

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FAO-150-2021(O&M)

Date of decision: 01.04.2021

Parsvnath Developers Ltd.

.....Appellant

Versus

M/s Wisecan Engineering Pvt. Ltd. And another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Gunjan Rishi, Advocate for the appellant

Mr. Vilas Sharma, Advocate for respondent no.1

ANIL KSHETARPAL, J.

Through this appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A&C Act'), the appellant assails the correctness of the order dated 12.11.2020 passed by the learned Additional District Judge while dismissing the application seeking condonation of delay in filing the petition u/s 34 of A& C Act .

The Facts:-

Some skeleton facts are required to be noticed. In this case, the sole Arbitrator commenced the proceedings under A&C Act in view of a reference made by the Micro and Small Enterprises Facilitation Council,(hereinafter referred to as 'the Council) in exercise of the powers conferred under Section 18 of the Micro Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the 'MSMED Act 2006') The Arbitrator, after reserving on 24.09.2018, pronounced the

award on 27.09.2018. A photocopy of the award is available on the record requisitioned from the Court. On careful perusal thereof, it becomes apparent that a copy of the award was received by one person on 29.09.2018. Learned counsel representing the respondent submits that he has received a copy of the award. There is no endorsement either by the Arbitrator or by his Secretariat that a copy of the award has been received by the appellant or dispatched to the appellant.

In the petition filed by the appellant under Section 19 of MSMED Act, 2006 read with Section 34 of A&C Act on 18.04.2019, it was asserted that the copy of the award has been received on 19.12.2018. Apart therefrom, an application seeking condonation of delay of 30 days was also filed.

No reply to the application for condonation of delay was filed by the respondent, although, the proceedings remained pending before the learned Additional District Judge for a period of more than 1 year and 6 months. The Court held that since it was filed beyond the period of 30 days, after elapse of original period of three months from the date of award, therefore, the delay in filing the petition cannot be condoned.

It is important to note that pending proceedings before Additional District Judge, an application for summoning the record of the Arbitrator was filed by the appellant, however, it was kept pending. On the other hand, the respondent filed an application under Section 19 of the MSMED Act, 2006, before the learned Additional District Judge. Yet another application for release of the amount deposited and

advancement of the date of hearing was also filed by the respondent. The respondent in support of his oral plea, produced a copy of a receipt issued by the Indian Posts alongwith a print out of the tracking details of the consignment in order to prove that the copy of the award was delivered to the appellant.

The Reasons for dismissal by the Court below:-

On careful perusal of the order passed by the learned Additional District Judge, it is apparent that the application for condonation of delay was dismissed on the following grounds:-

(i) On perusal of the photocopy of the award produced along with the petition it is apparent that there is an endorsement dated 29.09.2018.

(ii) Learned counsel representing the respondent has stated at Bar that since he belongs to Panipat, therefore, he had sent a copy of the award to the appellant by speed post and from the receipt and tracking consignment details, it is proved that the item was delivered to appellant on 12.10.2018.

(iii) The appellant has pleaded that after a period of two months from the day when the Learned Arbitrator reserved its award, they enquired from the sole Arbitrator who informed them that the award has already been pronounced on 27.09.2018. The Court has observed that the only source to obtain the copy of the award was from the Council but photocopy of the award attached with the petition u/s 34 A & C Act does not show that it was issued by the council.

On these grounds the court has held that since the petition

under Section 19 of the MSMED Act, 2006 read with Section 34 of the A&C Act, was filed after the elapse of the original period of three months + 30 days from the date of award which is the maximum period prescribed enabling the court to condone the delay, hence, the petition was dismissed only on the ground of delay.

On careful reading of the order passed by the learned Additional District Judge, it is apparent that the Court has failed to record the finding as to when the appellant received the signed copy of the Arbitral Award. As noticed above, the respondent did not file any reply to the application seeking condonation of delay. In this court, the respondent has filed written arguments with the assertion that the learned Arbitrator handed over the copy of the award in an envelope to the learned counsel representing the respondent with a direction to remit the same to the appellant and he, after coming back to Panipat, posted the same through a consignment/item on 09.10.2018 which was delivered to the appellant on 12.10.2018. However, there is no assertion that the aforesaid copy of the award was a signed copy, which is the specific requirement of Section 31 (5) of the A&C Act.

