

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

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Reserved on: 22nd August, 2019

Pronounced on: 12th September, 2019

O.M.P. (COMM) 244/2019, I.A. 8751/2019, I.A. 8752/2019 & I.A. 8753/2019

MINISTRY OF HEALTH AND FAMILY WELFARE & ANR... Petitioners

Through: Mr. Praveen Kumar Jain, Adv.
With Ms. Akanksha Agrawal, Adv.
with Dr. Yashwant singh/Addl. M. S.,
Mr. Pankaj Kumar Sinha/ DDA,
Mr. Anil Bhatt/ O.S and
Murari Kumar, LDC/ RML Hospital.

versus

M/S HOSMAC PROJECTS DIVISION OF HOSMAC INDIA PVT. LTD.

..... Respondent

Through: Mr. Nakul Dewan, Sr. Adv. With Mr.
Himanshu Chaubey, Adv.

JUDGMENT

SANJEEV NARULA, J

I.A No 8750 of 2019 (U/Sec. 34(3) of the A&C Act, 1996, r/w Section 151 CPC for condonation of delay in filing)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 has been filed against the Arbitral Award dated 20th November 2018, passed by the Sole Arbitrator, (hereinafter 'the Arbitrator'), whereby an amount of Rs. 22,05,09,651/- along with future interest @ 12% p.a., has been allowed in favour of the Respondent, along with the cost of arbitration assessed at Rs. 25 lakh.

Brief Facts:

2. On 7th May 2010, Petitioner No. 1- Ministry of Health and Family Welfare entered into an agreement with the Respondent- Hosmac Projects Ltd., for construction of Emergency Care Services and for renovation of 16 existing VIP Rooms in Respondent No. 2 - Dr. Ram Manohar Lohia Hospital, New Delhi, (hereinafter referred to as 'the Agreement'). On completion of the work, Respondent was issued 'No Objection Certificate' and Completion Certificate dated 11th February 2015. Thereafter, disputes arose between the parties with respect to payment and imposition of liquidated damages etc, and on an application of the Respondent, this Court appointed an Arbitrator who passed the impugned Arbitral Award dated 20th November 2018 (hereinafter 'the Award'). On 13th December 2018, Respondent filed an application under Section 33(1)(a) of the Arbitration and Conciliation Act (hereinafter the 'Act'), for correction of computation errors. The application was disposed of and a Corrigendum dated 7th January 2019, was passed, copies whereof were sent to the parties on the same date.

3. The Petitioner seeks condonation of delay in filing the present Petition. As per the records of the Registry of this Court, the present case was filed for the first time on 10th May 2019 and re-filed on 13th May 2019, 31st May 2019 and finally after curing all the defects on 1st July 2019. As on 10th May 2019, there is a delay of 33 days in filing the petition, beyond the statutory period of three months. The law relating to exercise of powers in terms of the proviso to Section 34(3) is now well settled. Even if the Court were to exercise its discretion in favour of the Petitioner, any delay beyond 30 days

cannot be condoned. In view thereof, on 3rd July 2019, referring to the judgment of the Supreme Court in ***State of Himachal Pradesh v. Himachal Techno Engineers, (2010) 12 SCC 210***, learned counsel for the Petitioner was queried as to the maintainability of the present petition and why it should not be dismissed *in limine* on account of the statutory bar under Section 34(3) of the Act. Learned counsel for the Petitioner after being granted time to respond to the query of the Court, after seeking instructions, contended that there is in fact no delay in the present petition and delay if any is liable to condoned. Learned Counsel argued that Petitioner No. 1 was never sent a signed copy of the Arbitral Award by the Arbitrator and the signed copy of the Award was sent only to Petitioner No. 2. Even the Corrigendum order dated 7th January 2019, was delivered only to the authorized representative of Petitioner No. 2 and not to Petitioner No. 1. He argued that Petitioner No. 1 received copy of the Award and the Corrigendum order, from Petitioner No. 2 vide letter dated 14th March 2019. Since the Arbitrator did not send a signed copy of the Award and a copy thereof was received only on 14th March 2019, the period of 90 days would commence from the said date i.e. 14th March 2019.

