

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

+ **EFA(OS) (COMM) 7/2018 and CM APPL. 30358-59/2018**

Reserved on: 31.07.2018

Date of decision: 27.08.2018

IN THE MATTER OF:

A G AEROVISION ELECTRONICS PVT LTD & ORS Appellants

Through: Mr. Sachin Datta, Senior Advocate with
Ms. Akanksha Singh, Dr. Farrukh Khan and
Mr. Piyush Chawla, Advocates

versus

TATA CAPITAL FINANCIAL SERVICES LTD Respondent

Through: Mr. Sanjeev Goyal, Advocate with
Mr. Varun Bedi, Regional Legal Manager

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

HIMA KOHLI, J.

1. Aggrieved by the orders dated 15.01.2018 and 22.05.2018 passed by the learned Single Judge in OMP (ENF.) (COMM.) 150/2016, the appellants have filed the present appeal under Section 13 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 (in short, “**Commercial Courts Act**”) read with Order XXI Rule 58 of the CPC read with Section 37 of the Arbitration and Conciliation Act, 1996 (in short “**the Act**”).

2. Before advertng to the arguments advanced by learned counsels for the parties, a brief glance at the facts of the case is considered necessary.

3. The appellant No.1 (Judgment Debtor No.1 in the Execution Petition) is a private limited company under liquidation. A provisional liquidator was appointed in respect of the appellant No.1/company vide order dated 11.12.2015 passed in Co.Pet. No.112/2014 filed by the respondent herein before the Company Court under Sections 433/434 of the Companies Act. The appellants No.2 and 3 (husband and wife) are the ex-Directors of the appellant No.1/company and personal guarantors of a loan taken from the respondent. The appellant No.4, brother of the appellant No.2 is also a guarantor of the said loan. The appellants No.2 to 4 are Judgment Debtors No.2 to 4 in the Execution Petition.

4. The respondent/Decree Holder, a non-banking finance company, is a wholly owned subsidiary of Tata Capital Ltd. (in short 'TCL'). The respondent has taken over all the assets, debts, outstanding credit liability etc. of TCL in terms of a scheme of arrangement sanctioned by the Bombay High Court vide orders dated 24.02.2012 and 12.03.2012, including the claims pertaining to the appellants. TCL had sanctioned an Equipment Finance Facility upto Rs.5 crores in faovur of the appellants in terms of the sanction letter dated 28.07.2010. For the loan extended to it by TCL at Mumbai, appellant No.1/company had entered into a Loan-cum-Hypothecation-cum-Guarantee Agreement dated 09.08.2010. A Supplementary Agreement dated 13.08.2010 was executed between the appellants and the respondent for opening a Letter of Credit. Over the year 2010-11, the respondent claims to have disbursed an amount of Rs.4,77,92,595/- to the appellants for purchase of several equipments.

5. When the appellants failed to clear the outstanding dues towards installments payable to the respondent/Decree Holder in the first quarter of the year 2012, the respondent served a recall notice dated 18.09.2012 on the appellant No.1/company as the principal borrower and the appellants No.2 to 4 as guarantors, calling upon them to jointly and severally repay a sum of Rs.4,35,77,748/- due as on 18.09.2012, together with interest at the agreed rate. On the appellants committing regular defaults in repaying the amounts due and payable alongwith the agreed interest, the respondent/Decree Holder filed a petition before the Bombay High Court under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the '**Act of 1996**') on 28.10.2012, where it was granted interim protection. Further, the respondent/Decree Holder invoked the arbitration clause governing the parties and vide letter dated 27.06.2013, appointed a Sole Arbitrator to adjudicate the disputes that had arisen between the parties.

