

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Arbitration Appeal No. 12 of 2016**

M/s Synergy Overseas Project And Consultant Private Limited , having Its Office At Plot No.-94, Mohan Plaza, Flat No. 203, Satya Nagar Bhubaneshwar (Orissa) Through- Its Proprietor Vishwaranjan Gannayak S/o Dr. Vipin Bihari Gan Nayak, Aged About 41 Years R/o Plot No.- 94, Mohan Plaza, Flat No. 203, Satya Nagar Bhubaneshwar (Orissa)

---- Appellant**Versus**

J. P. Engineering And Body Builders , Through- Its Partner- Nitin Sabarwal, Having Its Office At 60 Industrial Area, Rajgamaar Road, Korba, Tehsil & Distt.- Korba, Chhattisgarh

---- Respondent**And****Arbitration Appeal No. 13 of 2016**

M/s Synergy Overseas Project And Consultant Private Limited , having Its Office At Plot No.-94, Mohan Plaza, Flat No. 203, Satya Nagar Bhubaneshwar (Orissa) Through- Its Proprietor Vishwaranjan Gannayak S/o Dr. Vipin Bihari Gan Nayak, Aged About 41 Years R/o Plot No.- 94, Mohan Plaza, Flat No. 203, Satya Nagar Bhubaneshwar (Orissa)

---- Appellant**Versus**

M/s Elite Engineering through – Its Partner-Nitin Sabarwal, having its office at 281, Indira Commercial Complex, T.P. Nagar, Korba, tehsil & Distt.- Korba (C.G.)

---- Respondent

For Appellant	: Shri Sanjay Patel, Advocate.
For Respondents	: Shri Arvind Shrivastava, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****03/11/2017**

(1) Since the common question of law and fact is involved in both the writ

petition, they are being disposed of by this common order.

(2) Facilitation Council constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (for short "Act, 2006") passed an *ex parte* award in favour of the respondents on 19.6.2014. According to the appellant, he received copy of award on 30.08.2015, when the notice under Section 36 of the Arbitration and Conciliation Act, 1996 (for short "Act, 1996") was served to him. Thereafter, on 16.10.2015, the appellant filed an application under Section 34 of the Act, 1996 for setting aside the *ex parte* award dated 19.6.2014 before the District Judge, Korba.

(3) The District Judge, Korba, by its order dated 5.2.2016, has rejected the application finding that the application is barred by limitation under Section 34(3) of the Act, 1996; and 75% of the awarded amount has not been deposited by the appellant as per Section 19 of the Act, 2006, against which instant arbitration appeals have been filed questioning the same.

(4) Learned counsel appearing for the appellant would submit that learned District Judge did not make any enquiry on the question of limitation and straightway rejected the application filed by appellant under Section 34 of the Act, 1996, which is unsustainable and bad in law and the same is liable to be set aside.

(5) Per contra, learned counsel for the respondents would submit that copy of award was sent to the appellant through registered post by the Facilitation Council on 30.06.2016, which was duly received by the appellant on 4.7.2014, whereas application for setting aside *ex parte* award was filed by the appellant on 16.10.2015, which is beyond the period of limitation prescribed under Section 34(3) of the Act, 1996 and it was rightly rejected by the learned District Judge.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

(7) It is not in dispute that *ex parte* award was passed by the Facilitation Council on 19.06.2014; it is the case of the appellant that he received copy of award only on 30.08.2015 when the notice under Section 36 of the Arbitration and Conciliation Act, 1996 (for short "Act, 1996") was served to him, whereas it is the case of respondents that the appellant has received the copy of award on 04.07.2014.

(8) Since this is a disputed question of fact whether the appellant has received the copy of award on 30.08.2015 or on 04.07.2014 as provided under Section 34(3) of Act, 1996 read with Section 18 of the Act, 2006, therefore, the learned District Judge ought to have held an enquiry on the said fact. Since the enquiry has not been made on the question of limitation; and the application for setting aside *ex parte* award has been rejected, prejudice has been caused to the appellant. Thus, impugned order dated 5.2.2016 is set aside. The matter is remitted back to the District Judge for making enquiry on the question of limitation whether the application under Section 34 of the Act, 1996 was filed within the period of limitation or not in accordance with law. Further, the deposit made by the appellant in compliance of this Court order dated 6.5.2016, shall be taken as deposit under Section 19 of the Act, 2006. The respondents are at liberty to make an application before that court for releasing the same in accordance with law and in turn, the same shall be considered & decided by the learned District Judge expeditiously preferably within a period of three months from the date of receipt of certified copy of this order.

(9) Accordingly, the arbitration appeals are allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-