Arguments of Learned Counsels:-

Learned counsel representing the petitioner has submitted that a specific assertion was made in the application for condonation of delay that a copy of the award was delivered to the appellant on 19.12.2018 and in the absence of any counter, the assertion made by the petitioner would be deemed to have been admitted. Further, there is also no material to prove that a signed copy of the award was ever delivered

to the appellant. In the appeal, the counsel representing the respondent admits that the Arbitrator gave him an envelope containing a copy of the award which is alleged to have been dispatched through post from Panipat. However, there is no material on the record to establish that the envelope did contain a signed copy of the award and it was delivered to the appellant.

Per contra, learned counsel representing the respondent has submitted that the appellant has not pleaded that the copy of the award was handed over to them on 19.12.2018. In view of the receipt and the consignment tracker details, it stands proved that the appellant did receive a copy of the award in the month of October, 2018. It is not necessary that the Arbitrator himself should deliver the signed copy of the award to the party. The intention of the Legislature behind Section 31 (5) is to ensure that a signed copy of the award is dispatched by the Arbitrator to each of the party to the proceedings which has been complied with. The appellants have failed to prove beyond reasonable doubt that it received a copy of the award on 19.12.2018. While drawing the attention of the Court to the record of the court below, he submits that the appellants have even failed to produce a certified copy of the award, which is alleged to have been received by them on 19.12.2018.

Statutory Provisions:-

Before evaluating the arguments, it is necessary to notice the statutory requirements. The word 'Arbitral award' has been defined in Section 2 (1) (c) of the Act. Section 31 lays down the form and

contents of the Arbitral award. The manner as to how the arbitral proceedings shall stand terminated is provided in Section 32. Further, Section 34 gives an opportunity to the party aggrieved from the award to file objections. Section 36 provides for the enforcement of the award. The aforesaid provisions are extracted as under:-

“Section 2(1) (c) “arbitral award” includes an interim award;

Section 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.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given; or

(b) the award is an arbitral award on agreed terms under Section 30.

(4) The arbitral award shall state its date and the place of arbitration as determined in accordance with Section 20 and the award shall be deemed to have been made at that place.

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

(6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

(7)(a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.

41[(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of Section 2 of the Interest Act, 1978 (14 of 1978).]

42[(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with Section 31-A.]

Section 32. Termination of proceedings (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—

- (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
- (b) the parties agree on the termination of the proceedings; or
- (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) Subject to Section 33 and sub-section (4) of Section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

Section 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).

(2) An arbitral award may be set aside by the Court only if—

- (a) the party making the application [44](#)[establishes on the basis of the record of the arbitral tribunal that]—

- (i) a party was under some incapacity; or

- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

- (ii) the arbitral award is in conflict with the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(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.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

Section 36. Enforcement 1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).]

Provided further that where the Court is satisfied that a prima facie case is made out that,—

(a) the arbitration agreement or contract which is the basis of the award; or

(b) the making of the award,

was induced or effected by fraud or corruption, it shall stay the award unconditionally pending disposal of the challenge under Section 34 to the award.

Explanation.—For the removal of doubts, it is hereby clarified that the above proviso shall apply to

all court cases arising out of or in relation to arbitral proceedings, irrespective of whether the arbitral or court proceedings were commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015.”

