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IN THE HIGH COURT OF DELHI AT NEW DELHI

O.M.P. No. 938 of 2011

ASEEM ANAND

.... Petitioner

Through: Mr. Ashwath Sitaraman, Advocate.

Versus

SATISH KUMAR SHARMA & ORS.

..... Respondents

Through: None.

CORAM: JUSTICE S. MURALIDHAR

ORDER

24.07.2012

1. A detailed judgment has been passed today in Ex.P. No. 63 of 2008 (*Rajeev Kumar Agrawal & Ors. v. Sri Chand & Ors.*) along with five connected petitions including the present petition in which all the objections, raised by the JDs to the validity of the Award dated 19th August 2000 as modified on 19th October 2000, have been rejected.
2. Accordingly, in the terms of the said judgment in *Rajeev Kumar Agrawal*, the present petition is dismissed with costs of Rs.5,000 which will be paid by the Petitioner to the Respondents through counsel within four weeks.
3. The Registry is directed to place on the record of this petition a certified copy of the said judgment.



S. MURALIDHAR, J.

Signature Not Verified

Digitally Signed **July 24, 2012**
By:AMULYA ak

Reserved on: 7th May, 2012
Decision on: 24th July, 2012

✓ **EX.P. No. 63 of 2008**

RAJEEV KUMAR AGRAWAL & ORS. Decree Holders
Through: None.

Versus

SRI CHAND & ORS. Judgment Debtors
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Aswath Sitaraman, Mr. Trideep Pias and
Ms. Prabhsahay Kaur, Advocates for
R-20, 30, 33, 36 & 37.

With

EX.P. No. 171 of 2011 & E.A. No. 412 of 2011

DINESH KUMAR AGRAWAL & ORS. Decree Holders
Through: Mr. Amit Sibal with Mr. Pawan Sharma,
Mr. Munindra Dwivedi, Mr. Rajesh and
Ms. Roohina Dua, Advocates

Versus

KARMYOGI BUILDERS PVT. LTD. & ORS. Judgment Debtors
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Aswath Sitaraman, Mr. Trideep Pias and
Ms. Prabhsahay Kaur, Advocates.

With

EX.P. No. 181 of 2011 & E.A. No. 440 of 2011

RAKESH BHARGAVA & ORS. Decree Holders
Through: Mr. R.K. Tewari, Advocate.

Versus

KARMYOGI BUILDERS PVT. LTD. & ORS. Judgment Debtors
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Aswath Sitaraman, Mr. Trideep Pias and
Ms. Prabhsahay Kaur, Advocates.

With

EX.P. No. 313 of 2011 & E.A. No. 675 of 2011

EX.P. 63 of 2008, etc.

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High Court of Delhi of
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Indian Evidence Act.

BAIKUNTH BEHARI & ORS. Decree Holders
Through: Mr. R.K. Tewari, Advocate.

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Versus

KARMYOGI BUILDERS PVT. LTD. & ORS. Judgment Debtors
Through: Mr. Sanjay Jain, Senior Advocate with
Mr. Aswath Sitaraman, Mr. Trideep Pias and
Ms. Prabhsahay Kaur, Advocates.

and

O.M.P. No. 938 of 2011

ASEEM ANAND Petitioner
Through: Mr. Ashwath Sitaraman, Advocate.

Versus

SATISH KUMAR SHARMA & ORS. Respondents
Through: None.

With

O.M.P. No. 568 of 2012

CHANDRA PRAKASH GUPTA Petitioner
Through: Mr. Parag P. Tripathi, Senior Advocate
with Mr. Shadan Farasat, Advocate.

Versus

AJAY KUMAR AGRAWAL & ORS. Respondents

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT
24.07.2012

Introduction

1. These are four execution petitions under Section 36 of the Arbitration and Conciliation Act 1996 ('Act') read with Order XXI Rule 11 of the Code of Civil Procedure, 1908 ('CPC'). They seek execution of an Award dated 19th August 2000 passed by the learned sole Arbitrator, as amended further on 19th October 2000.

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2. OMP No. 938 of 2011 by Shri Aseem Anand is under Section 14(2) read with Section 15(2) of the Act seeking termination of the mandate of the learned Arbitrator and appointment of a substitute Arbitrator. O.M.P. No. 568 of 2012 by Shri Chandra Prakash Gupta is under Section 34 of the Act seeking to challenge the said Award dated 19th August 2000, amended on 19th October 2000.

3. By this common judgment the Court proposes to dispose of the objections of the Judgment Debtors ('JDs') to the petitions filed by the Decree Holders ('DHs') seeking execution of the aforementioned Award and also to dispose of the above two petitions.

Background Facts

4. The background to the present petitions is that the friends and family of late Shri Moti Lal Agrawal comprised of the Karmyogi Group consisting of Karmyogi Builders Private Limited ('KBPL'), Karmyogi Shelters Private Limited ('KSPL'), Karmyogi Construction Private Limited ('KCPL') and Vikram Real Estate Private Limited ('VREPL'). The friends and family of late Shri Moti Lal held shares in the aforementioned companies as well as few sister firms. All of them were associated directly or indirectly with the affairs and business activities of the Karmyogi Group and had an interest/stake therein as shareholders, directors, partners or investors in one or more of the groups concerned.

5. Disputes arose between the parties in respect of conduct of the business undertaken as well as affairs of the Karmyogi Group. The parties decided to resolve their disputes through arbitration and entered into an agreement dated 10th March 1995 referring their differences and disputes to arbitration under the provisions of the Arbitration Act 1940 ('1940 Act'). The parties executed Powers of Attorney ('POAs') in favour of seven persons. Later, an amendment was made to the arbitration agreement on 1st October 1997

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whereby the parties agreed to refer the disputes to arbitration under the Act and to the sole arbitration of Shri Sandeep Tandon.