4. He also argued that delivery of the Arbitral Award on an agent/ Counsel of a party does not amount to proper service on the party. As per Section 31(5) read with Section 2(h) of the Act, a signed copy of the award must be delivered to the party to the dispute. Learned Counsel also contended that the limitation period of 90 days, with respect to Petitioner No. 2, should be calculated from the date of receipt of the Corrigendum order (9th January 2019) and not from the date of the disposal of the application, filed under

Section 33 of the Act (7th January 2019). The term 'disposed of' in Section 34(3) of the Act, should be implied as the date of receipt of the corrigendum order and not the date of passing of the corrigendum order. In support of his contention learned counsel relied on Section 12(4) of the Limitation Act, 1963 which reads as under:

"4. In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded. Explanation.—In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

Analysis and Finding

5. I have given a thoughtful consideration to the submissions of the learned counsel for the Petitioner.

6. First and foremost, it is essential to note the contents of the application seeking condonation of delay in filing the objections under Section 34 of the Act. The application bearing IA No. 8750/2019 discloses the reasons for condonation of delay in the following terms:-

"2. That the petitioners through the present application crave the leave of this Hon'ble Court **to condone delay of 31 days in filing the accompanying objections/** petition due to the reasons beyond the control of the petitioners.

3. That the petitioners received the impugned corrigendum dt. 07-01-2019 on 09-01-2019 in their office. After receiving the said corrigendum, petitioner no. 2 approached its counsel

for legal opinion. On 09-03-2019, the petitioner received the legal opinion of its counsel and accordingly, after internal discussions and deliberations, on 14-03-2019 the matter was referred to Ministry of Health and Family Welfare for seeking approval from Ministry of Law and Justice. Thereafter, on 07-05-2019, directions were received from Under Secretary, Ministry of Health and Family Welfare to file objections/ petition against the impugned award dt. 20-11-2018 and impugned corrigendum dt. 07-01-2019.

4. That on 09-05-2019, the petitioners approached the Litigation incharge, Delhi High Court, Ministry of Law & Justice, Govt. of India and got appointed the present government counsel for filing objections/ petition against the impugned award dt. 20-11-2018 and impugned corrigendum dt. 07-01-2019 passed by Ld. Sole Arbitrator. Next day itself i.e. 10-05-2019, Ld. Counsel for the petitioners filed the objections/ petition u/s 34 of the Act before this Hon'ble Court.

5. That it is due to such a mandatory long process and necessities, the petitioners could file the accompanying objection/ petition on 10-05-2019 only.

6. That there is no *mala fide* on the part of the petitioners for the delay that has occurred in filling of the accompanying objections as the same was neither intentional nor deliberate.

7. That no prejudice shall be caused to the respondent, whereas the petitioners will suffer grave injury and prejudice if the present application is not allowed and the petitioners are not being heard on the merits of the case. Huge public money is involved in the present case and the impugned award is likely to be set aside by this Hon'ble Court."

7. In support of the above submission, Learned Counsel relied upon the judgement of the Supreme Court in ***Benarsi Krishna Committee & Ors v. Karmyogi Shelters Pvt. Ltd*** (2012) 9 SCC 496, wherein it has been held as

under:-

"15. The expression "party", as defined in Section 2(h) of the 1996 Act, clearly indicates a person who is a party to an arbitration agreement. **The said definition is not qualified in any way so as to include the agent of the party to such agreement. Any reference, therefore, made in Section 31(5) and Section 34(2) of the 1996 Act can only mean the party himself and not his or her agent, or Advocate empowered to act on the basis of a Vakalatnama.** In such circumstances, proper compliance with Section 31(5) would mean delivery of a signed copy of the Arbitral Award on the party himself and not on his Advocate, which gives the party concerned the right to proceed under Section 34(3) of the aforesaid Act."

(emphasis added)

8. Further reliance is also placed on the judgement in *Union of India vs. Tecco Tricky Engineers and Contractors*, (2005) 4 SCC 239, wherein the Court has held as under:-

"8. **The delivery of an arbitral award under sub-Section (5) of Section 31 is not a matter of mere formality. It is a matter of substance.** It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. **The delivery of arbitral award to the party, to be effective, has to be "received" by the party.** This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to

an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings."