6. Vide letter dated 29.06.2013, the Sole Arbitrator accepted his appointment and issued notices to both sides for commencing the arbitral proceedings on 24.07.2013. Initially, the notices issued to the appellants were returned to the learned Arbitrator with the remarks, '*left*'. On the respondent furnishing fresh addresses of the appellants, fresh notices were issued to them for appearing on 03.09.2013. Since some of the notices issued to the appellants were not returned, the hearing fixed on 03.09.2013 was adjourned by the Arbitrator to 17.09.2013, on which date, a counsel had appeared alongwith a representative of the appellants and the parties were directed to complete the pleadings. However, vide letter dated 04.12.2013, counsel for the appellants intimated the Sole Arbitrator that he was seeking discharge in the matter.

7. A perusal of the award dated 02.12.2015, passed by the learned Sole Arbitrator reveals that thereafter, the appellants kept playing hide and seek and avoided participating in the arbitral proceedings by sending e-mails addressed to the learned Arbitrator asking for more time to file the reply and for engaging a new advocate. On 09.06.2014, another advocate had appeared for the appellant No.1/company before the Sole Arbitrator and again, sought time to file a reply. On the next date fixed, none turned up on behalf of the appellants and nor was a reply filed to the statement of claims submitted by the respondent. Although the Arbitrator granted liberty to the appellants to cross-examine the witnesses of the respondent, they did not avail of the said opportunity. Instead, a request was made on behalf of the appellant No.1/company to drop the arbitral proceedings and await the outcome of some proceedings stated to be pending in respect of the company, before the AAIFR. Finally, an *ex-parte* award was passed by the learned Arbitrator on 02.12.2015, holding the appellants jointly and severally liable to pay a sum of Rs.4,75,22,104/- to the respondent alongwith interest and a sum of Rs.1,51,000/- towards their share of the Arbitrator's fee, over and above the claim awarded.

8. When the appellants did not seek recourse to Section 34 of the Act of 1996 by filing an application for setting aside the arbitral award within the time stipulated in Section 34(3) of the Act, in the end of November, 2016, the respondent/Decree Holder filed a petition under Section 36 of the Act on the original side of the High Court, for seeking enforcement of the Award. The appellants No.2 to 4 appeared in the said proceedings through counsel who took a plea that they had not received a signed copy of the arbitral award as

contemplated in Section 31(5) of the 1996 Act and therefore, the timeline for filing an application for setting aside the award, as contemplated under Section 34(3) of the Act, had not even commenced.

9. The aforesaid plea was refuted by learned counsel for the respondent/Decree Holder, who stated before the learned Single Judge on 30.05.2017 and 15.01.2018 that the learned Arbitrator had dispatched the signed award to the appellants No.2 to 4 at the same addresses as mentioned in the memo of parties of the Execution Petition, on 09.12.2015. However, the said envelopes were returned thrice with the remarks, '*locked*' and thereafter, with the remarks, '*unclaimed*'. Insofar as the appellant No.4 was concerned, counsel for the respondent/Decree Holder submitted that a signed award had been dispatched to him at his given address on 12.12.2015, but the same remained unclaimed with the remarks, '*closed premises*'. It was thus argued on behalf of the respondent/Decree Holder that the appellants were trying to misuse the process of law and were deliberately raising a dispute about service of a signed copy of the award so as to deprive it of the fruits of the award.

10. After considering the rival submissions of the counsels for the parties and examining the legal position, vide order dated 15.01.2018, the learned Single Judge rejected the objections raised by the appellants No.2 to 4 with regard to the maintainability of the petition filed by the respondent/Decree Holder under Section 36 of the 1996 Act. Not satisfied with the aforesaid order, the appellants No.2 to 4 filed a review petition, registered as Review Pet. No.124/2018, which was also dismissed as not maintainable vide order dated 22.05.2018, on the ground that it was beyond the scope and ambit of Section 47 of the CPC. Contemporaneously, an application filed by the appellants No.2 to

4 seeking a signed copy of the arbitral award (I.A. 5330/2018) was disposed of by the learned Single Judge upon counsel for the respondent/Decree Holder opening one of the envelopes containing the signed award dispatched by the Sole Arbitrator to the appellants at their respective addresses and placed on record in compliance of an order dated 23.01.2017. While directing that a signed copy of the award be furnished to the counsel for the appellants No.2 to 4, it was made clear in the order dated 22.05.2018, that furnishing of the said copy to them would not extend the period of limitation for filing a petition under Section 34 of the 1996 Act and that handing over of the said copy of the award to the counsel for the appellants would be deemed to be considered as a service on all the appellants. Aggrieved by the aforesaid orders dated 15.01.2018 and 22.05.2018, the appellants have filed the present appeal.

