

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Arbitration Appeal No.89 of 2017**

1. Siya Ram Nag, son of Samaru Nag, aged around 40 years, resident of House No.6, Kenduguda Para, Nagarnar, Tahsil-Jagdalpur, District Bastar (CG)
2. Smt. Paro Nag wife of Samaru Nag, aged around 50 years, resident of House No.48, Chohnagar, Tahsil-Jagdalpur, District-Bastar (CG)
3. Maanu Ram, son of Sanpat, aged around 35 years, resident of Nagarnar, Tahsil-Jagdalpur, District-Bastar (CG)

----Appellants**Versus**

Magma Fincorp Limited, Magma Shrachi Finance Ltd., Office-Magma House, 24, Part Street, Kolkata 700016

---- Respondent

 For Appellants : Mr.B.P.Sharma and Mr.Hari Agrawal, Advocate
 For Respondent : Mr.Vaibhav P. Shukla, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****13/07/2018**

1. The arbitral award was passed by the Arbitral Tribunal directing recovery of ₹ 5,62,631/- from the appellants on 9.10.2015 at Calcutta in favour of the respondent herein. The appellants filed an application under Section 34(2) of the Arbitration and Conciliation Act, 1996 (hereinafter called as "AC Act") along with an application under Section 5 of the Indian Limitation Act for setting aside ex-parte award stating inter-alia that no such signed copy of award issued by the Arbitrator was received by them and when they appeared in execution proceedings before the Executing Court on 27.8.2016, then only they came to know about passing of

award and thereafter they obtained copy of the award in May, 2017, therefore, delay in making the application under Section 34(2) of the AC Act be condoned and application under Section 34(2) of the AC Act be allowed. That application was opposed by the respondent. Ultimately, by the impugned order, learned District Judge rejected the application filed by the appellants under Section 34(2) of the AC Act as barred by limitation and hit by Section 34(3) of the AC Act. Feeling aggrieved and dissatisfied with the order of learned District Judge rejecting their application under Section 34(2) of the AC Act, this arbitration appeal has been preferred.

2. Mr.B.P.Sharma, learned counsel for the appellants, would submit that the appellants were not served with a signed copy of award issued by the Arbitrator under Section 31(5) of the AC Act and limitation provided under Section 34(3) of the AC Act would not apply. Even otherwise, only on the basis of appearance of the appellants in execution proceedings, it cannot be held that they were served signed copy of the award by the Arbitrator as required under Section 31(5) of the AC Act. Therefore, the impugned order passed by learned District Judge deserves to be set aside.
3. On the other hand, learned counsel for the respondent would support the impugned order and submit that duly signed copy of award by the Arbitrator was communicated to the appellants, despite that the appellants did not file the

application under Section 34(2) of the AC Act within limitation as prescribed in Section 34(3) of the AC Act. Even otherwise, the appellants appeared before the Executing Court on 27.8.2016, whereas application for setting aside ex-parte award was filed on 9.6.2017, which has rightly been rejected by learned District Judge as barred by limitation.

4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. In order to consider as to whether the appellants' application has rightly been rejected by learned District Judge, it would be appropriate to notice Section 31(5) and Section 34(3) of the AC Act which reads as under:-

“31. Form and contents of arbitral award.-

(1) to (4) xxx xxx xxx

(5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6) to (8) xxx xxx xxx.

34. Application for setting aside arbitral award-

(1) and (2) xxx xxx xxx

(3) 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.”

6. Section 31(1) of the AC Act mandates the members of the arbitral tribunal to make the award in writing and to sign it. Sub-section (5) of Section 31 further mandates that the signed copy of the award shall be delivered to each party by the Arbitrator itself and limitation under Section 34(3) would commence only from the date the 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 AC Act.
7. The Supreme Court in the matter of **State of Maharashtra and others v. ARK Builders Private Limited**¹ has held that the expression "party making that application had *received* the arbitral award" cannot be read in isolation and it must be understood in light of what is said earlier in section 31(5) that requires the signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under section 34 (3) would commence only from the date the signed copy of the award is delivered to the party making the application for setting it aside. It was 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 particular way and in case the

¹ (2011) 4 SCC 616

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.”

8. The Supreme Court in the matter of **Union of India and another v. Deepak Electric and Trading Company and another**² while dealing with Art.119 of the Schedule to the Limitation Act, 1963, which prescribes the period of limitation for filing the application under the Arbitration Act, 1940 held that starting point of limitation for filing the application for setting aside award would be the date of service of notice on the Executive Engineer as provided under Art.119(b) of the Schedule-II of the Limitation Act and not the date of knowledge of the filing of the award. The Supreme Court set aside findings of the High Court that Executive Engineer has knowledge of the filing of the award and limitation should be counted from the date of the knowledge.
9. The Supreme Court in the matter of **Benarsi Krishna Committee and others vs. Karmyogi Shelters Private Limited**³ has held that delivery of signed copy of the award upon the counsel of the parties is not sufficient and signed copy of the award has to be delivered to the party. If signed copy of award is not delivered to the party himself, it would not amount to compliance of provisions of Section 31(5) of the AC Act.

² 2012 (12) SCC 509

³ 2012 (9) SCC 496

10. Following the principle of law laid down by the Supreme Court in **ARK Builders Private Limited** (supra), reverting to the facts of the present case, it is the appellants case that they were not received the signed copy of the award by the Arbitrator in compliance of Section 31(5) of the AC Act, which has denied by the respondent stating inter-alia that signed copy of the award was sent by the Arbitrator to the appellants on 12.10.2015 and incorrect statement has been made by them before the Court, whereas learned District Judge did not enquire into that aspect of the matter as to whether signed copy of the arbitral award was delivered to the appellants to commence the period of limitation under Section 34 (3) of the AC Act and straightway rejected the application holding that the appellants appeared in execution proceedings on 27.8.2016 and after ten months, they filed an application under Section 34(2) of the AC Act, which is barred by limitation. Such a course is impermissible in law. Learned District Judge ought to have held enquiry to find out whether signed copy of the award by the Arbitrator was delivered to/received by the appellants as interpreted by the Supreme Court in **ARK Builders Private Limited** (supra), which has not been done.
11. In view of the aforesaid discussion, the impugned order is set aside. The matter is remitted to the District Judge, Bastar at Jagdalpur to consider the application afresh with regard to delivery/receipt of the arbitral award duly signed by

the Arbitrator to the appellants herein and to pass a fresh order after hearing the parties within a period of three months from the date of receipt of certified copy of this order. The parties are at liberty to file documents in support of their stand.

12. The arbitration appeal is allowed to the extent indicated hereinabove. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-