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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ FAO 46/2025, CM APPL. 11874/2025 & CM APPL.
11875/2025

INCITE HOMECARE PRODUCTS PVT LTDAppellant
Through: Mr. Gaurav Mahajan, Adv.

versus

R K SWAMY PVT LTD ERSTWHILE RK SWAMY BBDO
PVT LTDRespondent
Through: Mr. Shikhar Garg & Mr.
Ojasvi, Advs.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
27.02.2025

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CM APPL. 11875/2025 (EXMP.) & CM APPL. 11876/2025
(EXMP.)

1. Allowed, subject to all just exceptions.
2. The applications are disposed of.

FAO 46/2025, CM APPL. 11874/2025

3. The appellant has preferred this appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as “The Act”), thereby assailing the impugned judgment/order dated 18.01.2025 passed by the learned District Judge-02, Central District, Tis Hazari Courts, Delhi in Arbitration Petition No.286/2018.
4. Learned counsel for the respondent/decreed holder is present on advance notice.
5. Having heard the learned counsel for the parties and on perusal of the record, it is borne out from the record that the impugned award was passed on 08.11.2017, and a copy of the same was served upon



the appellant on 14.11.2017. It is also evident that before instituting the appeal under Section 34 of the Act before the District Judge, the appellant had filed the application/objection under Section 34 of the Act on 12.02.2018 in this Court.

6. It appears that the application/objection remained under objection with the Registry, and eventually, the appellant was informed on 15.03.2018 that the jurisdiction does not lie with the High Court but instead with the District Judge. Following this, the appeal/objection was withdrawn by the appellant from the High Court on 27.03.2018, and thereafter, the application/objection was filed before the learned District Judge on 31.03.2018.

7. It is borne out from the record that before the learned District Judge, the respondent/deGREE holder raised a preliminary objection regarding the application being barred by limitation in view of Section 34(3)¹ of the Act.

8. The learned District Judge *vide* impugned judgment and order dated 18.01.2025 found that the application/objection was barred by limitation. It would be expedient to reproduce the operative portions of the order that read as under: -

“18. In view of the submissions of the parties and material placed on record, the foremost issue for this Court to determine is that

“Whether the petition under Section 34 has been filed within the time period prescribed under the Arbitration &- Conciliation Act”

19. The record of the case lucidly manifests that the impugned

¹ An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.



award was passed on 08.11.20017, and the same was supplied to the petitioner on 14.11.2017. In view of this, the limitation to file objections was commenced on 14.11.2017, and the statutory period for filing a petition under Section 34(3) of the Arbitration Act expired on 14.02.2018. Though the present petition was filed on 31.03.2018, which was beyond the statutory and extended limitation period under Section 34(3) of the Arbitration Act.

20. The petitioner in support of saving the limitation period filed an application under Section 14 of the Limitation Act and sought the condonation of 43 days in filing the present petition, whereas, in the application under Section 34(3) filed with the petition, the petitioner sought the delay merely of 07 days. It is contended by the Ld. Counsel for the petitioner that the Ld. Counsel was not aware of the provisions of the Commercial Courts Act, and therefore, objections were filed before the Hon'ble High Court of Delhi vide dairy no. E-44105/2018. Thereafter, only on 22.03.2018 it was explained by the officials of the registry to the Ld. Counsel, and eventually it caused a delay in filing the same before the District Court. On these averments, the petitioner sought the condonation of the 43 delays in filing the petition.

21. The contentions of the petitioner are not to be accepted that its lawyer was not aware of the procedure of the recently enacted Commercial Courts Act, because a lawyer is an expert in its domain, and it may not be accepted that he is not well-versed with the procedure and working of a law of such importance. Moreover, it also doesn't hold any merit that the law was newly enacted because the Commercial Courts Act came into force on 23.10.2015, which is more than two years prior to the passing of the present award; therefore, it cannot be said that since the law was newly enacted/enforced, and therefore, the Ld. Counsel was not aware of the avenue where the objections should be filed. Furthermore, the objections are filed under the provisions of the Arbitration Act and not under the provisions of the Commercial Courts Act.

