2026:DHC:7691

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

% **Date of decision: 08.09.2026**

\+ O.M.P. (COMM) 96/2018

BETA CASHEWS AND ALLIED PRODUCTS PVT. LTD (PREVIOUSLY KNOWN AS MALABAR SOFT DRINKS PVT LTD) .....Petitioner

Through: Mr. Vijay Nair, Mr. Arpit Dwivedi & Ms. Sakshi Kapoor, Advs.

versus

MAHARISHI AYURVEDA PRODUCTS PVT LTD. .....Respondent

Through: Mr. Ravi Ranjan, Mr. Himank Sharma & Mr. Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') against the arbitral award dated 15.02.2006 (for brevity 'the award').

2. The facts shorn of unnecessary details are that the parties to the *lis* entered into an agreement dated 12.05.1998 (hereinafter referred to as 'the MOA'). The respondent was to market in foreign countries the 'NutKing' brand of plain, roasted & cashew nuts and other products of the petitioner and finance the procurement of raw materials, production and packing of the goods. The respondent pleaded that an advance of Rs.50,00,000/- was made to the petitioner towards

procurement of raw materials and production of goods.

2.1 Disputes arose between the parties *inter alia*, repayment of the amount paid and losses claimed by the respondent. The arbitration was invoked at the instance of the respondent and *vide* order dated 14.12.2004 the sole arbitrator was appointed by the court.

2.2 The petitioner initially participated in the arbitral proceedings but subsequently failed to appear and was proceeded *ex parte* by order dated 24.10.2005. The *ex parte* order was recalled on 29.11.2005 subject to costs of Rs.30,000/- but the petitioner thereafter did not participate in the arbitral proceedings.

2.3 The arbitral proceedings culminated in the impugned award whereby a sum of Rs.42,50,000/- was awarded to the respondent with interest at 9% p.a. and a sum of Rs.2,50,000/- towards costs along with *pendente lite* interest at 12% p.a.

2.4 In 2017, the respondent initiated the enforcement proceedings. The petitioner alleged that it came to know of the award upon receipt of notice dated 13.09.2017 and thereafter filed the present petition challenging the award.

3 Learned counsel for the petitioner contends that the MOA was entered with a proprietorship concern but the enforcement petition was filed by a private limited company. The company was incorporated *vide* certificate dated 13.07.1999 whereas the notice under Section 21 of the Act was issued on 07.09.2002 by the proprietorship concern. It is submitted that the proprietorship concern was no longer in existence at the time of initiation of the arbitral

proceedings. The petitioner has produced additional documents to establish that the proprietorship concern was not in existence at the time of the arbitral proceedings were initiated and that this fact was not within the knowledge of the petitioner at the time of filing of petition under Section 34 of the Act.

3.1 The argument is that the MOA was an agreement wherein it was agreed that a contract would be executed on fulfilment of the conditions mentioned therein and was not a binding agreement as per clause 11 of the MOA. The grievance is that despite raising the issue in the reply the arbitrator without dealing with the contentions awarded the claims. It is argued that the award is non-speaking and is in violation of Section 31(3) of the Act.

3.2 Lastly, it is argued that the parties arrived at a settlement under which an amount of Rs.29,82,374/- was to be paid but the effect of the settlement in view of Section 62 of the Indian Contract Act, 1872 (for short 'the Contract Act') was not considered by the arbitrator.

4 *Per contra*, the issue of non-existence of proprietorship concern at the time of initiation of arbitral proceedings was neither raised before the arbitrator nor in the petition filed under Section 34 of the Act.

4.1 The submission is that the agreement was enforceable in law and provided for dispute resolution through arbitration.

4.2 The contention that the matter was settled between the parties is refuted. It is submitted that the petitioner failed to honour the terms of the settlement and the settlement was not subsisting.

4.3 The award is defended on the ground that the arbitrator dealt with each claim separately. It is argued that the petitioner neither cross-examined the witness of the respondent nor adduced evidence and was proceeded *ex parte*.

5 The contention of learned counsel for the petitioner that the proprietorship concern ceased to exist from July, 1999 is based on the additional documents placed on record pursuant to the order dated 18.11.2019 of this court. However, the issue was neither raised in the reply filed before the arbitrator nor in the petition filed under Section 34 of the Act and the grounds raised in the petition under Section 34 of the Act were also not amended. *Albeit*, prayer for raising additional grounds was made in the application for placing the additional documents on record but *vide* order dated 18.11.2019 the prayer *qua* placing the additional documents on record was accepted. The petitioner therefore cannot be permitted to argue a case which was neither pleaded before the arbitrator nor raised in the petition under Section 34 of the Act.

6 It is an undisputed fact that the petitioner had filed a reply before the arbitrator but failed to cross-examine the witness of the respondent and the petitioner was proceeded *ex parte*. The *ex parte* order was subsequently set aside *vide* order dated 29.11.2005 of this court subject to payment of costs of Rs.30,000/- which the petitioner failed to deposit.

7 In statement of defence the petitioner raised the following issues:- (i) relying on Clause 11 of the MOA raised the issue that the

MOA was not a binding agreement; (ii) that the respondent had failed to comply with the terms of the MOA and consequently the contract pursuant to the MOA was not executed; (iii) the claim was time barred; and (iv) that there was a settlement between the parties under which an amount of Rs.29,82,374/- besides Rs.4,15,223/- was to be paid but the amount so stated was contrary to the evidence on record. The arbitrator awarded claims without dealing with the pleadings of the petitioner.

8 Section 31(3) of the Act mandates a reasoned award. The law is well settled that the requirement of Section 31(3) of the Act is not a mere formality. The award is not to be equated with a judgment of the court and the reasoning in an appropriate case can be gathered from a fair reading of the award and the documents referred to therein. Reference is to the decision of the Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*** (2019) 20 SCC 1 wherein it was held as under:

> "34. The mandate under Section 31(3) of the Arbitration Act is to have reasoning which is intelligible and adequate and, which can in appropriate cases be even implied by the courts from a fair reading of the award and documents referred to thereunder, if the need be. The aforesaid provision does not require an elaborate judgment to be passed by the arbitrators having regard to the speedy resolution of dispute."

8.1 In ***Som Datt Builders Ltd. v. State of Kerala*** (2009) 10 SCC 259 it was held as follows:

> "25. The requirement of reasons in support of the award under Section 31(3) is not an empty formality. It

<u>guarantees fair and legitimate consideration of the controversy by the Arbitral Tribunal</u>. It is true that the Arbitral Tribunal is not expected to write a judgment like a court nor is it expected to give elaborate and detailed reasons in support of its finding(s) but mere noticing the submissions of the parties or reference to documents is no substitute for reasons which the Arbitral Tribunal is obliged to give......"

(emphasis supplied)

9 From the perusal of the impugned award it is forthcoming that after considering the claims, reply filed and the evidence led by the respondent, the arbitrator allowed a sum of Rs.42,50,000 against the claim of advance amount of Rs.50,00,000/- along with interest at 9% p.a. *Pendente lite* interest at 12% p.a. and costs of Rs.2,50,000/- were also awarded. There is no discussion on the pleas raised by the petitioner in the reply and no reasons are recorded for allowing the claims.

10 In view of the above discussion, the award is bereft of reasons and falls within the teeth of Section 31(3) of the Act. It is patently illegal and is accordingly set aside. The petition is allowed.

11 Needless to say, the parties shall be at liberty to avail remedies in accordance with law.

AVNEESH JHINGAN, J

SEPTEMBER 8, 2026
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Reportable: **Yes**