6. Shri Vishwa Nath Agrawal and his brother Shri Dinesh Kumar Agrawal were the two main POA holders. Their respective groups were known as 'VN Agrawal Group' and 'DK Agrawal Group'. They were the principal parties before the learned Arbitrator.

7. The Award dated 19th August 2000 was an elaborate one running into 113 pages. It dealt with claims of the parties and of their respective shares in the assets of the Karmyogi Group which mostly related to land and shares in profit in the various companies and concerns. It appears that the details of the various liabilities and net assets submitted to the learned Arbitrator were either not complete or accurate. He took into account the understanding of the family members as to the investments and the allocation of profits as were reasonably believed by him to have been arrived at and were being honoured and accepted. Annexures 1 to 29 of the Award gave the allocation of shares to the different family members in various groups, companies, concerns and projects. It appears that even after the disputes arose between the various family members, some of the projects undertaken by the Karmyogi Group were not attended to. The learned Arbitrator allocated all projects by way of consolidation to KBPL believing that it would enable the group to consolidate its holdings, customers and plot-holders better. The assets of KBPL were allocated in equal ratio to VN Agrawal and DK Agrawal Groups. As regards the parties who had stated claims in the various assets of the Karmyogi Group, the Arbitrator decided that each shareholder would have 50% shares in the paid-up capital of the company with the management and control given to the two groups. The Arbitrator determined the liabilities that were to be discharged by KBPL which included the claims of the parties to whom no allocation could be made. This was done respecting the understanding the Group had with those parties including

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settlement of claims of the parties for compensation of services, claims of staff members and labour to meet the requirements of the project at Kant Enclave to serve the customers and plot-holders of KBPL and to run and manage the projects of KBPL and any other liability and future expenses required to be incurred. The learned Arbitrator determined that the assets of KBPL were not to be utilized for repayment/refund of investors other than the project at Kant Enclave and for all past expenses that had been incurred by the parties since they had already been accounted for allocating the assets.

8. It appears that after the Award was pronounced, two applications were filed by the V N Agrawal Group on 17th September 2000 under Sections 33(1) and 33(4) of the Act before the learned Arbitrator. One application was filed by Shri Dinesh Kumar Agrawal on 18th September 2000 under Section 33 of the Act. Two applications were filed by Shri Ashok Kumar Agrawal through his Attorney holder Shri Dinesh Kumar Agrawal under Section 33(1)(a) and Section 33(4) of the Act on 21st September 2000. Accepting as justified the rectifications of certain mistakes as pointed out by the applicants, the learned Arbitrator passed a supplementary Award on 19th October 2000 incorporating these changes. The learned Arbitrator in the said supplementary Award inter alia observed as under:

“(e) In the caption ‘the award and its operation’, Clause N, page 78, para 2, the direction ‘documents and papers conveying the ownership of assets to the allottees shall stand replaced and substituted by ‘documents and papers conveying the ownership/management & income of assets to the allottees’. The Arbitration Award dated 19.8.2000 shall be treated as amended to the above extent.”

Earlier challenges to the Award

9. There were a series of challenges thereafter to the said Award. First was OMP No.276 of 2000 filed in this Court under Section 34 of the Act by 14 Petitioners therein. According to the DHs, reply was filed to the said petition by Shri Vishwa Nath Agrawal supporting most of the objections to the

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Award except to the extent that some of the objections were directed against him. The DHs further stated that during the pendency of OMP No.276 of 2000, it transpired that signatures of four of the Petitioners in that petition were forged. The signatures were sent to the Central Forensic Sciences Laboratory which confirmed the forgery. During pendency of the said OMP, the remaining ten Petitioners expressed their desire to withdraw their objections.

10. On 5th November 2001, Sarvashri Sri Chand, Vinod Kumar Agrawal, Nanpnumal Agrawal, Nirav Nimesh Agrawal and Ramesh Chand Agrawal, all belonging to the VN Agrawal Group, filed IA No.10390 of 2001 and Shri Satish Kumar Sharma filed IA No.10107 of 2001 seeking their transposition as Petitioners in OMP No.276 of 2000 claiming that they had similar objections as raised in the said OMP to the Award. By an order dated 6th November 2001 the said applications were dismissed by the learned Single Judge, *inter alia*, on the ground that the objections to the Award had to be filed within the statutory period prescribed by law. Once the main OMP itself stood dismissed as withdrawn, the applicants could not be permitted to be transposed as petitioners. In the said order, the Court recorded the statement of Smt. Sudha Agrawal who was the Petitioner No.3 therein and was appearing also on behalf of Petitioner Nos.4, 5 and 6 therein, who were minors, as their guardian, that she had neither signed the petition nor the objections filed to the Award and that she was no longer interested in pursuing the matter keeping the overall interest of the family as well as the welfare of the minors. The other Petitioners i.e. Petitioner Nos.1, 2 and 7 to 14 informed the Court that they too wished to withdraw the petition and the IAs. Accordingly, the petition was dismissed and the applications were also dismissed.

11. Aggrieved by the aforementioned order dated 6th November 2001, the Applicants therein who sought transposition as Petitioners filed FAO(OS)

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No.537 of 2001 which came to be dismissed by the Division Bench of this Court on 15th May 2007. Thereafter the same parties again filed Review Petition No.300 of 2007 where one of the main grounds raised was that the law of limitation was not applicable to a case of transposition. In the said review petition, the learned senior counsel for the Respondent Nos. 15, 21, 24, 27 and 28 (all belonging to the VN Agrawal Group) supported the contentions of the applicants. It was observed by the Division Bench that the parties seeking transposition "could have themselves filed objections if they were so aggrieved, but they chose not to file any such objections and accepted the Award." It was further observed that "the opportunity of filing objections under Section 34 having not been exercised within the period of limitation, the said right cannot be subsequently exercised." It was ultimately observed that "right of each party to the arbitration proceeding to file objections is a separate and distinct right which lapses when period prescribed under Section 34 of the Act expires. In our considered opinion what cannot be done directly, cannot be allowed to be done indirectly." Accordingly, by an order dated 6th November 2007 the review petition was dismissed.