22. The petitioner has not mentioned the date in the application on which the objections were filed before the Hon'ble High Court of Delhi; however, perusal of the records reveals that the same was filed on 12.02.2018. The lethargic approach of the petitioner may be gleaned from the fact that the court fees for the filing of the objections under Section 34 of the Arbitration Act were purchased only on 13.03.2018. Multiple objections on the filing were raised by the Registry, and it is not correct to aver by the petitioner that only on 22.03.2018 the objection regarding the maintainability before the Hon'ble High Court of Delhi was raised for the first time as Annexure V on pages No. 241 and 242. lucidly reveals that



entry No. 14, 22, and 23 of the objections raised by the registry regarding the applicability of the provisions of the Commercial Courts Act vide dated 15.03.2018.

23. It is also pertinent to mention that the petition filed before the Hon'ble High Court of Delhi could not be considered a valid filing because it was neither supported by an affidavit of the authorized person nor appropriate court fees was annexed to it. It is settled law that incomplete filing or dummy filing cannot be qualified as valid filing. Therefore, no benefits, either on factual or legal grounds, could be extended to the petitioner. At this juncture, it is apposite to mention the judgment of the Hon'ble High Court of Delhi, titled as *National Highway Authority of India vs KNR Construction Ltd, 20231DHCI000623'* wherein, it has been held the filing with inherent defect is no filing in law, that

“8. xxx. Filings with fundamental defects making them hopelessly inadequate were not considered as a proper filing in DDA v. Durga Construction, 2013 SCCOnLine Del445J.

9. In case, the first filing is found to have inherent defects and such filing has been held as non-est, then the date of re-filing shall be considered as the first date of filing. However, where the defects have been found to be only formal in nature, then the date of first filing is considered as the date to reckon for the purpose of/imitation.

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11. xxx. If the defects are of such character as would render a plaint a non-plaint in the eyes of law, then the date of presentation would be the date of re-filing after removal of defects. If the defects are formal or ancillary in nature not affecting the validity of the plaint, the date of presentation would be the date of original presentation for the purpose of calculating the limitation for filing the suit”

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23. Likewise, in the case of Jay Polychem (India) Ltd & Ors. Vs. S. E. Investment Ltd 2018 SCC OnLine Del 8848, this Court while dealing with non-filing of Statement of Truth, held that a Statement which is neither signed nor supported by an affidavit cannot be considered as an application under Section 34 of the A&C Act 1996 of the A&C Act. 1996. The Petition thus filed without the Statement of Truth, is non-est. (Emphasis Supplied)

24. The first filing was done without court fees, an affidavit, or a



statement of truth; even the names of the parties were not mentioned in the vakalatnama. Therefore, the same cannot be qualified as a valid filing and non-est in the eyes of the law. Moreover, since the submissions regarding the recent enactment of the Commercial Courts Act cannot be accepted as at the time of filing of the present petition, more than two years had already passed when it came into force; therefore, it cannot be said to be a new law, and a practicing lawyer must be aware of the provisions of the same.

25. In light of the extensive discussion above, this court is of the considered opinion that the statutory limitation to file the petition under Section 34 of the Act expired on 14.02.2018, and the extended period of 30 days also expired on 14.03.2018; thus, this court has no discretion to condone the delay beyond 30 days after the expiry of the three-month period of limitation in filing the petition/application under Section 34 of the Act, whereby the period of limitation commences from 14.11.2017, the date of receipt of the impugned award. Even otherwise, as aforesaid, the filed petition under Section 34 of the Act is well beyond the available statutory three-month period for filing a petition or application under Section 34 of the Act and even beyond the period of the subsequent 30 days.”

