



2025:DHC:1276-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 25.02.2025***+ **FAO(OS) (COMM) 273/2024**
GOOD HEALTH AGRO TECH PVT LTD

.....Appellant

Through: Ms.Liza Arora, Adv.

versus

HALDIRAM SNACKS PVT LTD

.....Respondent

Through: Mr.Varun Goswami,
Mr.Naveen Grover, Mr.Hritik
Chaudhary & Ms.Dakshita
Sharma, Advs.**CORAM:**
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR**NAVIN CHAWLA, J. (ORAL)****CM APPL. 68387/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

FAO(OS) (COMM) 273/2024 & CM APPL. 68388/2024

2. This appeal has been filed by the appellant, challenging the Order dated 29.08.2024, passed by the learned Single Judge in OMP (COMM) No. 397/2023 titled *Haldiram Snacks Pvt. Ltd. v. Good Health Agro Tech Pvt. Ltd.*, dismissing the said petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short, 'Act') as being filed beyond the period of limitation, and even beyond the condonable period under Section 34(3) of the Act.



3. The learned Single Judge in the Impugned Order notes that the Impugned Award was received by the appellant on 31.03.2023, and even assuming that 25.07.2023 was the first filing of the petition, the same, being filed without the Arbitration Award, was a *non est* filing. All the documents, including the Impugned Arbitral Award, came to be first filed only on 22.09.2023, that is, beyond the period of limitation and the maximum condonable period.

4. In ***Pragati Construction Consultants v. Union of India & Anr.***, 2025 SCC OnLine Del 636, a Full Bench of this Court has held that filing of the Impugned Award is a mandatory requirement for considering the petition filed under Section 34 of the Act, and in the absence thereof, the filing shall be treated as a *non est* filing. We may quote from the said Judgment as under:

“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 enforced, or the Arbitral Award is in conflict with the public policy of India. Under Sub-Section 2A 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.

97. We summarise our answer to the Reference, as under:

a) Non-filing of the Arbitral Award alongwith an application under the Section 34 of the A&C Act would make the said application liable to be treated and declared as non-est, and the limitation prescribed under Section 34(3) of the A&C Act shall continue to run in spite of such filing;”

5. In view of the above, the filing of the petition on 25.07.2023 has rightly been considered “non-est” by the learned Single Judge. The petition, as noted hereinabove, can be considered to have been first filed only on 22.09.2023, when the copy of the Impugned Award was filed by the appellant. However, by that time, the period of limitation, as well as the maximum period by which the delay could be condoned, had expired.



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6. In view thereof, we find no infirmity in the Impugned Order.
7. The appeal is accordingly dismissed. The pending applications are also disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

FEBRUARY 25, 2025/rv/VS

Click here to check corrigendum, if any