11. Mr. Sachin Datta, learned Senior Advocate appearing for the appellants contended that the learned Single Judge failed to appreciate that a signed copy of the award was never served on the appellants before 22.05.2018 and the observations recorded in the order dated 22.05.2018 to the effect that supply of a copy of the arbitral award to the appellants in the course of the court proceedings, shall not extend the period of limitation for filing a petition under Section 34 of the Act, defeats the very purpose of seeking service of a copy of the award; that the learned Single Judge failed to appreciate that repeated efforts were made by the appellants for obtaining a signed copy of the award including by sending a letter dated 12.03.2018 to the Sole Arbitrator, but the same went futile; that on its own, the respondent/Decree Holder had never served a signed copy of the arbitral award on the appellants even when the appellants No.2 to 4 were represented through a counsel in the winding up

petition filed by the respondent/Decree Holder before the Company Court or before the Bombay High Court in the proceedings bearing Chamber Summons No.160/2016, filed in Arbitration Petition No.1232/2012.

12. It was further argued on behalf of the appellants that it is evident from a perusal of the delivery reports filed by the respondent/Decree Holder that the envelopes addressed to the appellants No.2 and 3 had been returned with the remarks, '*unclaimed*', whereas the envelope sent to the appellant No.4 was returned with the remarks that he was not residing at the same address and therefore, no conclusion could have been drawn that a signed copy of the arbitral award had been delivered to them. In the alternate, learned Sr. Advocate urged that a presumption of service as postulated under Section 3 of the 1996 Act, is always rebuttable and it would depend upon the facts of each case and that Section 31(5) being a substantive provision, any non-compliance thereof, would have serious repercussions. The thrust of the argument was that the right of the appellants to file objections to the arbitral award cannot be foreclosed till a signed copy is delivered and in the absence thereof, the respondent/Decree Holder cannot be permitted to directly jump to the stage of enforcement of the award by invoking Section 36 of the Act. In support of his submissions, learned counsel for the appellants relied on the following decisions:-

- (i) Lalmani Ramnath Tiwari vs. Bhimrao Govind Pawar; **2001 (2) Mh.L.J.**
- (ii) National Projects Constructions Corporation Limited vs. M/s Bundela Bandhu Constructions Company; **ILR (2007) II Delhi 59**
- (iii) State of Maharashtra and Ors. vs. ARK Builders Private Limited; **(2011) 4 SCC 616**

13. The aforesaid submissions were countered by learned counsel for the respondent, who opened his arguments by pointing out that the appellants No.2 to 4 are not competent to file the present appeal on behalf of the appellant No.1/company as a provisional liquidator has already been appointed in respect of the said company vide order dated 11.12.2015, passed by the Company Court in Co. Pet. No.112/2014. He submitted that only the appellants No.2 to 4 (Judgment Debtors No.2 to 4) had appeared in the execution proceedings and their counsel had stated before the Single Judge on 23.01.2017, that a provisional liquidator had been appointed in respect of the appellant No.1/company filed by the respondent/Decree Holder.