Analysis

On a careful perusal of Section 31 (5), it is apparent that the statute requires the delivery of a signed copy of the arbitral award to each party. The importance of delivery of a signed copy is not only to authenticate its correctness but to ensure that the period for its enforcement u/s 36 or for filing objections u/s 34 begins to run. . The signed copy would obviously mean signed by the Arbitrator. Still further, on careful reading of Section 36, it becomes apparent that the arbitral award becomes enforceable only when the time for making an application for setting aside the arbitral award, as provided under Section 34, has elapsed. On a careful reading of Section 34 (3), it is apparent that an application for setting aside the award is required to be made within a period of three months from the date on which the party making the application received the signed copy of the arbitral award. Thus, the emphasis is on three months time from the date on which the party received the arbitral award. As per the proviso to Sub section 3 , it is apparent that the statute has provided that the Court can at the maximum condone the delay of 30 days after the expiry of original period of three months if sufficient cause for not making such an application within the period prescribed is shown. The court cannot condone the delay beyond the period of 30 days. Thus, the statute, while making the provision,

enabled the court to condone the delay but restricted its outer limit to 30 days from the date of expiry of the original period of three months. However, the three months period would begin to run only from the date the signed copy of the arbitral award was received by the party. Receipt of copy of the arbitral award by the party means a signed copy of the award.

Section 32 of the Act provides for termination of Arbitral proceedings which essentially means the termination in accordance with Section 31, which would include delivery of a signed copy of the award to each party. In a recent judgment passed by the Hon'ble Supreme Court in **Dakshin Haryana Bijli Vitran Nigam Limited vs. M/s Navigant Technologies Pvt Ltd. (2021) SCC online (SC) 157**, their Lordships held that the termination would take place only when there is a complete compliance of Section 31 of the Act which would include the delivery of a signed copy of the award to each party.

Thus, it is mandatory for the sole Arbitrator or the Arbitral Tribunal to ensure that a signed copy of the award is delivered to each party so that the limitation as provided under Section 34 begins to run. In the absence of delivery of a signed copy of the award to each party, the limitation of three months does not begin to run. Therefore, the Arbitrators must make an arrangement for the delivery of the signed copy to each party.

Now, the next issue which needs discussion is what can be the possible modes of delivery of a copy? One method is to call the parties on the date of pronouncement of the award and deliver them

signed copies there and then and make endorsement to this effect on the original copy of the award with signatures of the parties. However, sometimes, it may not be possible. The Arbitrator can always insist upon the fact that each of the parties to the arbitration be represented on the date on which the award is pronounced. In the case of large organizations, the Arbitrator can insist that an authorized representative, who is especially empowered/authorized to receive a signed copy of the award be present. An alternative method can be to ensure that the copies of the award are remitted to each of the party through speed post or registered post with acknowledgement due so that the copy is delivered to the party. The Arbitrator can also send an additional copy on the email of the party as also by delivering it to the counsels representing them. If a signed copy of the award is handed over to the parties on the date of pronouncement, such disputes can be easily avoided.

At this stage, it is important to notice that Hon'ble Supreme Court in various judgments while interpreting Section 31 has held that delivery of a signed copy to the party is not a mere formality. The Court while interpreting the phrase "*a signed copy shall be delivered to each party*" has held that the delivery of a signed copy is not only mandatory but it has to be delivered to a responsible officer representing the party. If the party is a large organization, then the delivery of copy to the counsel or clerk has been found to be not sufficient. In this regard, reliance can be placed on the judgment in **Union of India vs. Tecco Trichy Engineers and Contractors (2005) 4 SCC 239** where in para 8 and 12, the Hon'ble Supreme 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.

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12. The learned Single Judge of the High

Court as also the Division Bench have erred in holding the application under Section 34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of sub-section (3) of Section 34. There was a delay of 27 days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under sub-section (1) of Section 34 of the Act filed on behalf of the appellant deserves to be heard and decided on merits.”

Next judgment is in **State of Maharashtra and others vs. ARK Builders Pvt. Ltd. (2011) 4 SCC 616**. Relevant discussion is in paras 17 and 18, which are extracted as under:-

“17. In light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in *Tecco Trichy Engineers & Contractors* [(2005) 4 SCC 239] and in taking a contrary view. The High Court overlooked that what Section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the Arbitral Tribunal.