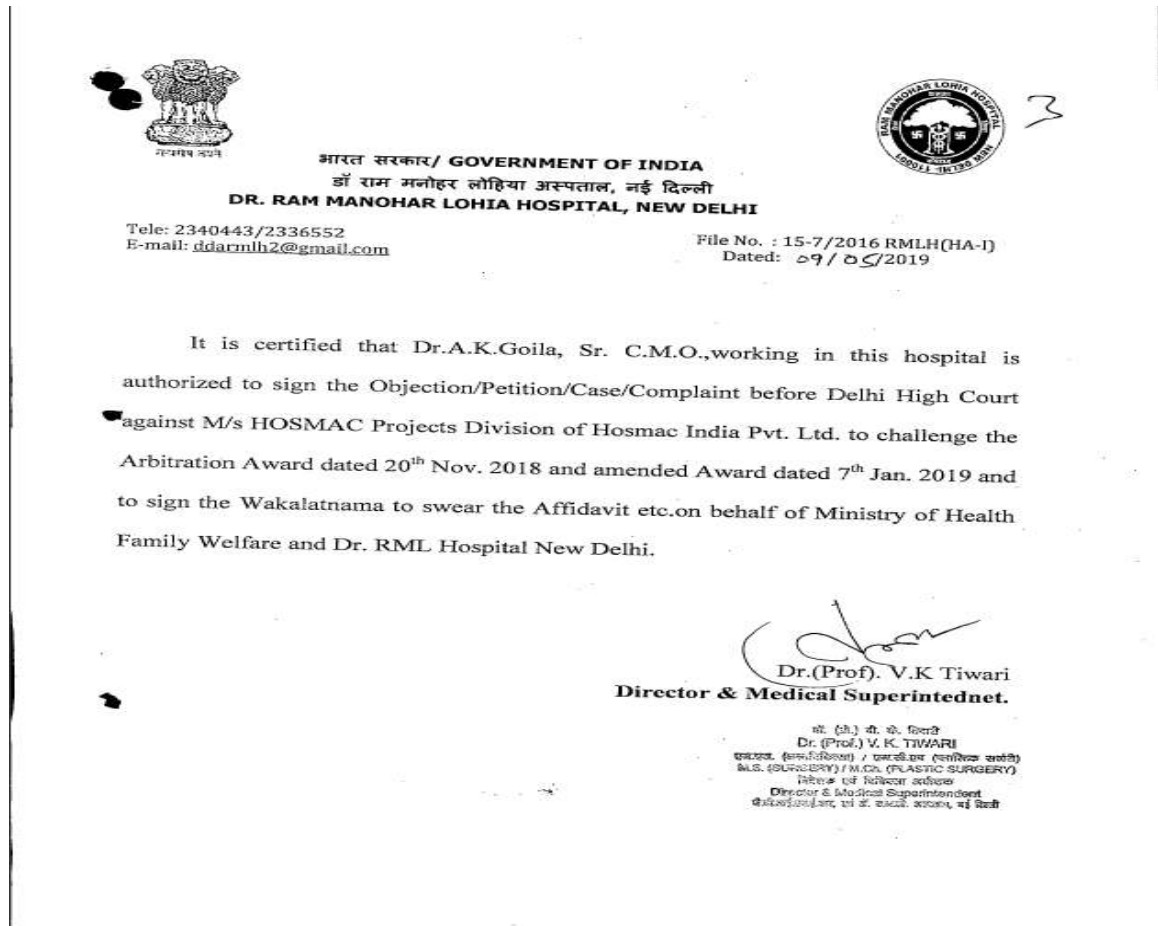
(emphasis supplied)