14. On a perusal of the records of the OMP (ENF.) (COMM.) 150/2016, it is revealed that on the aforesaid submission being made, the learned Single Judge had observed that the proceedings against the appellant No.1/company can continue only after permission is obtained from the concerned court. On 11.04.2017, the respondent/Decree Holder was given liberty to approach the Official Liquidator for seeking necessary permission for proceeding against the appellant No.1/company. In the light of the aforesaid position, the objection taken by learned counsel for the respondent/Decree Holder about the maintainability of the present appeal by the appellant No.1/company through the appellant No.2, ex-Director, is valid and upheld. The appellant No.2 is not authorized to file the present appeal on behalf of the appellant No.1/company as an ex-Director when a provisional liquidator has already been appointed. Accordingly, the present appeal is not maintainable on behalf of the appellant No.1/company and is confined to the appellants No.2 to 4 alone.

15. On merits, learned counsel for the respondent/Decree Holder highlighted the manner in which the appellants have tried to evade service in the arbitral proceedings and submitted how even after they had entered appearance through an Advocate, they did not file a reply to the statement of claims submitted by the respondent/Decree Holder or participate in the arbitral proceedings. Instead, they tried to drag the proceedings as best as they could, leaving no option for the learned Arbitrator but to finally pass an *ex-parte* award on 02.12.2015. Learned counsel asserted that the mischievous conduct of the appellants is evident from the fact that they made every effort to avoid receiving a signed copy of the award that the learned Arbitrator had dispatched at their addresses mentioned in the arbitral proceedings, which are the same addresses as set out in the memo of parties of the execution petition. The envelopes containing the signed award were dispatched to the appellants No.2 and 3 on three occasions and each time, they were returned by the postal authorities with the remarks, “locked” and “unclaimed”. Similarly, the envelope dispatched to the appellant No.4 remained unclaimed with the remarks, “closed premises”. It was thus stated that when the above repeated attempts on the part of the appellants to evade receiving the signed award were brought to the notice of the learned Single Judge, it was rightly concluded that they can be deemed to have been served, once the envelopes were sent at their last known address, which fact has not been denied by the appellants No.2 to 4/Judgment Debtors in their reply.

16. We have heard the arguments advanced by learned counsels for the parties, perused the impugned orders dated 15.01.2018 and 22.05.2018 and carefully examined the records and the judgments cited by learned counsel for

the appellants No.2 to 4. The question required to be answered here is whether the envelopes containing the signed copy of the award, dispatched through speed post by the Sole Arbitrator to the appellants at the addresses available in the arbitral record and returned by the postal authorities with the remarks “locked”, “unclaimed” and “premises locked”, can be treated as good service, as contemplated under Section 31(5) of the Act.

17. Before dealing with the submissions made by learned counsels for the parties, we may extract below, the relevant provisions of the Arbitration and Conciliation Act, 1996:-

“3. Receipt of written communications—(1) *Unless otherwise agreed by the parties,—*

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

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31. Form and contents of arbitral award.—(1) *An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.*

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

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34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

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(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.”

18. Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act, 1872 are also relevant to answer the question raised in the case and state as follows:-

“General Clauses Act, 1897

27. Meaning of service by post — Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Indian Evidence Act, 1872

114. Court may presume existence of certain facts. —The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.”

19. As is apparent from the facts of the present case noted above, the learned Arbitrator had dispatched the signed copies of the award to the parties by speed post at the same addresses, at which they were served in the arbitral proceedings. Pertinently, these are the very same addresses that have been mentioned in the Execution Petition filed by the respondent/Decree Holder on which the appellants were duly served with the court summons. It is also an undisputed position that the envelopes containing the signed copy of the award and dispatched by the Sole Arbitrator to the appellants No.2 and 3, had been returned with the remarks, “*locked*” and thereafter, with the remarks, “*unclaimed*” and the said envelopes evidence that three attempts had been made to effect service on them. Similarly, the envelope containing the signed copy of the award addressed by the Sole Arbitrator to the appellant No.4 at his given address, had also been returned with the remarks, “*closed premises*”.