12. Against the order dated 15th May 2007 dismissing FAO(OS) No.537 of 2001 and the order dated 6th November 2007 dismissing Review Petition No.300 of 2007, the applicants seeking transposition filed Special Leave Petition ('SLP') (C) No.2747 of 2008 in the Supreme Court. Notice was directed to be issued in the petition on 25th February 2008. It is stated that the said SLP is pending but no stay has been granted of the execution of the Award.

13. On 2nd July 2007, nearly seven years after the passing of the Award, Shri Vishwa Nath Agrawal and others belonging to his group filed OMP No.478 of 2007 under Section 34 of the Act challenging the Award dated 19th August 2000. There were as many as 51 grounds raised in the said petition.

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By a judgment dated 7th September 2007, the learned Single Judge of this Court dismissed the said petition on the ground of limitation. As an explanation for the delay in preferring OMP No.478 of 2007 the said Petitioners had filed IA No.9819-23 of 2007 in which they had prayed for exclusion of the time spent by them in pursuing the earlier OMP No.276 of 2000 in which the Petitioners in OMP No.478 of 2007 were Respondent Nos.3, 11, 16, 19 and 20. It was noted in the said order that according to the Petitioners therein, the arbitral Award was published on 19th August 2000 and thereafter on their applications under Sections 33(1) and 33(4) of the Act, a supplementary Award was published on 19th October 2000. The Petitioners therein had not filed their objections within the statutory period prescribed under Section 34(3) of the Act. In their reply to OMP No.276 of 2000 filed on 25th April 2001 they had admitted that their objections were beyond the prescribed time. It was held that the Petitioners therein were precluded from filing objections against the arbitral Award nearly after seven years after the passing of the Award. Accordingly, the petitions were dismissed and subsequently, OMP No.478 of 2007 was also dismissed.

14. Aggrieved by the aforementioned dismissal of OMP No.478 of 2007, these Petitioners filed FAO(OS) No.473 of 2007 before the Division Bench. The said appeal was dismissed on 8th September 2011. Thereafter, those Petitioners filed SLP (Civil) No.1551 of 2012 which was dismissed by the Supreme Court on 21st February 2012.

15. The resultant position is that on two occasions attempts were made to challenge the impugned Award under Section 34 of the Act. The first round resulted in the original Petitioners withdrawing their objections and the order dismissing the petition as withdrawn and rejecting the applications filed by the Respondents to that petition seeking to transpose themselves as petitioners was also affirmed by the Division Bench. The SLP against the said order of the Division Bench is pending consideration in the Supreme

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Court. However, the second round which witnessed Shri Vishwa Nath Agrawal himself and some others belonging to his group filing OMP No.478 of 2007 facing rejection of their objections to the Award by the learned Single Judge on 7th September 2007 and thereafter by a Division Bench on 8th September 2011. The said orders attained finality with the Supreme Court dismissing the Special Leave Petition on 21st February 2012. With these two attempts of challenging the impugned Award having failed and with no stay being granted by the Supreme Court, the Award is enforceable and executable.

The present petitions

16. Execution Petition No.63 of 2008 was filed on 15th March 2008 by Mr. Rajeev Kumar Agrawal and four others. On 10th April 2008, another execution petition being Execution Petition No.3 of 2008 was filed by the same parties i.e. Rajeev Kumar Agrawal and four others in the District Court of Faridabad. In the said execution petition, the learned Additional District Judge directed the learned Arbitrator to deposit the original signed Award in the Court by an order dated 6th April 2009. On 3rd August 2009, the learned Arbitrator entered appearance through counsel in the said Court and on 24th September 2009 the learned Arbitrator deposited in the Court of the Additional District Judge, Faridabad the original Award. Subsequently, the DHs in the Execution Petition No.3 of 2008 filed an application for adjournment of the execution petition *sine die*. On 5th February 2010, the District Court at Faridabad allowed the said application and Execution Petition No.3 of 2008 was adjourned *sine die* with liberty to the DHs to get it revived. Thereafter, the three Execution Petitions, being Execution Petition Nos.171, 181 and 313 of 2011 have been filed by Shri D. K. Agrawal and others, Shri Rakesh Bhargava and others and Shri Baikunth Behari and others, respectively.

17. In these execution petitions, the JDs have filed a large number of

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objections which are dealt with hereinafter. Even while the execution petitions were pending, Shri Aseem Anand, son of Shri Vishwa Nath Agrawal who had executed a POA in favour of his father, filed OMP No. 938 of 2011 under Section 14(2) read with Section 15(2) of the Act with the prayer that the mandate of the learned Arbitrator, Shri Sandeep Tandon, should be terminated and that a substitute Arbitrator should be appointed in his place. The said petition was filed on 17th December 2011 whereas Shri Sandeep Tandon expired on 17th March 2010. The arguments in the said petition were heard along with all the objections raised by the JDs in the execution petition.

18. After orders were reserved in the execution petition and in the aforementioned OMP, Shri Chandra Prakash Gupta on 30th June 2012 filed OMP No.568 of 2012 under Section 34 of the Act. In the said petition, Shri Chandra Prakash Gupta admitted that he had given a POA in favour of Shri D.K. Agrawal. He stated that although he was re-assured by D.K. Agrawal that his interests would be taken care of, the manner in which the execution petitions were prosecuted, made it clear that Shri D.K. Agrawal was "only concerned with his own interest and those of his wife and children, which he had already secured in the Award and was only concerned in sidelining the Petitioner, while at the same time giving the Petitioner fake assurances."