9. The averments made in the application are contrary to the submissions advanced by the learned counsel for the Petitioners. As noted in para 3 of the application, it is the collective stand of the Petitioners that they have received the impugned award dated 20th November 2018 and the Corrigendum dated 7th January 2019 in their office on 9th January 2019. Therefore, the contention of Petitioners that the Corrigendum dated 7th January 2019 was delivered only to the authorised representative of Petitioner No. 2 and not Petitioner No. 1 is completely misconceived. Petitioner calculated the delay as 31 days, as is evident from the contents of the application. The application duly supported by an affidavit, unambiguously and explicitly discloses the date of receipt of the Corrigendum dated 7th January 2019. The plea advanced before the Court in the written submissions is contrary to the averments made in the application. Petitioners in a bid to cover up the delay are conveniently ignoring the date of service of the Corrigendum on representative of Petitioner No. 2 which is the date of delivery. This stand is being taken with the sole objective to advance the date of receipt of the award for the purpose of calculating the period of limitation and cross the hurdle of the statutory bar under section 34(3) of the Act. Learned Counsel has also tried to detach and separate the Petitioners to give an impression that both of them are independent of each other for the purposes of calculating the period of limitation. This is

nothing but a desperate attempt to save the petition being dismissed on the ground of delay. It is essential to note that Petitioner No. 1 is Ministry of Health and Family Welfare and Petitioner No. 2 is Ram Manohar Lohia Hospital, which is under the aegis of Petitioner No. 1. The present petition has been filed jointly on behalf of both the Petitioners and has been signed only by Dr. Ajay Kumar Goila, Senior CMO, Department of Anaesthesia, PGIMER & Dr. RML Hospital, New Delhi who states that he is the duly authorised representative of both the Petitioners and is competent to swear the affidavit/Statement of Truth on behalf of the Petitioners. It is also noteworthy that in the arbitral proceedings, it was Mr. Ajay Kumar Goila, who represented both the Petitioners along with other officers of RML Hospital. The joint counter statement of facts, filed on behalf of the Petitioners, before the arbitral tribunal were signed by one Mr. Shambhu Kumar who was working as Deputy Director Administration, Dr. RML Hospital, New Delhi. Thus Petitioner No. 2 [Respondent No. 2 before the Arbitral Tribunal], all throughout represented Petitioner No. 1 [Respondent No. 1 before the Arbitral Tribunal] and is prosecuting the case on behalf of both the Petitioners.

10. The present petition is also a joint petition on behalf of the Petitioners and as noted above, the same has been signed only by an Officer of Petitioner No. 2. Thus, both the Petitioners are represented through an Officer of Petitioner No. 2 [RML Hospital] and there is no independent representation by Petitioner No.1. Petitioner No. 1, though joined as a co-petitioner in the present petition, has not independently signed or annexed any affidavit on its behalf. The affidavit, Statement of Truth and signatures

on the petition are by an officer of Petitioner No. 2. In fact, the certificate annexed with the petition. The contents whereof are reproduced hereinbelow, makes it abundantly clear:



11. There is no averment on behalf of the Petitioner denying the receipt of the award and plea advanced before the Court that service was not affected on Petitioner No. 1 is completely misconceived and altogether contrary to record. Therefore, the delivery of the award and the Corrigendum to the authorised representative of Petitioner No. 2, was a valid service in law and the period of limitation has to commence from the said date and that would be the date of commencement of period of limitation. On receipt of the

award, if there has been some delay internally for seeking opinion and approval to file the petition is merely an administrative difficulty and the same, does not qualify to be a ground for condonation of delay.

12. I am afraid the judgments relied upon are of no assistance to the Petitioner. There is no quarrel on the legal proposition laid therein that the delivery of the arbitral award to the party, to be effective, has to be received by the party. However, in the present case, there is no averment made in the application seeking condonation of delay, that the service was not affected on the party. On the contrary, as noted above, the application categorically states that the copy of the award and the Corrigendum was delivered to the authorised representative of Petitioner No. 2. The Petitioners are, in fact, very cleverly seeking to extend the period of limitation by contending that the service on authorised representative of Petitioner No. 2 does not qualify as a service on Petitioner No. 1. This contention would not extend the period of limitation.

13. Now, coming to the question as to what would be the date of commencement of limitation period of three months for filing the present petition. The period of limitation for filing objections against the award has been prescribed under Section 34(3) of the Act which reads as under:-

"34. Application for setting aside arbitral award-

(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."