20. In view of the objection taken by the appellants No.2 to 4 to the non-service of a signed copy of the award on them, the learned Single Judge had taken the precaution to direct the respondent/Decree Holder to place on record, proof of service of the signed copy of the award on them and in compliance therewith, copies of the said envelopes dispatched by the Sole Arbitrator were duly filed. Further, on 11.04.2017, when counsel for the appellants No.2 to 4 had claimed that they had not been afforded a signed copy of the award, the respondent/Decree Holder was directed to serve the same on them and place the proof of service on record. The impugned order dated 22.05.2018 records that the envelopes containing signed copies of the award were returned back with the remarks that the addressees, appellants No.2 and 3 could not be found inspite of repeated attempts made to deliver the article. The envelope

addressed to the appellant No.4 was returned with the remarks, “*premises was found closed*”.

21. Much emphasis has been laid by learned counsel for the appellants on the use of the words, “*a signed copy shall be delivered to each party*” in Section 31(5) of the Act to contend that the Act contemplates actual delivery of the award and that the period of limitation provided under Section 34(3) of the Act for preferring a petition under Section 34(1), can commence only from the date when a party lodging such a petition has “*received the arbitral award*”. It was canvassed before us that there is nothing on record to demonstrate that the award was in fact delivered to the appellants No.2 to 4 and resultantly, the prescribed period of limitation to institute a petition under Section 34 of the Act for setting aside the said award, cannot be stated to have commenced at all.

22. On a cumulative reading of Section 34 (3) with Section 31(5) of the Act, delivery of a copy of the award by the Tribunal and the receipt of the same by the parties is an important stage in the arbitral proceedings and must be adhered to as once the said stage is crossed, it sets into motion several periods of limitation, as contemplated in the Act [Refer: UOI vs. Tecco Trichy Engineers & Contractor (2005) 4 SCC 239]. But at the same time, the word “*delivery*” used in Section 31(5) of the Act cannot be interpreted in a pedantic manner as to defeat the quintessential feature of the enactment, which is speedy and time bound disposal of arbitration related cases.

23. We are of the opinion that the distinction sought to be drawn by learned counsel for the appellants between the word, “*delivered*” used in Section 31(5) vis-à-vis the word “*received*” used in Section 34(3) of the Act, cannot invite such a punctilious interpretation as to frustrate the very intent and purpose of

the Statute by a party like the appellants No.2 to 4 before us, who have right from the very beginning, been adopting all kinds of dilatory tactics to avoid service in the arbitral proceedings and on passing of an *ex-parte* award, have evaded delivery/receipt of the award. Yet, in the same breath, they keep on insisting that the period of limitation available for instituting a petition under Section 34 of the Act in respect of the award, cannot be stated to have commenced till a signed copy thereof is actually delivered on them.

24. In a case like the present one, where an *ex-parte* award was published by the Arbitral Tribunal on conclusion of the arbitral proceedings, the only manner in which the signed copy of the same could have been delivered/served on the appellants, was through post/courier. For the purpose of service, Section 3 of the Act prescribes that any written communication is deemed to have been received if it is delivered to the addressee at the place of business/habitual residence/ mailing address. Once the signed copy of the award was dispatched by the learned Arbitrator to the parties at their last known place of business/habitual residence/ mailing address, which can be demonstrated by providing “*a record of the attempt to deliver it*”, the same would be sufficient to draw an inference that they are deemed to have been served. It is not as if the Arbitral Tribunal was expected to physically serve/deliver the arbitral award on the appellants, particularly, when they elected to keep away from the arbitral proceedings, resulting in passing of an *ex-parte* award.

25. In the facts and circumstances of the instant case, the presumption arising under Section 114 of the Evidence Act and Section 27 of the General Clauses Act would come into play. There is sufficient material on record to establish that several attempts were made to deliver the signed copy of the

arbitral award on the appellants No.2 to 4 but each time, the said envelopes were returned with the remarks, “*locked*”, “*unclaimed*” and *closed premises*”. Nor have the appellants been able to place anything before the learned Single Judge or for that matter, before this Court to rebut the presumption under the provisions of Section 114 of the Evidence Act and Section 27 of the General Clauses Act, with regard to service of the award on them.