19. In all the objections to the execution petitions as well as in OMP Nos. 938 of 2011 and 568 of 2012 the principal point raised is that none of the parties has been communicated a certified copy of the Award dated 19th August 2000 and that in terms of the decision of the Supreme Court in *State of Maharashtra v. Ark Builders Private Limited*. (2011) 4 SCC 616 (hereinafter '*Ark Builders case*'), the period of limitation for filing objections to the Award does not arise. Elaborate arguments have been advanced by the parties in this behalf.

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The decision in the Ark Builders case

20.1 In order to appreciate the above principal objection, this Court proceeds to discuss the decision in *Ark Builders case* in some detail. The question that arose in the *Ark Builders case* for consideration is set out in para 1 of the said decision and reads as under:

“Whether the period of limitation for making an application under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter “the Act”) for setting aside an arbitral award is to be reckoned from the date a copy of the award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the award is delivered to him by the arbitrator.”

20.2 The facts were that on 20th March 2003 the Arbitrator in that case gave a signed copy of the Award to Ark Builders Private Limited, Respondent in that case, (‘Ark Builders’) in whose favour the Award was made. However, no copy of the Award was given to the State of Maharashtra, which was the appellant in that case before the Supreme Court or to the other parties in the proceedings since both the State of Maharashtra and the other parties had failed to pay the cost of arbitration. Ark Builders submitted a copy of the Award in the office of the Executive Engineer of the State of Maharashtra on 29th March 2003 claiming payment in terms of the Award. On 16th April 2003, the Executive Engineer put up a proposal for challenging the Award before his superior officer.

20.3 Meanwhile on 15th January 2004, the Executive Engineer informed the Ark Builders that the State of Maharashtra had decided to challenge the Award before the appropriate forum. A decision in that behalf was taken on 16th December 2003 but no application to challenge the Award was made since the copy of the Award had not been received from the Arbitrator. On 17th January 2004, a messenger was sent to the learned Arbitrator with a letter seeking a copy of the Award. The Arbitrator made an endorsement on the letter and sent along with it a xerox copy of the said Award certified by

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the Arbitrator as a true copy. This xerox copy of the Award certified by the Arbitrator was received on 19th January 2004 and on 28th January 2004 the State of Maharashtra filed its petition under Section 34 of the Act.

20.4 The question that arose before the Principal District Judge, Latur, was whether the petition under Section 34 of the Act was barred by limitation. The said objection raised by Ark Builders was upheld by the Principal District Judge and the State of Maharashtra then preferred an appeal before the Bombay High Court. A contention before the said High Court was that since the Arbitrator had not sent a copy of the Award, as envisaged under Section 31(5) of the Act, the period of limitation had not begun to run. Reliance was placed on the decision of the Supreme Court in *Union of India v. Tecco Trichy Engineers & Contractors (2005) 4 SCC 239* (hereinafter '*Tecco Trichy Engineers case*'). The High Court held that under Section 31(5) of the Act it was not necessary for copy of the arbitral record to be sent by the learned Arbitrator to the party concerned but only to be handed over to the appropriate parties. It was held that since the Executive Engineer had admittedly received the copy of the Award in April 2003, the Appellants had to blame themselves for not acting till January 2004 to challenge the Award. It was held that there was sufficient compliance with Section 31(5) of the Act since the appellant had received the copy of the Award in April 2003. The State of Maharashtra then appealed to the Supreme Court.

20.5 After discussing the earlier decision in the *Tecco Trichy Engineers case*, the Supreme Court had observed as under:

"15. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a

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particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law."

20.6 Thereafter, the Supreme Court discussed the decision of Patna High Court in *Sheo Shankar Sahay (Dr.) v. Commr.* 1965 BLJR 78 and held in paras 17, 18 and 19 as under:

"17. In light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in *Tecco Trichy Engineers & Contractors* and in taking a contrary view. The High Court overlooked that what Section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the Arbitral Tribunal.

18. In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the respondent claimant but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.

19. In the light of the discussion made above this appeal must succeed. We, accordingly, set aside the judgments and orders passed by the Bombay High Court and the Principal District Judge, Latur. The application made by the appellants under Section 34 of the Act is restored before the Principal District Judge, Latur, who shall now proceed to hear the parties on merits and pass an order on the application in accordance with law. Since the matter is quite old, it is hoped and expected that the Principal District Judge will dispose this matter preferably within 6 months from the date of receipt of this order."

20.7 The ratio of the above decision is that under Section 31(5) the mere delivery of "any kind of a copy of the Award" is not sufficient but the said provision requires the "delivery of a copy of the Award that is duly signed by

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the members of the Arbitral Tribunal.” Further, it was held that the period of limitation prescribed under Section 34(3) of the Act “would start running only from the date a signed copy of the Award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act.” Therefore, the two factors highlighted are the Award having to be signed by the learned Arbitrator and a certified copy thereof having to be delivered to the parties to the arbitral proceedings who propose to make an application to challenge it under Section 34(1) of the Act.

Was a signed copy of the Award delivered to the parties?

