th JANUARY, 2025

IN THE MATTER OF:

+ **O.M.P. (COMM) 426/2023, I.A. 19992/2023, I.A. 19993/2023, I.A. 19994/2023**

KGF COTTONS PVT LTD

.....Petitioner

Through: Mr. Dhruv Gupta, Liza Arora
Anubhav Garg, Advocates

versus

HALDIRAM SNACKS PVT LTD

.....Respondent

Through: Mr. Varun Goswami, Ms. Arpita
Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The instant petition under Section 34 of the Arbitration & Conciliation Act, 1996 has been filed challenging an Award dated 31.03.2024 by which the Ld. Sole Arbitrator has allowed the claim of the Respondent herein and has dismissed the counter claim of the Petitioner herein.
2. Shorn of unnecessary details, the facts which are relevant for the purpose of this challenge as mentioned in the Award, are as under-
 - i. The Respondent herein is a company incorporated under the Companies Act. The Petitioner herein used to place orders on one M/s Coral Products Pvt. Ltd. (CPPL) for importing crude Palm oil



- (edible grain) from foreign suppliers, for delivery at Kakkinada Port, Andhra Pradesh (now Telangana).
- ii. The goods so imported pursuant to the orders placed by the Petitioner herein were sold to the Petitioner herein on the High Seas through various High Seas Sales Agreements dated 07.01.2011.
 - iii. CPPL was later amalgamated with the Respondent herein under scheme of amalgamation, approved by this Court vide Order dated 25.04.2014.
 - iv. The Respondent herein, in the Arbitration proceedings stated that after giving credit to all the payments made by the Petitioner herein, there was an outstanding amount of Rs, 2,09,18,103.19/- which was stated to be due and payable to the Respondent herein as on 04.07.2013
 - v. The Respondent herein, on 08.06.2016, in terms of Clause 15 of the HSSA sent a legal notice to the Petitioner invoking Arbitration and calling upon them to pay Rs. 2,09,18,103.91/- and convey its consent for appointment of a Sole Arbitrator to adjudicate upon the disputes which arose between the parties.
 - vi. The Respondent then approached this Court by filing a petition under Section 11 of the Arbitration & Conciliation Act being Arb. P. 540/2016 and this Court *vide* Order dated 18.04.2017 appointed an Arbitrator.
3. The petition under Section 34 of the Arbitration & Conciliation Act is accompanied by an application for condonation of delay in filing the Petition under Section 34 of the Arbitration & Conciliation Act. The same has been



objected by the Respondent herein stating that the challenge has been filed beyond the period prescribed under Section 34 of the Act.

4. The short question which arises for consideration is whether the petition under Section 34 of the Act has been filed within the time period prescribed under the Arbitration & Conciliation Act.

5. The log information as placed on record indicates that Petitioner filed the Petition under Section 34 of the Arbitration & Conciliation Act on 26.07.2023 when total of 80 pages were filed. The said petition was filed in 116 days of the passing of Award. The defects were notified by the Registry on the same day.

6. Material on record indicates that the petition was filed without an award or any documents, the filing was marked as defective and sent back for re-filing on the very same day. The Petitioner herein filed the petition again on 07.10.2023 and the same defects were again notified by the Registry to the Petitioner herein. The matter was finally re-filed on 10.10.2023.

7. Ld. Counsel for the Respondent herein states that the filing on 26.07.2023 and re-filing on 07.10.2023 which was without the Award is a *non-est* filing, i.e., it cannot be taken as a filing at all and the re-filing on 10.10.2023 which assuming to be the correct filing has been made beyond the time prescribed under Section 34 of the Act and therefore the present petition cannot be considered.

8. *Per contra*, the learned Counsel for the Petitioner contends that the initial filing was within the period of limitation and was not a *non-est* filing. He states that the objections to the petition were cured, and the petition was again filed on 10.10.2023 in proper format containing detailed grounds after



thorough analysis of the impugned award. The petition was duly stamped and supported by a duly executed affidavit and accompanied by a *vakalatnama* and therefore cannot be said that the filing was completely *non est*.

9. He further states that the impugned award was passed on 31.03.2024. Section 34 of the Arbitration & Conciliation Act mandates that the application for setting aside the award should be filed within three months with grace period of 30 days if the court satisfied with the reasons given in the application for condonation of delay and therefore the three months with 30 days grace period ends on 31.07.2024 and since the petition which was filed on 26.07.2023 is within the period of limitation and therefore this court has to only consider if the reason for condoning the delay is correct and it cannot be said that the petition has been filed beyond the prescribed period.

10. It is also stated that this issue is pending before a three Judge Bench of this Court.

11. Heard the learned Counsels for the parties and perused the material on record.

12. Section 34(3) of the Arbitration & Conciliation Act states that an application for setting aside an arbitration award may not be filed after three months having elapsed from the date on which the party making that application had received the arbitral award. Also, the proviso to Section 34(3) states that if the Court agrees with the reasons given by the Applicant which prevented him from making the application for setting aside the award within the said period of three months, it may entertain the application within a further period of 30 days but not thereafter.



13. It is now well settled that the application under Section 34 of the Arbitration & Conciliation Act cannot be filed after the period as prescribed under the Arbitration & Conciliation Act.

14. It is stated that the initial petition has been filed on 26.07.2023 which is within the period prescribed under the Act. The said petition has been admittedly filed without a copy of the Impugned Award.

15. A petition under Section 34 of the Arbitration & Conciliation Act is for setting aside the Award. It cannot be said that a challenge to an Award filed without the Award itself would be a valid filing. Without the Award, the challenge would become meaningless because unless the Award is perused by the Court, it cannot adjudicate upon the appropriateness and correctness of the Award. An application under Section 34 of the Act filed without an Award and admittedly without a *vakalatmana* can only be a stack of papers filed only to save the limitation.

16. A Division Bench of this Court in ONGC v. Joint Venture of Sai Rama Engineering Enterprises (Sree) & Megha Engineering & Infrastructure Limited (Meil), **2023 SCC OnLine Del 63**, has observed 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)

17. This Court is not discussing the other defects which have been pointed out for it is of the opinion that without the Award, an application for setting aside an Award cannot be filed. It is not the case of the Petitioner that he did not have the copy of the Award which is being challenged by way of the present petition. There is no reason forthcoming as to why the copy of the Award was not filed. The filing on 26.07.2023 was therefore a *non est* filing.

18. The fact that the issue is pending before the three Judge Bench of this Court is no bar on the Court to proceed further and pass Orders in the absence of any indictment by the said Bench directing that the issue must not be dealt with pending the Judgment.

19. Therefore the filing on 10.10.2023 was therefore beyond the period of prescribed limitation and this Court cannot entertain this Petition.

20. In view of the above the present petition is dismissed on the ground that it is barred by time.

SUBRAMONIUM PRASAD, J

JANUARY 08, 2025

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