26. In our view, if the submission made by learned counsel for the appellants No.2 to 4 that till a signed copy of the arbitral award is delivered on a party, the limitation period prescribed under Section 34(3) of the Act of 1996 does not commence for making an application under Section 34(1) for setting aside the award, is accepted without looking at the fact situation in a given case, it will give a licence to dishonest litigants to adopt all kinds of devious tactics to evade receiving a signed copy of the award and then claiming that the same was not “*delivered*” and therefore, the period of limitation cannot commence for filing a petition under Section 34(3) of the Act. We find merit in the submission made by learned counsel for the respondent that if such a plea is accepted, then no beneficiary under an award would ever be able to reap its fruits by applying for its execution and enforcement.

27. A party in whose favour an award has been passed, cannot be divested of its precious rights on a dishonest plea taken by the opponent that he could not take recourse to Section 34(1) of the Act due to non-delivery of a signed copy of the award, when there is sufficient material on the record to demonstrate deliberate attempts to evade receipt of the same. One would be loath to give such a literal interpretation to the word, “*delivery*” used in Section 31(5) of the Act, as it would result in nullifying the limitation period prescribed under

Section 34(3) of the Act and thereby frustrate the very object sought to be achieved by the enactment, whose *liet motif* is expeditious disposal. The primary object of the said provision is to fast track the legal process and ensure that the parties desirous of filing objections against an arbitral award, move with alacrity to approach a judicial forum and not that they resort to deceitful means to evade service and then take a plea of non-delivery of a signed copy of the award to urge that the period of limitation prescribed under Section 34 of the Act for setting aside the award, had not commenced.

28. We are of the firm view that in the present case, unclaimed service amounts to good service and should be treated as deemed service of the arbitral award on the appellants, as it has been amply demonstrated that the signed copy of the award had been dispatched by the learned Arbitrator at the correct addresses of the parties. The postal authorities had attempted to deliver the envelopes enclosing the signed copy of the award at the addresses of the appellants No.2 to 4, as available with the learned Arbitrator, which happen to be the same addresses as furnished in the memo of parties of the execution petition on which they were duly served with the court summons. Once the learned Arbitrator had dispatched the signed award in envelopes by speed post to the appellants No.2 to 4 and they were returned with the endorsements, “*locked*”, “*unclaimed*” and *closed premises*”, deemed service ought to be presumed against them. Therefore, the principles incorporated in Section 27 of the General Clauses Act read with Section 114 of the Evidence Act can be safely applied in the instant case. The appellants No.2 to 4 have miserably failed to discharge the onus cast on them of proving that the envelopes containing the signed copy of the award had not been served on them and that

they could not be held responsible for the said non-service in any manner. In the absence of any such rebuttal, the benefit shall naturally go to the respondent/Decree Holder. The appellants No.2 to 4 have none other to blame except for themselves for failing to take timely steps to file objections to the arbitral award under Section 34 of the Act.

29. As for the decisions cited by the learned counsel for the appellants No.2 to 4 in the cases of Lalmani Ramnath Tiwari (supra) and ARK Builders (supra), the learned Single Judge has considered and distinguished them on facts in the following manner:-

“8. The learned counsel for the Judgment Debtor Nos. 2 and 4 relies upon the judgment of the Supreme Court in ***State of Maharashtra and Others v. ARK Builders Private Limited***, (2011) 4 SCC 616 to submit that the period of limitation for filing of the objection would not start till the signed copy of the Award is delivered to the Judgment Debtor. He submits that merely because the counsel for the Decree Holder had offered to give a copy of the Award to the counsel for the Judgment Debtors, this would not amount to service of the signed copy of the Award in terms of Section 31(1) of the Act. In my opinion, the above judgment would have no application to the fact of the case. In ***ARK Builders (Supra)***, it was an admitted case that no copy of the Award was given by the Arbitrator to the other party of the proceedings, primarily because the said party failed to pay the cost of the Arbitration. In the present case the Arbitrator has duly sent a copy of the Award to the Judgment Debtors, and as held by me above, the same would amount to due service of the signed copy of the Award on the Judgment Debtors.