21. It was repeatedly urged before this Court by the JDs. that there was, in fact, no original signed copy of the Award is available as no party had seen such copy. Secondly it was submitted that, in any event, a signed copy of the Award was not delivered to each of the parties as was mandatory under Section 31(5) of the Act, as explained by the Supreme Court in the *Ark Builders case*. It is further submitted that a xerox copy of the signed Award cannot be equated with a signed copy of the Award. In other words, each copy of the Award which is to be delivered to the parties has to bear the original signature of the Arbitrator and signing one Award and making several photocopies of it does not fulfil the requirement of Section 31 (5) of the Act. Delivering a photocopy of the Award is not compliance. A further aspect of this argument is that since without the delivery of a signed copy of the Award the arbitral proceedings cannot be said to have terminated under Section 32 of the Act, the Award does not become enforceable as such. The limitation for challenging the Award under Section 34 cannot begin to run till the ingredients of Section 31 are not satisfied. Further, since the learned Arbitrator has expired with the arbitration proceedings not having concluded, another arbitrator requires to be appointed by this Court. It is submitted that there cannot be any estoppel against law and the law has only now been explained by the Supreme Court in the *Ark Builders case*. The fact of the earlier challenge to the impugned Award having failed up to the Supreme

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Court cannot come in the way of the JDs raising an objection to the validity of the impugned Award on the above ground. It is contended that since the arbitral proceedings have not been concluded, and the Award passed cannot be said to be final and binding, the execution petitions are themselves premature.

22. The DHs point out that a certified copy of the Award as filed in the Execution Petition No.3 of 2008 in the Court of the District Judge at Faridabad has been placed on record in the present proceedings. To counter this, it is contended by the JDs that "while filing of a certified copy from another court proceeding may be sufficient for the purpose of igniting an execution petition but the same is no substitute or compliance of the first requirement of the Arbitrator supplying a signed copy of the award to each stakeholder/party to the Arbitration."

23. There is a basic misconception in the above submissions on behalf of the JDs as well as the Petitioner in OMP No. 938 of 2011. The fact of the matter is that the learned Arbitrator signed the Award on 19th August 2000 and passed and signed the supplementary Award on 19th October 2000. The learned Arbitrator sent certified copies of the Awards to the POAs of all the parties. The last line of the Award dated 19th August 2000, in fact, states that "a certified copy of the Award is being sent to the parties through their Power of Attorneys holders/Allottees." The learned Arbitrator signed each of the Annexures to the Award as well. He also appears to have signed the supplementary Award dated 19th October 2000.

24. In the application filed by Shri Vishwa Nath Agrawal under Section 33(1) of the Act, he admitted to receiving a copy of the Award dated 19th August 2000. In his reply to OMP No.276 of 2000 he stated in para 29 that "the answering respondent after receiving the copy of the Award on 17th September 2000 moved an application before the learned Arbitrator for

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correction of the Award under Section 33(1) of the Act.” He further stated in para 31 that the learned Arbitrator “was pleased to pass an order dated 19th October 2000 and sent copy of the same to the answering respondent.” In his own objection Petition No.478 of 2007, Shri Vishwa Nath Agrawal stated in para 1 that he was annexing a true copy of the Award dated 19th August 2000. Further, in para 5 of the same petition, he stated that he was enclosing a true copy of the order dated 19th October 2000 of the learned Arbitrator. Shri Aseem Anand, son of Shri Vishwa Nath Agrawal and the Petitioner in OMP No. 938 of 2011 had filed a reply in Faridabad Court that the learned Arbitrator had, in fact, passed a final Award. The POAs were valid till the Award was finally implemented. The attempt made by Shri Aseem Anand to wriggle out of his POA in favour of his father cannot be countenanced. Likewise, the attempt by Shri Chandra Parkash Gupta to wriggle out of the POA granted to Shri Dinesh Kumar Agrawal also cannot be countenanced. This appears to be a desperate attempt to justify the filing of fresh petitions under Section 34 of the Act several years after the passing of the original Award.

25. It is very difficult for this Court to accept at this stage that none of the parties were given a certified copy of the Award. The parties gave POAs in favour of Shri Vishwa Nath Agrawal and Shri Dinesh Kumar Agrawal. The receipt by POA holders of the signed copy of the Award from the learned Arbitrator satisfies the requirement of Section 31(5) of the Act. The decision in *Ark Builders case* is distinguishable on facts. The said judgment does not discuss the situation where a POA of the party receives a signed copy of the Award and yet the person who has executed such POA later turns around and claims a right to himself or herself to receive a signed copy of the Award. Entertaining such a plea several years after the passing of the Award would make a mockery of the period of limitation prescribed under Section 34(3) of the Act. In the present case, in neither round of litigation challenging the Award dated 19th August 2000 and the supplementary Award dated 19th

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October 2000, was such objection raised by the JDs in the execution petitions or the Petitioners in the OMPs.

26. Applications were filed seeking summoning of the record in Execution Petition No.3 of 2008 pending in the Court of the District Judge, Faridabad. With a certified copy of the original Award having been filed and placed in these proceedings, this Court is not inclined to allow the above prayer as it would unnecessarily delay the matter further. There is nothing produced to demonstrate that the copy of the Award filed in this Court is any different from the original Award filed in Execution Petition No.3 of 2008 in the District Court in Faridabad. There can be several execution petitions arising out of an arbitration Award. As long as an original signed Award is filed in the Court in one of those proceedings and a certified copy of it is produced in other Courts, it is sufficient compliance with the requirement of Section 31(5) read with Section 34 of the Act. There is also merit in the contention of the DHs that the question of delivery of the signed original Award to the party is relevant only for the purposes of limitation for filing of the objections under Section 34 of the Act and nothing comes in the way of execution of the Award as long as the executing Court is satisfied that the original Award is, in fact, available.

27. The contention of the JDs that there was no signed original Award or that the signed copy of the Award was not delivered to any of them is factually incorrect and is hereby rejected.

Was the Award properly stamped and registered?

