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

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Judgment delivered on 01.10.2013

+ O.M.P. 628/2013

NATIONAL HIGHWAYS AUTHORITY OF INDIA Petitioner

Through: Ms Meenakshi Sood, Mr Mukesh Kumar
& Ms Tanu Priya Gupta, Advs.

versus

AFCONS INFRASTRUCTURE LTD

..... Respondent

Through: Mr N.K. Kaul, Sr. Adv. with Mr D.
Balaraman & Mr Manu Seshadri, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

IA No. 10241/2013 (condonation of delay)

1. By order dated 05.07.2013 I had directed the petitioner to file an affidavit to indicate therein as to whether the minutes of the meeting dated 19.08.2012 held before the arbitral tribunal were served upon the petitioner. In that order itself it had also been noted that the chairman of the petitioner had received a signed copy of the award on 27.08.2012.
2. In terms of the directions issued by this court the petitioner has filed an affidavit on 12.07.2013 wherein briefly it has been indicated that though the minutes of meeting of 19.08.2012 were received by the Project Implementation Unit (PIU), Chennai on 27.08.2012 vide diary no. 3974, the award was not received by the said PIU.
3. A reading of the affidavit and the submissions of the counsel made

before me tend to point to the fact that there is no dispute about the factum of receipt of a signed copy of the award on 27.08.2012 by the chairman of the petitioner. If the contents of the affidavit are to be accepted by the court, then what emerges is that the PIU never received a signed copy of the award. Though it is not in dispute that a communication dated 22.01.2013 was received by the PIU on 28.01.2013, which brought to light the fact that the award had been pronounced in the matter.

3.1 Therefore, what is to be considered is whether service of a signed copy of the award on the chairman, would suffice in law.

4. Learned counsel for the petitioner says that it would not suffice as the proceedings before the arbitral tribunal were conducted by the Project Director of the concerned PIU at Chennai. All notices were sent to the said Project Director, and therefore service of the signed copy of the award on the chairman was not sufficient service. Time for filing the petition under Section 34 of the Arbitration & Conciliation Act, 1996 (in short the Act), according to Ms Sood, should run only from 28.01.2013.

4.1 It is the submission of the learned counsel for the petitioner that if limitation is counted from 28.01.2013 then there is a delay of 15 days beyond the three months period as prescribed under Section 34(3) of the Act. Learned counsel for the petitioner says that a mere communication of the minutes of meeting was not sufficient. Reliance is placed on the judgment of the Supreme Court in the case of *Union of India vs Tecco Trichy Engineers & Contractors (2005) 4 SCC 239*.

5. On the other hand, learned counsel for the respondent submits that both in the contract executed between the parties as well as in the memo of parties, the address set out is the address of the petitioner at Delhi, which is

where, the signed copy of the award was served. He further draws my attention to the memorandum of delegation of the powers operable in the petitioner company (a document which has been filed by the petitioner alongwith a copy of the petition), to demonstrate that power to institute legal proceedings is entrusted to Member (Administration) and the power with regard to the acceptance of arbitration award, is invested in the Chairman.

5.1 Learned counsel for the respondent says that in these circumstances the service of the award on the Chairman was sufficient service and, therefore, limitation should run from 27.08.2012.

6. I have heard the learned counsels for the parties. During the course of her submissions, learned counsel for the petitioner had placed reliance on the judgment of the Supreme Court in the case of ***UOI vs Tecco Trichy Engineers & Contractors***. In this behalf, particular emphasis was laid on paragraphs 3, 7, 9 & 10 of the judgment.

6.1 In this behalf, I may only note that the facts in the case of ***UOI vs Tecco Trichy Engineers & Contractors*** were distinguishable for the following reasons. The agreement on behalf of UOI was signed by the chief engineer. During the arbitral proceedings, the chief engineer was representing the UOI. All notices were served on the Chief Engineer. Furthermore, the arbitral award itself clearly mentioned that UOI was represented by Deputy Chief Engineer, Gauge Conversion, Chennai. However, the signed copy of the award was, somehow, served on the General Manager of Southern Railway. It is in this context that the Supreme Court came to the conclusion that the limitation for institution of objections under Section 34 of the Act would run not from the date on which the service was effected on the General Manager, as he was not an officer who

was representing the UOI.

6.2 A Division Bench of this court had an occasion to discuss the import of the judgment of the Supreme Court in *UOI vs Tecco Trichy Engineers & Contractors* case. The discussion is made in the judgment dated 02.01.2012, in the case of *National Highways Authority of India vs Bhageeratha Engineering Ltd.*, passed in FAO(OS) No. 621/2011. The relevant observations of the Division Bench are as follows:

“..... In our considered view, the thread which is common to all the aforesaid judgments is that in the large monolithic organizational structures, the concerned authority dealing with the contract in question must be in receipt of the award for necessary action to be taken. If we analyze the facts of the present case in terms (sic terms of) aforesaid principle, we find that the contract executed between the appellant and the respondent was executed on behalf of the appellant by the Chairman. Thus, the concerned authority executing the contract was the Chairman. Not only that, all the affidavits have been filed by the Working Project Director, who has referred to the address of the corporate office at Delhi.

Learned senior counsel for the appellant did seek to contend that the Project Director was actually at Salem but had to come to Delhi and thus given the address of the corporate office at Delhi. We fail to appreciate this plea as in that case, the proper description of the address should have been of the office at Salem and the affidavit should have gone on to state that the said deponent was at present, at Delhi. This is not so in the present case....”

6.3 I am also informed by the counsel for the parties that the petitioner has carried the said judgment in appeal to the Supreme Court, in which, notice has been issued. Both counsels agreed though that there is no stay on the judgment of the Division Bench.

6.4 Having regard to the fact that the judgment of the Division Bench is

intact, and given the facts and circumstances of the case, I am inclined to agree with the counsel for the respondent. In the given fact situation, the signed copy of the award was served on the Chairman, who is the highest officer in the petitioner company. He is invested with the power to accept the arbitration award. In my view the true import of the judgment of the Supreme Court in the case of *UOI vs Tecco Trichy Engineers & Contractors* was, to protect statutory authorities and governmental agencies from being mulcted with a liability emanating from an unintended situation, which had its genesis in an organisational labyrinth.

6.5 Qua challenge to awards, the defining parameters on limitation are provided in the judgment of the Supreme Court in the case of *Union of India vs Popular Construction Co. (2001) 8 SCC 470*. The Supreme Court excluded the application of Section 5 of the Limitation Act, 1963 to the provisions of Section 34(3) of the Act, which requires challenge to an award to be made in the time frame provided therein. Factors, such as the one which the petitioner seeks to bring into play to relax the defined time frame, tend to reduce the efficacy of the Act, to a naught.

6.6 The distinguishing factor in this case, as against facts which obtained in the case of *UOI vs Tecco Trichy Engineers & Contractors*, is that, it is not as if the award was served on an officer who was not invested with the relevant power to challenge the award.

6.7 As noted above, the Chairman being the highest authority, the service of the award on him, in my opinion, was service on the petitioner and, therefore, the limitation, in this case ought to run from the said date, i.e., 27.08.2012. Therefore, if limitation were to reckon from 27.08.2012, there is a delay of 169 days.

7. Accordingly, I am not inclined to condone the delay. The application is, accordingly, dismissed.

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8. In view of the orders passed above in IA No. 10241/2013, the captioned petition would also have to be dismissed. It is ordered accordingly.

RAJIV SHAKDHER, J

OCTOBER 01, 2013

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