9. The learned counsel for the Judgment Debtors has also relied upon the judgment of the Bombay High Court in ***Lalmani Ramnath Tiwari v. Bhimrao Govind Pawar*** 2001 (2) Mh.L.J. 342 to contend that where the envelopes have been returned with the expression “Not Claimed”, the same would not amount to due service of the same. In my view, the said judgment would have no

application to the facts of the present case. Judgment was dealing with the case of notice, which was a mandatory requirement under Bombay Rent Act. The Court further, refused to apply the presumption of service as provided for in the General Clause Act and held that once the tenant denies receipt of the notice, no presumption can be drawn that service has been affected. In the present case, it is not a question of presumption of service but the effect of Section 3 of the Act, which, as noted above clearly states that the service would be deemed to have been affected if it is sent to the addressee's last known place of habitual residence. This is a deeming provision in the Act, which is a special legislation and would, therefore, override the general law of service as contained in the Code of Civil Procedure, 1908."

We see no reason to differ with the above view expressed in the impugned orders. The fact situations in both the cases cited by the counsel for the appellants are entirely different and do not have any application to the instant case.

30. Coming to the decision in the case of M/s Bundela Bandhu Constructions Company (supra), where the court was called upon to decide whether an application seeking condonation of delay in filing objections to an award is maintainable and the delay could be condoned by the court, it was held by the Division Bench that the court does not possess the power to condone the delay or enlarge the time beyond the prescribed timeline, reckoned from the date on which the arbitral award is delivered on a party desirous of filing objections. The said decision highlighted the necessity of meticulous and proper delivery/service of the arbitral award on the parties but at the same time, added a word of caution that a punctilious or fastidiously formal connotation to the word '*delivered*' employed in Section 31(5) of the Act, ought not to be imported. Emphasis was laid on substantial and authentic compliance of the

said provision, at the instance of the Arbitral Tribunal itself. In fact, the said decision does not espouse the cause of the appellants. Rather, it supports the view expressed by us above.

31. As a result, the challenge laid to the impugned orders dated 15.01.2018 and 22.05.2018, fails. The impugned orders are upheld and the present appeal is dismissed as meritless alongwith the pending applications, with costs of Rs.10,000/- imposed on the appellants No.2 to 4.

32. We may hasten to add that the present appeal has been decided on merits, without going into the aspect of its maintainability under Section 37 of the Act read with Section 13 of the Commercial Courts Act, though such a plea was available to the respondent/Decree Holder, but no such objection was raised before us at the time of arguments.

33. Before parting with the present case, we also wish to record that at the request of the parties, the learned Single Judge had referred them to the Delhi High Court Mediation and Conciliation Centre for exploring the possibility of a settlement, but no settlement was reported. On conclusion of arguments in the present appeal, on 31.07.2018, when learned counsel for the appellants No.2 to 4 had made a similar submission before us for referring the parties to mediation, to test their bonafides, we had enquired if the appellants would be ready and willing to deposit at least 50% of the awarded amount in Court. A response was awaited from the learned counsel for the appellants No.2 to 4 but at the end of the day, it was conveyed that the appellants were not in a position to deposit any amount, much less 50% of the amount awarded in favour of the respondent/Decree Holder. Consequently, the request made for sending the

parties to mediation, was turned down since it appeared to be more of a ploy to buy time, than a *bonafide* intent to arrive at an amicable resolution.

**(HIMA KOHLI)
JUDGE**

**(REKHA PALLI)
JUDGE**

AUGUST 27, 2018

rkb/na