28. The next objection concerns the stamping of the Award. It is submitted that in terms of Article 12(b) read with Article 46 of Schedule I of the Bombay Stamp Act, 1958 ('Bombay Stamp Act') a stamp duty of Rs. 10 per value of Rs. 500 had to be paid. It is submitted that the assets of the Karmyogi Group which are to be distributed in terms of the Award are

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spread across several cities including Delhi, Agra, Gurgaon and Gautam Budh Nagar in the States of Delhi, Uttar Pradesh and Haryana. It is submitted that the valuation of the total assets runs into hundreds of crores which requires appropriate stamping of the Award. It is submitted by the JDs that some of the assets which have been allotted in terms of the Award to various parties are incapable of valuation. It is contended that under Section 2(m) of the Bombay Stamp Act, an instrument of partition includes an instrument whereby co-owners of any property by themselves reach an agreement as to partition of those properties or agree to partition on certain terms and conditions or agree to divide the property at a later date. It is submitted that in the present case, the partition of the property was by mutual consent of all co-owners without any external intervention. It is submitted that it is not necessary for the partition to take place between co-owners.

29. On the other hand, it is contended by the DHs that Article 46 of Schedule I to the Bombay Stamp Act is not applicable as it is not an Award directing partition within the meaning of Article 12 of Schedule I read with Section 2(m) of the Bombay Stamp Act. It is submitted that some of the parties are not even shareholders of the four companies. The distribution of assets among shareholders of the company does not amount to partition as the shareholders are not the owners of the assets of the company. Reliance is placed on the decision of the Supreme Court in *Bacha F. Guzdar v. Commissioner of Income Tax, Bombay (1955) 1 SCR 876*. It is contended that the Award only directs Board of Directors of a company to execute necessary transfer documents and this does not amount to partition as such. Reference is made to the decision in *Anurag Malik v. Amit Malik 2006 (126) DLT 114*.

30. In order to appreciate the above contention, reference may be made to relevant provisions of the Bombay Stamp Act. Article 46 of Schedule I provides for payment of stamp duty on an "instrument of partition." Section

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2(m) of the Bombay Stamp Act reads as under:-

“Instrument of partition” means any instrument whereby co-owners of any property divide or agree to divide such property in severalty and includes:-

- i) in final order for effecting a partition passed by any revenue authority or any Civil Court,
- ii) an award by an arbitrator directing a partition, and
- iii) when any partition is effected without executing any such instrument, any instrument or instruments signed by the co-owners and recording, whether by way of declaration of such partition or otherwise, the terms of such partition amongst the co-owners.”

31. Article 12 of Schedule I to the Bombay Stamp Act reads as under:-

Award, that is to say, any decision in writing by an arbitrator or umpire, on a reference made otherwise than by an order of the Court in the course of a suit, being an award made as a result of a written agreement to submit, present or future differences to Arbitration but not being an award directing a partition –	
a) on the amount of value of the property to which the award relates as set forth in the award;	The same duty as Bond (Article 13), subject to a maximum of (one hundred rupees).
b) in any other case.	One Hundred rupees.

32. A perusal of the Award shows that in the operative portion the learned

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Arbitrator held as under:-

"2. The award shall come into effect and become operational immediately from the date of my signing the same as herein under appearing and by virtue of the same the allottees stand vested with all ownership and other rights in the assets allocated to them. Documents and papers conveying the ownership/management of assets to the allottees shall be prepared and executed by the board of directors of the respective companies in the manner and to the extent of allocations made by me under the auspices of this award immediately and any non compliance in this regard shall amount to a contempt of the award. Notwithstanding, the execution of such documents and papers in respect of the assets and projects allotted to them, this award shall entitle and convey to the allottees all ownership rights, titles and interests in the assets and projects allocated to them with effect from the date of my signing the same.

3. ...

4. All costs, expenses, registration charges involved or likely to be incurred in respect of transfer of assets allocated by me shall be paid and borne by the respective allottees of such assets."

33. The above portion was further amended by the supplementary Award dated 19th October 2000 by inserting the following additional clause:-

"8. The investors and the public at large had made investments in the projects run and undertaken by the 'Karmyogi Group' by reposing a lot of faith in the family members, particularly Mr. Vishwanath Agrawal and Mr. Dinesh Kumar Agrawal. Such investors, plot holders, customers and the likes are dependent upon the resolution of disputes of the group for their entitlements of money and money's worth, the knowledge of which is mainly confided and limited to the family members, particularly Mr. Vishwanath Agrawal and Mr. Dinesh Kumar Agrawal. In addition to that, the group may be called upon to discharge government and statutory dues, meet various regulatory requirements after passing of the Arbitration Award dated 19.08.2000. After due and thorough consideration of such peculiar facts and circumstances, the interest of the investors, customers and the public at large, that, the Arbitration Award dated 19.08.2000 has been passed by me.

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9. The Arbitration Award dated 19.08.2000 is final and binding on the parties unless and until there is a successful challenge to the same. The process of arbitration is not to be subjected to misuse by repeating and reiterating the disputes and differences which have been considered and adjudicated upon in the manner discussed and detailed in the Arbitration Award dated 19.08.2000.

10. The order passed in paras 4 (a to e) supra, shall be an order under Section 33(2) of the Act and form part of the Arbitration Award dated 19.08.2000. No order under Section 33 (5) is being passed on the applications made before me for the reasons and discussions stated above."

34. Consequently, it is not that the Award itself brings about the division of the assets but it requires steps to be taken to convey the ownership, management and income of the assets to the allottees. It is at that stage that necessary stamp duty for those transactions would be required to be paid. There is merit in the contention that it is the four companies which would be the owners of the assets. It is not as if shareholders of the company own the assets of the company. There cannot possibly be a deed of partition concerning allocation of assets belonging to the companies. Such a concept is alien to the notion of partition as such. It is difficult to accept the contention of the JDs that it is Article 46 and not Article 12 of Schedule I to the Bombay Stamp Act that would get attracted in the circumstances. In other words, the contention that within the meaning of Section 2(m) of the Bombay Stamp Act, the Award in question tantamounts to an 'instrument of partition' cannot be accepted. The question of registration and payment of registration charges also does not arise at this stage. As and when the actual transfer takes place, the respective allottees will have to pay registration charges in accordance with law.