14. In the application seeking condonation of delay, it has been contended that the limitation period shall commence from 9th January 2019, the date of receipt of the Corrigendum, which was passed on 7th January 2019. The law dealing with the power of the Court to condone the delay in filing the petition under Section 34 of the Act, is now well settled. In ***Union on India v. Popular Construction Co. (2001) 8 SCC 470***, the Court while dealing with the question of applicability of the Section 5 of the Limitation Act held as under:-

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.

13. Apart from the language, 'express exclusion' may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether

and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".

14. Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed under Section 34 to challenge an Award is absolute and unextendable by Court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process" This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

"5. Extent of judicial intervention. -
Notwithstanding anything contained in any other law for the time being in force, in matter governed by this Part, no judicial authority shall intervene except where so provided in this Part."

15. The 'Part' referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act.

16. Furthermore, section 34(1) itself provides that 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. Sub Section 2 relates to grounds for setting aside an award and is not relevant for our purposes. But an application filed beyond the period mentioned in Section 34, sub section (3) would not be an application "in accordance with" that sub section. Consequently by virtue of Section 34(3), recourse to the court against an arbitral award cannot be made beyond the period prescribed."

15. Further, in ***P. Radha Bai v. Ashok Kumar, 2018 SCC Online SC 1670***, the Supreme Court interpreted the phrase "but not thereafter" to hold that the

intent of the legislature was to give finality to the Arbitral Award by fixing an outer boundary limit for challenging the award. It has been held that Proviso to Section 34 gives discretion to the Court to condone the delay for a sufficient cause, but such discretion cannot be extended beyond the period of thirty days. This is evident from the following observations of the Court:-

"39. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result."

16. Further, in *Simplex Infrastructure Ltd. v. Union of India*, (2019) 2 SCC 455, the Supreme Court further clarified that the statutory limit to challenge the arbitral award has to be strictly adhered to and has held that administrative difficulties would not be a reason to condone delay beyond statutory prescribed period, in the following terms:

"9. Section 34 provides that 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). sub-section (2) relates to the grounds for setting aside an award. An application filed beyond the period mentioned in sub-section 3 of Section 34, would not be an application "in accordance with" that subsection. By virtue of Section 34(3), recourse to the court against an arbitral award cannot be beyond the period prescribed. Sub-section (3) of 5 Section 34, read with the proviso, makes it abundantly clear that the application for setting aside the award

on one of the grounds mentioned in sub-section (2) will have to be made within a period of three months from the date on which the party making that application receives the arbitral award. The proviso allows this period to be further extended by another period of thirty days on sufficient cause being shown by the party for filing an application. The intent of the legislature is evinced by the use of the words "but not thereafter" in the proviso. These words make it abundantly clear that as far as the limitation for filing an application for setting aside an arbitral award is concerned, the statutory period prescribed is three months which is extendable by another period of upto thirty days (and no more) subject to the satisfaction of the court that sufficient reasons were provided for the delay.

18. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made within three months and the period can only be extended for a further period of thirty days on showing sufficient cause and not thereafter. The use of the words "but not thereafter" in the proviso makes it clear that the extension cannot be beyond thirty days. Even if the benefit of Section 14 of the Limitation Act is given to the respondent, there will still be a delay of 131 days in filing the application. That is beyond the strict timelines prescribed in sub-section (3) read along with the proviso to Section 34 of the 1996 Act. The delay of 131 days cannot be condoned. To do so, as the High Court did, is to breach a clear statutory mandate.

20. Administrative difficulties would not be a valid reason to condone a delay above and beyond the statutory prescribed period under Section 34 of the 1996 Act"

17. Keeping in view the aforesaid dicta of the Supreme Court dealing with the power of the Court while deciding an application seeking condonation of delay, I now proceed to examine, whether there is a delay in presenting the present petition beyond the period prescribed under Section 34 (3) of the Act

i.e. period of 3 months and 30 days. The arbitral award was pronounced on 20th November 2018 whereby learned sole Arbitrator passed an award in favour of the Respondent and directed the Petitioner to pay a sum of Rs. 22,05,09,651/- and further awarded a sum of Rs. 25,00,000/- towards arbitration cost incurred by the Respondent. Since there was a computation error, which resulted in Respondent being granted higher amount, the Respondent preferred an application under Section 33 of the Act for rectification of mistake in calculation. The said application was allowed vide order dated 7th January 2009 and the awarded amount was reduced to Rs. 15,11,66,498/-. Concededly, Petitioners received the Corrigendum dated 7th January 2019 on 9th January 2019. As per the Petitioners, the period of limitation has to be calculated from 9th January 2019.