26. In view of the above, the petitioner is not entitled for granting the relief as mentioned under Section 14 of the Limitation Act and Section 34 (3) of the Arbitration Act as the application seeking condonation of delay filed by the petitioners for setting aside the impugned award dated 08.11.2017 was beyond the mandatory period of limitation permitted under the Act of 1996. Hence, the same cannot be entertained, as the delay is both inordinate and inexplicable; ergo, the present petition being hit by limitation is not maintainable, and the same is dismissed without going into the merits on the challenge to the impugned award dated 08.11.2017, alongwith the application to condone the delay under Section 34 (3) of the Arbitration Act and Section 14 of the Limitation Act.

9. *Ex facie*, on careful perusal of the aforesaid order, it is manifest that the impugned order dated 18.01.2025 cannot be sustained due to the fact that the learned District Judge failed to consider the aspect of exclusion of time in accordance with Section 14 of the Limitation Act, 1963. Reliance in this regard can be placed on the decision by the Supreme Court in the case of *Consolidated Engg. Enterprises v.*



*Principal Secy. Irrigation Deptt.*², wherein the Supreme Court distinguished the scope and ambit of Section 5 vis-a-vis Section 14 of the Limitation Act, 1963, and made the following observations: -

“32. Sub-section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the court, discretion to extend the period of limitation by a further period not exceeding thirty days if the court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34(3) of AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the court that he had sufficient cause for not making the application within the prescribed period. Section 5 of Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to Sub-section 3 of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Sub-section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, In regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.

33. On the other hand, Section 14 contained in Part III of Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither Sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14 is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time

² (2008) 7 SCC 169



during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders therefore lays down the correct legal position.

35. The decision in *Popular Construction* is also of no assistance. That decision makes it clear that AC Act, 1996 being a special law, and Section 34 thereof prescribing a period of limitation different from that prescribed under the Limitation Act and providing a ceiling on the period by which the period of limitation could be extended, the corresponding provisions in the Limitation Act prescribing the period of limitation for filing an application for setting aside an award [Article 119(b) of the Schedule to Limitation Act) and for extending the period of limitation for sufficient causes (section 5 of the Limitation Act), were inapplicable. It did not relate to the applicability of Section 14(2) of Limitation Act. Nor did this Court consider the applicability of Section 14(2). therefore, the decision in *Popular Construction* will not apply. Fairgrowth merely reiterates the principle in *Popular Construction* in regard to the exclusion of Section 5 of the Limitation Act, as is evident from the following observations:

...the general rule as far as special and local Acts are concerned is that the specified provisions including Section 5 of the Limitation Act will apply provided the special or local Act provides a period of limitation different from that prescribed under the Limitation Act. There is an additional requirement viz. that the special local Act does not expressly exclude the application of the Limitation Act.

Therefore it has to be held that Section 14(2) of the Limitation Act, 1963 is applicable to proceedings under Section 34(1) of the AC Act.”

10. Similarly, reference may also be made to the decision by the Supreme Court in the *Kirpal Singh v. Government of India*³, wherein the proposition of law was reiterated that the relief can also be claimed under Section 14 of the Limitation Act, 1963, despite an appeal/application/objection being barred by virtue of Section 34(3) of the Act.

³ Civil Appeal Nos.12849-12856/2024



11. Faced with above, learned counsel for the respondent pointed out that though the appellant filed the application/objection on 12.02.2018, the Registry had infact raised certain objections on the following date, i.e., 13.02.2018, but the appellant failed to remove the objection until 15.03.2018, resulting in a delay of 32 days, for which no explanation has been provided. The said plea raised shall be open to be addressed and to be considered in accordance with law.

12. In view of the above, the present appeal is disposed of, setting aside the impugned order dated 18.01.2025, and resultantly the the matter is remanded back to the learned District Judge for reconsideration in light of the observations made hereinabove in accordance with law.

13. It is reiterated that all contentions raised by the learned counsel for the parties shall remain open for consideration and appropriate decision before the learned District Judge.

14. The present appeal is disposed of accordingly without prejudice.

DHARMESH SHARMA, J.

FEBRUARY 27, 2025

Ch/Ss