

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION (L) NO.2556 OF 2015
IN
ARBITRATION PETITION (L) NO.1814 OF 2015
Along with
ARBITRATION PETITION (L) NO.1814 OF 2015**

JSC Ispat Pvt. Ltd. & Ors. .. Applicants/Petitioners
Vs.

M/s.HDB Financial Services Limited .. Respondent

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Mr.Harshad Sathe for the applicants/petitioners.

Mr.Sandeep Jinsiwale for the respondent.

CORAM : R.D. DHANUKA, J.

DATE : 4th January 2018

P.C.:

. By this application, the applicants/petitioners seek condonation of delay of 30 days in filing the present arbitration petition.

2. Learned counsel appearing for the applicants states that the applicants have applied for condonation of delay of 30 days in filing the present arbitration petition. It is submitted by the learned counsel that the notice of motion for condonation of delay is filed on the premise that the date of commencement of the cause of action for filing the arbitration petition under Section 34 of the Arbitration and Conciliation Act, 1996 in this case would commence after the applicants have received certified copy of the award from the executing Court. It is submitted that as a

matter of record, since the applicants have received a copy of the signed award from the learned arbitrator, cause of action for filing the arbitration petition under Section 34 of the Act did not commence.

3. In view of the issue of limitation raised by the respondent pursuant to the directions issued by this Court, the learned counsel for the respondent has produced the original file containing the records and proceedings of the arbitral proceedings including the Detailed Track Events for the items booked on 11th September 2014 along with certificate putting rubber stamp by the concerned post office. Learned counsel for the respondent submits that notice for each and every meeting was served upon the petitioners by the respondent and a copy of the signed award was sent by the learned arbitrator to both the parties. He submits that copy of the signed award was delivered on 15th September 2014 whereas the arbitration petition is filed by the petitioners only on 11th September 2015.

4. In the rejoinder, learned counsel for the petitioners submits that the 'Detailed Track Events' produced from the original file of the learned arbitrator would not conclusively prove that copy of the signed award was delivered upon the petitioners by the learned arbitrator. He

also placed reliance on the order dated 1st December 2014 passed by the Delhi High Court in O.M.P. 67 of 2014 filed by the respondent against the petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 in which a statement was recorded made by both the parties that the arbitration proceedings were going on in the Bombay Court and a request was made that the said application filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 be sent to the learned arbitrator with a direction that the same be treated as an application under Section 17 of the Act. He submits that thus the learned arbitrator could not have rendered any award prior to 1st December 2014 and thus question of effecting of service of signed copy of the award upon the petitioners by the learned arbitrator prior to 1st December 2014 did not arise.

5. Learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of ***Union of India Vs. Tecco Trichy Engineers and Contractors*** reported in ***2005 (4) SCC 239*** in support of the submission that if the service of the arbitral award is rendered on the officer who is directly concerned with the subject matter, cause of action would not commence from the date of service of such award on such officer.

6. Learned counsel for the respondent, on the other hand, placed reliance on the judgment of this Court in the case of ***Francisco A. D'Souza & Anr. Vs. L and T Finance Limited, Mumbai*** reported in ***2015 (5) Mh.L.J. 390*** in support of the submission that since the learned arbitrator has sent copy of the award at the last known address of the petitioner mentioned in the statement of claim and the same has not been returned by the postal authority, it would amount to a deemed service of such copy of the award.

7. Before going into the issue of limitation, this Court enquired with the learned counsel for the petitioners about merit of the matter and whether the petitioners are ready and willing to deposit any amount. Learned counsel for the petitioners fairly states that except raising preliminary objection before the learned arbitrator, his client did not attend any of the meetings before the learned arbitrator nor filed any written statement. His client is also not in a position to deposit any amount if any opportunity is granted by this Court in the event of this Court coming to the conclusion that delay in filing the arbitration petition can be condoned.

8. A perusal of the original file of the arbitral proceedings produced by the respondent indicates that five of the respondents in the

arbitral proceedings including the petitioners herein had received the packet which was delivered upon the petitioners on 15th September 2014. The arbitral award is dated 28th August 2014. The address of the petitioners mentioned in one of the documents annexed to the said file i.e. confirmation of the postal department showing the names of the petitioners and other party-respondents to the arbitral proceedings to be read with the Detailed Track Events would indicate that the petitioners and other respondents were served with copy of the arbitral award. It is not the case of the petitioners that the addresses mentioned in the said document were not of the petitioners. In my view, the petitioners were thus served with a copy of the signed award by the learned arbitrator as required under Section 31 (5) of the Arbitration and Conciliation Act, 1996.

9. In so far as the judgment of the Supreme Court in the case of ***Union of India Vs. Tecco Trichy Engineers and Contractors (supra)*** relied upon by the learned counsel for the petitioners is concerned, in the said judgment, issue was whether cause of action for filing the petition under Section 34 of the Act would commence even if the copy of the award was served on the officer who was not concerned with the subject matter of the dispute. There was no such issue involved in this

matter. The said judgment of the Supreme Court thus would not even remotely apply to the facts of this case and would not assist the case of the petitioners.

10. This Court in the case of ***Francisco A. D'Souza & Anr. Vs. L and T Finance Limited, Mumbai (supra)*** has considered the similar issue and after construing the provision of Section 3(1)(b) and Section 34 of the Act has held that the notices were sent by the Registered Post A.D. at the last known addresses of the petitioners and the same have not been returned by the postal authority, it would amount to a deemed service of such notices and proceedings. The principles of law laid down by this Court in the said judgment would apply to the facts of this case. I am respectfully bound by the said judgment.

11. Be that as it may, even if this Court would have come to the conclusion that there was no delay in filing petition, the petitioners are not able to make out any case for interference with the impugned award. It is not disputed by the petitioners that the petitioners were served with all notices by the learned arbitrator. Except raising a preliminary objection by the petitioners, the petitioners have neither filed any written statement nor participated in the proceedings before the learned arbitrator.

The petitioners even today are not willing to deposit any amount. I am thus not inclined to entertain this petition even otherwise on merit. No case is thus made out for interference in the impugned award. In view of the aforesaid reasons, notice of motion and also the arbitration petition are dismissed. No order as to costs.

12. At the request of the learned counsel for the petitioners, ad-interim protection granted by this Court to continue for a period of four weeks from today.

R.D. DHANUKA, J.