18. Learned counsel for the Petitioners has contended that the Supreme Court in ***State of Himachal Pradesh & Ors v. Himachal Techno Engineers & Anr, (2010) 12 SCC 210***, has held that Section 12 of the Limitation Act would be applicable in proceedings under Section 34 of the Act. It has been further argued that in ***Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department (2008) 7 SCC 169***, following the decision in ***Simplex Infrastructure Ltd v. Union of India*** (supra), the Supreme Court held that the provisions of Section 14 of the Limitation Act would also be applicable in respect of proceedings under Section 34 of the Act. Section 29 of the Limitation Act provides that provisions of Section 4 to 24 shall apply if they are not expressly excluded by any special or local law. Section 34 of the Act does not expressly exclude operation of Section 4 to 24 of the Limitation Act. Sub-Section 2 and 4 of Section 12 of the Limitation Act

provide for exclusion of time taken in obtaining copy of the award. It is, therefore, contended that the period of limitation should be construed from 9th January 2019 and not the date of disposal of the application under section 33 of the Act.

19. On the other hand, Learned counsel for the Respondent has, however, relied upon the decision of the Division Bench of this Court in *Prakash Atlanta JD V. National Highway Authority of India, 227 (2016) DLT 691* to contend that the period of limitation would commence from the date of corrigendum dated 7th January 2019, which is the date of disposal of the application filed under Section 33 of the Act. The Division Bench of this Court has examined the question regarding the period of limitation in the context of Section 33 of the Act and has clearly held that in a situation where a request under Section 33 of the Act is considered, it is the date of disposal of the said application which becomes the relevant date for commencement of the period of limitation. The relevant portion of the said judgement reads as under:-

"22. The error by the learned Single Judge is to overlook the principle of law, that if legislative intention is clear, other provisions of the same enactment have not to be looked into, unless a conflict arises. The rule of harmonious construction would then come into play and the two provisions have to be harmoniously read. Meaning thereby, the territory occupied by the two has to be delineated with precision.

23. But the learned Single Judge has not brought out any conflict. On the contrary, we find no conflict. Para (a) of Sub-Section (1) of Section 33 contemplates a request made to an Arbitral Tribunal concerning computation, clerical,

typographical and other errors of the kind in an award. Para (b) of the said Sub-Section contemplates a request made to the Arbitral Tribunal to give an interpretation of a specific point or part of the award. Sub-Section (2) vests the Arbitral Tribunal the jurisdiction to consider the request made under Sub-Section (1) and to make the correction or give interpretation, which as per Sub-Section (2) 'Shall form part of the arbitral award.' Thus, the legislator has not contemplated any supplementary award to be made. The legislator has provided for the said decision to be forming part of the arbitral award. Sub-Section (3) confers a *suo moto* power on the Arbitral Tribunal to correct an error of the kind contemplated by clause (a) of Sub-Section (1) to be made. Sub-Section (4) and (5) deal with a situation where an award has omitted to consider claims presented and empowers the Arbitral Tribunal to make an additional award. Since a time limit is prescribed under Sub-Section (4) and (5) to deal with a request made under Sub-Section (1), Sub-Section (6) empowers the Arbitral Tribunal to extend the time limit prescribed. Sub-Section (7) simply imports the requirement of Section 31 which are applicable to an award to an order correcting or interpreting an arbitral award or making an additional arbitral award. **We fail to understand as to in what manner interpretation of Sub-Section (3) of Section 34 of the Act, which has a bearing on the date from which limitation would run to file an application under Sub-Section (1) of Section 34 of the Act, can possibly come into conflict with the provisions of Section 33 of the Act.**

24. It is not unknown to law that for different kinds of cause of action accruing, a different date wherefrom limitation commences.

25. Conscious of the fact that if after an award is published a request has been made under Section 33 of the Act, a party should be entitled to the benefit of limitation not running against it with reference to the date of the award, the legislator has stipulated the trigger date as the one when the request under Section 33 of the Act is disposed of. This

additionally shows the consciousness of the legislator to provide two trigger of dates."