The MOU of December 2002

35. It is next contended by the JDs that by a Memorandum of Understanding ('MOU') dated 21st December 2002 executed between VN Agrawal Group

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and DK Agrawal Group, the shares of the family members in the four JD companies i.e. KBPL, KSPL, KCPL and VREPL have been transferred in the name of Karmyogi Promoters Private Limited ('KPPL'), a Special Purpose Vehicle ('SPV') created only for the said purpose with the consent of both Shri Vishwa Nath Agrawal and Shri Dinesh Kumar Agrawal. It is stated that as on date, KPPL holds maximum number of shares in each of the four JD companies and this has been done under the advice of the Chartered Accountants. It is further stated that in terms of Clause 1(a) of the MOU, the Community Centre has been jointly sold by Shri Vishwa Nath Agrawal and Shri Dinesh Kumar Agrawal and receipts thereof have been utilized for settlement of loans of certain parties. Likewise, it is stated that several clauses of the MOU have been acted upon by the parties. It is further stated that a tripartite agreement between KBPL, Techman Buildwell Pvt. Ltd. and Neelpadam Builders Pvt. Ltd. had been entered into for resolving the problems of over 700 customers of Karmyogi Nagar. Reference is made to an agreement to sell of Senior Secondary School in Kant Enclave in terms of Clause 15 of the MOU. It is contended that Shri Dinesh Kumar Agrawal could not be permitted to back out from the MOU. Accordingly, since Shri V.N. Agrawal had not agreed to the execution of the Award, Shri Dinesh Kumar Agrawal attempted to resolve the disputes due to the pressure of the customers by entering into the MOU dated 21st December 2002. However, it is stated that the said MOU could not be implemented as the consent of other constituent members of the DK Agrawal Group and VN Agrawal Group could not be obtained and, therefore, the MOU was abandoned. It is stated that another MOU was signed/agreed in 2004 between Shri Dinesh Kumar Agrawal and Shri Vishwa Nath Agrawal and the property sharing ratio in respect of the said four projects was 45: 45 and 10% was reserved for being allocated in future. According to the DK Agrawal Group, the copy of the MOU is not traceable but the subsequent change in the shareholding of KPPL would testify to such an MOU having been entered into. It is further stated that after the 2004 MOU, the shareholding of the KPPL changed to 50:

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50 both in number as well as value and the VN Agrawal Group and the DK Agrawal Group purportedly transferred their shareholding in the four companies to KPPL. In the written submissions filed, the DHs have in two tabular columns shown the shareholding in KPPL in April 2003 as well as on 8th December 2004. It is asserted that except to the extent of transfer of shareholding in the four JD companies as set out in the tabulated chart, "no part of either the 2002 MOU or the 2004 MOU has been acted upon and has been abandoned by both the parties *inter alia* because of not receiving the consent of the other parties to the Arbitration Agreement." The DHs have also set out various circumstances which would show that the 2002 MOU had been abandoned by the parties. A reference is also made to the order dated 10th December 2001 passed by the Division Bench in FAO(OS) No.537 of 2001 directing *status quo* to be maintained in respect of the properties which were the subject matter of the Award dated 19th August 2000. The above order was further modified on 23rd May 2005 by directing that Respondent Nos.72 to 75 could do their business in normal course, however, proper accounts were to be maintained in respect of the sale/purchase of the land in question.

36. It must be mentioned at the outset that there is merit in the contention that the transfer of shares pursuant to the MOU of 2002 has not helped to resolve the issues between the parties. If it is true that the MOU has, in fact, been abandoned or, in any event, not given effect to completely, then it is necessary to restore the *status quo ante* the date of passing of the Award dated 19th August 2000. It is stated that all the parties to whom the companies have been transferred i.e. the Directors and shareholders of KPPL are parties to the Award. KPPL is comprised of the parties to the arbitration or their representatives. In the circumstances, it is necessary that the transfer of all shares of the four JD companies to KPPL be declared illegal and the Award dated 19th August 2000 be read with the orders of the Division Bench dated 10th December 2001. If, however, even after the present order, the

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parties are able to get the shareholders of the four JD companies to agree to such transfer then possibly there can be a rectification of such transfer of their shareholding to KPPL. Therefore, the transfer of shares of the four JD companies to KPPL is declared as invalid and the *status quo ante* the transfer of shares to KPPL is restored. Corresponding changes will be made in the register of shareholders of the four JD companies as well as of KPPL. In any event, the remaining shareholders of the four JD companies are directed to transfer their shares in the manner indicated in the Award dated 19th August 2000.

School in Kant Enclave

37. As regards the agreement to sell concerning the School in Kant Enclave, it is stated in the written submissions filed by the DHs that the utilization of the part of the sale consideration for the refund of certain amounts to creditors was not pursuant to the MOU as such and that the DK Agrawal Group is ready to refund the amount used by the VN Agrawal Group for discharge of genuine liabilities on production of proper documents together with interest. It is, accordingly, directed that within four weeks VN Agrawal Group will file an affidavit indicating what was the exact amount utilized of the sale consideration in respect of the Senior Secondary School at Kant Enclave to discharge the liability so that appropriate directions can be issued by this Court.

Karmyogi Nagar

38. It is then contended by the JDs that pursuant to the 2002 MOU, Karmyogi Nagar held by KPPL was to be divided between DK Agrawal Group and VN Agrawal Group. As regards the tripartite agreement referred to earlier which was entered into on 3rd June 2005, it is contended by the JDs that Karmyogi Nagar was not to be allocated to any person and was to remain with KBPL in which VN Agrawal and DK Agrawal Groups had shares of 50% each. The learned Arbitrator had intended to keep unallocated

assets like Karmyogi Nagar in KBPL and it was to serve the liability of the Karmyogi Group. It is further contended that the tripartite agreement was not entered into pursuant to the MOU. Various circumstances are highlighted to demonstrate this.