18. In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with the supply of a copy of the award to them by the respondent claimant but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case.”

Next judgment on the subject is in **Banarsi Krishan Committee and Ors vs. Karmyogi Settlers Pvt. Ltd. (2012) 9 SCC 496** and relevant paras are 15 to 17, which are extracted as under:-

“15. Having taken note of the submissions advanced on behalf of the respective parties and having particular regard to the expression “party” as defined in Section 2(1)(h) of the 1996 Act read with the provisions of Sections 31(5) and 34(3) of the 1996 Act, we are not inclined to interfere with the decision [*Karmyogi Shelters (P) Ltd. v. Banarsi Krishna Committee*, AIR 2010 Del 156] of the Division Bench of the Delhi High Court impugned in these proceedings. The expression “party” has been amply dealt with in *Tecco Trichy Engineers case* [(2005) 4 SCC 239] and also in *ARK Builders (P) Ltd. case* [(2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413], referred to hereinabove. It is one thing for

an advocate to act and plead on behalf of a party in a proceeding and it is another for an advocate to act as the party himself. The expression “party”, as defined in Section 2(1)(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.

16. The view taken in *Pushpa Devi Bhagat case* [(2006) 5 SCC 566] is in relation to the authority given to an advocate to act on behalf of a party to a proceeding in the proceedings itself, which cannot stand satisfied where a provision such as Section 31(5) of the 1996 Act is concerned. The said provision clearly indicates that a signed copy of the award has to be delivered to the party. Accordingly, when a copy of the signed award is not delivered to

the party himself, it would not amount to compliance with the provisions of Section 31(5) of the Act. The other decision cited by Mr Ranjit Kumar in *Nilkantha Sidramappa Ningashetti case* [AIR 1962 SC 666 : (1962) 2 SCR 551] was rendered under the provisions of the Arbitration Act, 1940, which did not have a provision similar to the provisions of Section 31(5) of the 1996 Act. The said decision would, therefore, not be applicable to the facts of this case also.

17. In the instant case, since a signed copy of the award had not been delivered to the party itself and the party obtained the same on 15-12-2004, and the petition under Section 34 of the Act was filed on 3-2-2005, it has to be held that the said petition was filed within the stipulated period of three months as contemplated under Section 34(3) of the aforesaid Act. Consequently, the objection taken on behalf of the petitioner herein cannot be sustained and, in our view, was rightly rejected by the Division Bench of the Delhi High Court.”

Thus, it is by now settled that the delivery of a signed copy to each party is necessary/sine qua non to begin the running of the period of limitation as provided under Section 34 (3) of the Act. In this case, there is no material on record to prove that a signed copy of the award was delivered. Learned Additional District Judge has dismissed the

application on the ground that the appellant did not produce the copy allegedly received by him on 19.12.2018. The question in the present case is not that the appellant has produced the copy or not. The question is whether a signed copy was delivered to the appellant or not and if delivered, the date whereof.? On a careful perusal of the record of the Additional District Judge, it is apparent that a photocopy of the award was produced by the appellant along with the objection petition filed under Section 34. The Additional District Judge did not requisition the record of the Learned Arbitrator, although an application was filed by the appellant. On a careful perusal of the copy of the award, it is apparent that it is a photocopy of the copy of the award which has been attested to be a true copy signed by the Arbitrator. There are two endorsements on the aforesaid copy of the award. First is on 29.09.2018. It has been written that someone has received the copy of the award. One cannot make out who has signed the same, however, in the facts of the case, when learned counsel representing the respondent admits that he had received the copy on 29.09.2018, it is safe to assume that he has put his initials. The second endorsement is to the effect that the file has been received. Again, the court is unable to make out who has initialed it. It is not the case of the respondent that these initials belong to the officer representing the appellant. It is the case of the respondent that the Learned Arbitrator has given him a copy of the award in an envelope at Faridabad which he later on remitted to the appellant through speed post from Panipat. Thus, it is not safe to assume that the Arbitrator had remitted the signed copy of the award,

particularly, when there is no material to prove that the alleged copy of the award in the envelope was a signed copy and secondly, the same envelope was sent through speed post, particularly, when it remained in the custody of the counsel representing the respondent. In the considered view of the Court, the Arbitrator committed a grave error in handing over the envelope to the counsel for the opposite party to remit the same to the appellant. In fact, the requirement is that the learned Arbitrator or his office should remit the signed copy of the award. Still further, there is no material to prove that the copy sent was a signed copy.