20. It is also pertinent to note that a Special Leave Petition bearing No. 6853/2016, titled as *National Highway Authority Of India v. M/S Prakash Atlanta JV*, against the said judgement was dismissed by the Supreme Court vide order dated 18th March 2016. In *Himachal Techno Engineers* (supra), it has been held that Section 12 of the Limitation Act is applicable to the petitions under Section 34 of the Act. However, in the present case, the decision of Division Bench in *Prakash Atlanta JV* (supra), is squarely applicable as the application under Section 33 of the Act was decided on 7th January 2019, and the said date would be the relevant date for the purpose of calculating the period of limitation and not 9th January 2019. Nevertheless, even if limitation is reckoned from 9th January 2019, the petition is still barred by limitation, as explained hereinafter.

21. To decide the question of calculation of the period of limitation, it is essential to refer to decision of the Supreme Court in *Himachal Techno Engineers* (supra), which read as under:

"8. Sub-section (5) of Section 31 of the Act provides that after an arbitral award is made, a signed copy shall be delivered to each party. If one of the parties to arbitration is a Government or a statutory body or a corporation, which has notified holidays or non-working days, and if the award was delivered to it on a holiday, the question is: whether the date of physical delivery to the office of a party, should be considered as the date of receipt of the award by the party, or the next working day should be considered as the date of receipt?

9. In *Union of India v. Tecco Trichy Engineers & Contractors* [(2005) 4 SCC 239] this Court considered the meaning of the word “received” in Section 31(5) of the Act and held: (SCC pp. 243-44, paras 8-9)

“8. The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. ... The delivery of arbitral award to the party, to be effective, has to be ‘received’ by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

9. In the context of a huge organisation like the Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub-section (1) or (5) of Section 33 or under sub-section (1) of Section 34.”

10. When the award is delivered or deposited or left in the office of a party on a non-working day, the date of such physical delivery is not the date of “receipt” of the award by

that party. The fact that the beldar or a watchman was present on a holiday or non-working day and had received the copy of the award cannot be considered as “receipt of the award” by the party concerned, for the purposes of Section 31(5) of the Act. Necessarily the date of receipt will have to be the next working day.

11. In this case, it is not disputed that though the cover containing the award was delivered to the beldar in the Office of the Executive Engineer on 10-11-2007 which was a holiday, the Executive Engineer received the award on 12-11-2007 (Monday), which was the next working day. Therefore we hold that the date of delivery of the award on a holiday (10-11-2007) could not be construed as “receipt” of the award by the appellant. The date of receipt therefore should be taken as 12-11-2007 and not 10-11-2007.

12. Section 12 of the Limitation Act, 1963 provides for exclusion of time in legal proceedings. Sub-section (1) thereof provides that in computing the period of limitation for any application, the day from which such period is to be reckoned, shall be excluded. The applicability of Section 12 of the Limitation Act, 1963 to petitions under Section 34 of the Act is not excluded by the provisions of the Act."

22. Let's test the period of limitation under both the scenarios. If the corrigendum was received on 7th January 2019, the period of limitation would commence from 8th January 2019 and the period of limitation calculated in terms of the aforesaid judgements would be as under:-

Date of disposal of application under Section 33	7.01.2019
Date to reckon the period of limitation	8.01.2019
Three months period from 7.01.2019 as per Section 34 Calculated in terms of judgment of Hon'ble Supreme Court in <i>State of Himachal Pradesh v. Himachal Techno Engineers 2010 12 SCC 210</i>	i. 8.01.2019-7.02.2019 ii. 8.2.2019-7.03.2019 iii. 8.03.2019-7.04.2019
30 days after expiry of three months in terms of Section 34(3) calculated from 8.04.2019, end on -	7.05.2019

Date of filing the Petition	10.05.2019
DELAY	3 Days

23. Thus, in view of the above, the petition would be barred by a period of three days. In arguendo, if the contention of the Petitioner is accepted and 9th January 2019, the date of receipt of the corrigendum is considered to be the relevant date, even then the petition would be barred by time, which is evident from the following tabulation.

