

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

INTERIM APPLICATION NO. 574 OF 2019
WITH
INTERIM APPLICATION (LODGING) NO. 27044 OF 2021
IN
INTERIM APPLICATION NO. 574 OF 2019
WITH
INTERIM APPLICATION (LODGING) NO. 25055 OF 2021
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 1281 OF 2019

National Insurance Company Limited ...Applicant/Petitioner

Versus

Coromandel International Ltd. ...Respondent

WITH
COMMERCIAL EXECUTION APPLICATION NO. 29 OF 2021
WITH
INTERIM APPLICATION NO. 2657 OF 2022
IN
COMMERCIAL EXECUTION APPLICATION NO. 29 OF 2021

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- Mr. R.S. Vidyarthi, Mr. A.S. Vidyarthi, Ms. Ishita Bhole, Mr. Parth Parikh, Mr. Shasvat Vidyarthi i/by Mr. Asim Vidyarthi, for Applicant/Petitioner.
- Mr. Rohaan Cama, Mr. Jay Sanklecha, Mr. Pheroze Mehta and Mrs. Mahafarin Mehta i/by HSA Advocates, for the Respondent.

* * *

CORAM : MANISH PITALE, J

DATE : 11th APRIL, 2023.

P. C. :

1. Heard, learned Counsel for the parties.
2. By this application, the Applicant is seeking condonation of delay of seven days in filing the accompanying petition under Section 34 of the Arbitration and Conciliation Act, 1996.

3. It is the case of the Applicant that the award was pronounced on 28th March, 2019, but while the Respondent was delivered a signed copy of the award on stamp paper, it was not delivered to the Applicant on the same day. According to the Applicant, it was much later that the stamp paper could be made available to the learned Arbitrator to provide a signed copy of the award. The Applicant submits that such a signed copy of the award was prepared on 09th July, 2019 and eventually it was received by the Applicant on 12th July, 2019. The learned Counsel appearing for the Applicant has tendered an additional affidavit along with a colour photocopy of the said award. The Applicant is directed to file the additional affidavit along with the colour photocopy of the award in this Court, within one week from today.

4. A perusal of the colour photocopy of the award indeed shows that it is typed on stamp paper obtained on 14th June, 2019. The award bears the signature of the sole Arbitrator with the date 09th July, 2019, specifically mentioned below the signature of the learned Arbitrator.

5. It is submitted that the petition was filed on 18th October, 2019, and on this basis, it is contended that there is delay of seven days in filing the accompanying petition.

6. The Applicant has stated in paragraph no. 4 as to the reasons why delay of seven days beyond the three months period occurred.

7. On the other hand, learned Counsel appearing for the Respondent submitted that if the statements made in the application are to be perused, it appears that a copy of the award on the stamp paper was prepared on 09th July, 2019 and the Applicant claims to have received the same on 12th July, 2019. It was submitted that there is nothing in the application to indicate as to when signed copy of the award was delivered to the Applicant. This aspect could be clarified if the learned Arbitrator is called upon to file an affidavit. It is further submitted that if the contentions raised on behalf of the Applicant are to be accepted, and delay is to be calculated from 09th July, 2019, it would come to delay of 10 days.

8. This Court has considered the rival submissions. The position of law is by now well settled, as per the judgments of the Hon'ble Supreme Court in the case of *State of Maharashtra Vs. ARK Builders Pvt. Limited*¹ and the judgment in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Navigant Technologies (P) Ltd.*² that the period of limitation would commence from the date when the signed copy of the award is delivered to the party. In paragraph no.

1 (2011) 4 SCC 616

2 (2021) 7 SCC 657

27 of the judgment in the case of *Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. Navigant Technologies (P) Ltd.(supra)*, the Hon'ble Supreme Court held as follows :

“27. Sub-section (1) of Section 31 read with sub-section (4) makes it clear that the Act contemplates a single date on which the arbitral award is passed i.e. the date on which the signed copy of the award is delivered to the parties. Section 31(5) enjoins upon the arbitrator/Tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a signed copy of the award is the date from which the period of limitation for filing objections under Section 34 would commence. This would be evident from the language of sub-section (3) of Section 34 which reads :

“34. Application for setting aside arbitral award. -

(1)-(2) * * *

(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.”

9. Hence, it is clear that the limitation period would stand triggered from the date when a signed copy of the award is delivered to the party.

10. Considering the statements made in the application, read with the additional affidavit and the colour photocopy of the award placed on record on behalf of the Applicant, this Court is convinced that the signed award was kept ready for delivery on the Applicant, by the Arbitrator on 09th July, 2019. The Applicant claims that it was received on 12th July, 2019. The limitation period can be calculated in the present case either from 09th July, 2019 or 12th July, 2019, which means that the delay would be between seven days and ten days. This Court is not convinced that in such circumstances the learned Arbitrator is to be called upon to file an affidavit for ascertainment of facts. The statements made in the application, read with the additional affidavit on behalf of the Applicant are enough to indicate that the limitation period stood triggered in the present case either on 09th July, 2019 or 10th July, 2019.

11. This Court has perused paragraph no. 4 of the application wherein reasons are stated as to why the petition was filed beyond the period of three months specified in Section 34 of the said Act. The reasons are found to be satisfactory and do indicate sufficient cause

for condoning the aforementioned delay.

12. In view of the above, the Interim Application No. 574 of 2019 is allowed. The delay is condoned.

13. The Interim Application No. 574 of 2019, stands disposed of.

COMMERCIAL ARBITRATION PETITION (L) NO. 1281 OF 2019

1. List the petition for admission hearing on **22nd June, 2023.**

2. Reply affidavit on behalf of the Respondent may be filed within four weeks from today.

3. Rejoinder affidavit, if any, be filed within two weeks thereafter.

4. The Petitioner is at liberty to file a convenience compilation of documents, within four weeks, with an advance copy served on the Respondent. The Respondent is also at liberty to file additional documents, if any, within the period of four weeks from today.

5. The office objections be removed, within four weeks from today.

(MANISH PITALE, J.)