In these circumstances, once the respondents have not filed any reply to the application seeking condonation of delay and the assertions made therein have not been rebutted, then this Court is left with no other choice but to accept the correctness of the assertions made in the application.

Learned Additional District Judge has decided the application while being oblivious of the statutory requirement that the Arbitrator is required to remit a signed copy to the party. Still further, learned Additional District Judge also erred in observing that from the perusal of the photocopy of the award enclosed with the objection petition, it is nowhere disclosed that the copy was received on 19.12.2018. As noticed above, the appellant while filing objection petition disclosed that the copy of the award was received from the sole arbitrator on 19.12.2018. It was never the case of the appellant that the certified copy or the signed copy has been delivered to it or a certified

copy has been obtained from the Council. In the absence of a counter or any material to the contrary, the court erred in not accepting the plea of the appellant.

Learned Additional District Judge has also erred in observing that since the appellant has pleaded that it inquired about the award after the expiry of two months, then it must be assumed that they came to know of the award in November, 2018. The Additional District Judge obviously overlooked the requirement of sub section 5 of Section 31. Learned Additional District Judge further erred in doubting the appellant on the ground that a copy of the award could only be obtained from the council, however, the same has not been produced. It may be noted here that it is not the case of the appellant that they obtained a copy of the award from the council. What has been pleaded is that the counsel representing the appellant enquired from the learned sole Arbitrator regarding the award and thereafter, once he was informed that the award stands pronounced on 27.09.2018, the counsel immediately collected the copy of the award on 19.12.2018 from the learned sole Arbitrator.

There is yet another perspective which needs some deliberation. It has been noticed that the petition under Section 34 alongwith an application for condonation of delay has been filed on 18.04.2019. For a period of approximately 11 months, the courts were functioning normally before they had to start working in a restrictive manner due to COVID-19 pandemic. However, the court of learned Additional District Judge did not even consider the application for

condonation of delay for a long time. In these matters, once there is a statutory mandate to conclude the arbitration proceedings within a period of 12 months then the time is the essence of these proceedings. Therefore, the courts should be sensitive about the time and should not take such cases in a casual manner.

Although, learned Additional District Judge has not considered the application for condonation of delay for a period of 30 days after the expiry of the limitation which is the upper limit for condoning the delay, however, since the respondents have not filed any reply and a period of nearly 2 and a half years have elapsed from the date the award was pronounced, no further delay in disposal of the petition under Section 34 is acceptable. The Court must always bear in its mind that 'justice delayed is justice denied'. Moreover, substantive justice must always be kept above technical errors, especially, when they are bona fide and carry a sufficient cause. Hence, the delay of 30 days in filing the petition is condoned. Learned Additional District Judge is directed to decide the objection petition under Section 34 within two months, from the date of receipt of copy of this order, positively. The parties through their counsels are directed to appear before the learned Additional District Judge on 09.04.2021.

Epilogue

Before parting, it is necessary to sensitize different organizations which are normally part of the Arbitration. Therefore, let the Registrar (Judicial) circulate a copy of this order to the respective Presiding Judges of the various Sessions Divisions in the State of

Punjab, Haryana and the U.T. of Chandigarh as also to 'the Council' of both the States and the UT, Chandigarh. Let a copy of this judgment also be sent to the respective Chief Secretaries of both the States for getting further information and taking necessary action.

01.04.2021

rekha

Whether speaking/reasoned

Whether Reportable

Yes /No

Yes / No

(ANIL KSHETARPAL)

JUDGE