Date of receipt of corrigendum under Section 33	9.01.2019
Date to reckon the period of limitation	10.01.2019
Three months period from 7.01.2019 as per Section 34 Calculated in terms of judgment of Hon'ble Supreme Court in <i>State of Himachal Pradesh v. Himachal Techno Engineers 2010 12 SCC 210</i>	i. 10.01.2019 - 9.02.2019 ii. 10.2.2019 - 9.03.2019 iii. 10.03.2019 - 9.04.2019
30 days after expiry of three months in terms of Section 34(3) calculated from 10.04.2019, end on -	9.05.2019
Date of filing the Petition	10.05.2019
DELAY	1 Day

24. The learned counsel has relied upon the decision of the Bombay High Court in *Union of India v. Maa Agency and Ors, 2003(4) Bom CR 234*, wherein it was held that:

"3. Since the arbitral award in the present case was received on 18th December 2001, having regard to the provisions of Section 9 of the General Clauses Act, that day would have to be excluded. *The period of three months would thus commence on and from 19th December 2001 and expire on 19th March 2002.* The Arbitration Petition has been filed within a period of 30 days thereafter, in fact on the last of the 30 days which was 18th April 2002. A Notice of Motion for condonation of delay has been instituted by the petitioner. In my view, sufficient cause has been shown to condone the delay of 30 days. The Motion is accordingly made absolute and the delay of 30 days is condoned."

(emphasis supplied)

25. Petitioners contention that if 9th January 2019 is considered to be the relevant starting date for calculating the period of limitation, then the period would commence from 10th January 2019 and 3 months would expire on 10th April 2019, is misconceived and untenable. The date of receipt of the corrigendum i.e. 9th January 2019 would obviously be excluded. The starting date would be 10th January 2019. However, the corresponding date of the expiry of three months would be 9th April 2019 and not 10th April 2019, as contended by the Petitioner. This is evident from the manner of calculation of the period as considered by the Supreme Court in ***Himachal Techno Engineers*** (supra), which is evident from the dates noted in the said judgement and explained in the following paragraphs:-

"5. This leads us to the question whether the petition was filed beyond three months plus thirty days. There is no dispute that if the petition had been filed within a period of three months plus thirty days, the delay has to be condoned as sufficient cause was shown by the appellant for condonation of the delay. But the High Court has accepted the contention of the respondent that the period of three months plus thirty days expired on 10.3.2008 and therefore the petition filed on 11.3.2008 was barred. Therefore, the following questions arise for our consideration:

(i) What is the date of commencement of limitation?

(ii) Whether the period of three months can be counted as 90 days?

(iii) Whether only three months plus twenty eight days had

expired when the petition was filed as contended by the appellant, or whether petition was filed beyond three months plus thirty days, as contended by the respondent?

Re: Question (iii)

12. As the award was received by the Executive Engineer on 12.11.2007, for the purpose of calculating the three months period, the said date shall have to be excluded having regard to Section 12(1) of Limitation Act, 1963 and Section 9 of General Clauses Act, 1897. Consequently, the three months should be calculated from 13.11.2007 and would expire on 12.2.2008. Thirty days from 12.2.2008 under the proviso should be calculated from 13.2.2008 and, having regard to the number of days in February, would expire on 13.3.2008. Therefore the petition filed on 11.3.2008 was well in time and was not barred by limitation."

26. Thus, even if the period of limitation is calculated from 9.01.2019, the petition would be barred by 1 day. The Bombay High Court has ignored the above aspect and considered the expiry of limitation as contrary to the judgment of the the Supreme Court in *Himachal Techno Engineers* (supra).

27. In view of the aforesaid discussion and in view of the judgements of the Supreme Court which explicitly states that the Court does not have any power to condone the delay beyond 30 days, the petition is barred by limitation and accordingly the application is dismissed.

O.M.P. (COMM) 244/2019

28. In view of the fact that the application seeking condonation of delay has been dismissed, there is no ground to entertain the present petition.

Accordingly, the present petition along with the pending applications are dismissed with no order as to costs.

SANJEEV NARULA, J.

SEPTEMBER 12, 2019

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