39. Without going into these details, it suffices only to notice that the DHs themselves stated that the division of Karmyogi Nagar jointly to both the groups had been achieved and, therefore, the Court may record satisfaction of the Award by transfer of Karmyogi Nagar to Neelpadam/nominees and Techman Buildwell Pvt. Ltd./nominees pursuant to the said tripartite agreement. It is, accordingly, ordered.

R. Kant & Company

40. An objection is raised as to the division plan of R. Kant & Company not being signed till date. The DHs have pointed out that KBPL is a partner in R. Kant & Company and that by another MOU dated 11th November 1992, the property of R. Kant & Company was divided amongst its various partners. The Award deals with the assets of R. Kant & Company which fell to the shares of KBPL. It is stated that since Dinesh Kumar Agrawal has accepted the Award and has filed the present execution petition, he is obviously not challenging the division of assets of R. Kant & Company. It is claimed that all the assets of Kant Enclave will fall to the shares of KBPL including the Film Studio and Senior Secondary School which are clearly identified on the map, a copy of which has been placed on record in the execution petition.

41. The question of transfer from the Government of Haryana for Group Housing in favour of VREPL is a matter which would be dealt with by the Court when it takes up the question of executing the impugned Award. This *per se* does not make the Award unenforceable or invalid for that reason. The modified layout plan marks out the properties falling to the share of

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KBPL and a copy of the modified plan is also placed on record. Even as regards the Senior Secondary School, there appears to be a layout plan even according to Vishwa Nath Agrawal. These objections as regards the assets in Kant Enclave do not affect the validity of the Award *per se*. At this stage the Court is concerned with the question whether the Award is enforceable as such. Any difficulty that would be faced in the matter of operationalization of the Award will be dealt with at the appropriate stage. With more than 11 years having elapsed after the passing of the Award, it is important to ensure that the Award to the best extent possible is enforced. It does appear from the written submissions filed by the DHs that hundreds of plots in Kant Enclave have been sold and transferred by owners including the DK Agrawal Group, the VN Agrawal Group and other partners of R. Kant & Company.

FSI

42. The next objection concerns the allocation by the Arbitrator of Floor Space Index ('FSI') to the parties. As pointed out by the DHs themselves, FSI is only a mathematical ratio and does not denote physical assets. The Arbitrator appears to have used the term 'FSI' in a common parlance as buildable area.

43. These are again objections which can be dealt with at the appropriate stage. It is possible that the allottees could enter into agreements between them and demark their respective shares. All these objections really do not impinge on the validity or the enforceability of the Award.

Moti Cinema and Vikram Real Estate

44. As regards Moti Cinema and Vikram Real Estate, there appears to be some dispute between KSPL and Banarasi Krishna Committee which was referred to arbitration. In the said arbitration, the Arbitrator awarded Rs.41 lakhs to KSPL along with interest at 12% per annum. The objections filed by the VN Agrawal Group were dismissed by this Court but in appeal it has

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been remanded by the Division Bench to a Single Judge. The appeal filed against the said order by Banarasi Krishna Committee is stated to be pending in the Supreme Court. It is obvious that the execution of this part of the Award will affect the decision in the said arbitral proceedings.

45. The objection as regards Vikram Real Estate is also untenable since in terms of the Award the Karmyogi Vatika Project jointly held by VREPL and KSPL has been allocated to the DK Agrawal Group and the Moti Cinema Project of KSPL has been allocated to the VN Agrawal Group which allocation is not permissible in view of para 3 of the Award. There is, in fact, no asset called Moti Cinema Project which can be transferred to the VN Agrawal Group. Moreover, in terms of para 3, no part allocation is permissible.

Karuna Associates

46. The firm Karuna Associates was allocated to the DK Agrawal Group originally, however, in the corrected Award in place of words 'firm Karuna Associates' the words 'Project Springdales held in Karuna Associates to the extent of rights of Karmyogi Group in the firm Karuna Associates' were inserted. Consequently, there is no need to make the partners of Karuna Associates parties to present proceedings. Further, all partners of the firm Dhoopchaon Builders are stated to be the parties to the arbitration except Ms. Alka Agrawal who has already signed papers in favour of Dinesh Kumar Agrawal to whom the said project has been allocated. Therefore, they can easily execute the documents for operationalizing this part of the Award.

47. As regards the liabilities which have been allocated, it will be necessary for the respective parties to whom such allocation has been made to take care of the respective liability. Here again, in the actual enforcement of the Award, detailed directions will have to be issued. As regards Kant Enclave Colony, while mining is prohibited the transfer of land of the said colony is

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not. Further, as regards, Karmyogi Vatika only shares have to be transferred.

48. There are other minor objections which actually do not affect the validity of the Award dated 19th August 2000 as clarified on 19th October 2000.

Conclusions

49. For the aforementioned reasons, this Court rejects all the objections raised by the JDs to the validity of the Award dated 19th August 2000 as modified on 19th October 2000. It is declared that the said Award dated 19th August 2000 as modified by the order dated 19th October 2000 is enforceable as such.

50. OMP Nos. 938 of 2011 and 568 of 2012 are dismissed with costs of Rs.5,000 each which will be paid by the Petitioners to the DHs/Respondents in the petitions through counsel within four weeks.

51. The execution petitions are fixed for hearing for enforcement of the Award dated 19th August 2000, as modified by the order dated 19th October 2000, on 8th October 2012.

Sd/-
S. MURALIDHAR, J.

July 24, 2012
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