

FAO No. 2750 of 2015

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

FAO No. 2750 of 2015

Date of decision: 24th May, 2023

M/s Atlanta Electricals (P) Ltd.

Appellant

Versus

Superintending Engineer, MM-II, PKL and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Amit Jhanji, Senior Advocate with
Ms. Nikita Garg, Advocate for the appellant.

Mr. B. R. Mahajan, Senior Advocate with
Mr. S. K. Mahajan, Advocate for the respondents.

AVNEESH JHINGAN, J (Oral):

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short, 'the Act') is filed aggrieved of dismissal of objections under Section 34 of the Act.

2. The brief facts are that the appellant was successful bidder for tender issued by Haryana Vidyut Prasaran Nigam Ltd. (for short, 'the Nigam') for supply of high power transformers. The terms and conditions provide for dispute resolution through arbitration. The arbitration proceedings initiated at the instance of the Nigam culminated in award dated 18.3.2009. The objections filed by the appellant were dismissed on 21.11.2014 as time barred as well as on merits.

3. Learned senior counsel appearing for the appellant submits

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that the objections filed were within time and the limitation would start running from the service of copy of the award. It is argued that once the objections were dismissed as time barred, the court had no jurisdiction to decide the matter on merits.

4. Learned senior counsel appearing for the Nigam contends that copy of the award was sent to the appellant and the appellant was appearing in execution proceedings.

5. Under Section 31(5) of the Act, the arbitrator is under an obligation to deliver signed copy of the arbitral award to the parties. As per Section 34(3) of the Act, the limitation to file objections begins from the date of receipt of arbitral award.

6. From the perusal of the impugned order, it is evident that the District Judge had dismissed the objections as time barred on the ground that the appellant had the knowledge of passing of the arbitral award. There cannot be any quarrel with the proposition that limitation shall not begin from the date of gaining knowledge of the award but from receipt of copy of the award.

7. There is no finding recorded on the basis of the material available on record that when arbitral award was delivered to the appellant or that ingredients of Section 27 of the General Clauses Act, 1897 are fulfilled for invoking presumption of service of a document.

8. There is another aspect of the matter that once the objections under Section 34 of the Act were dismissed as time barred, the District Judge should not have considered merits of the case. Reference in this

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regard is made to the decision of the Supreme Court in *S.V. Matha v. Lal Chand Meghraj and others, (2007) 14 SCC 722*.

9. Without commenting on the merits of the case, the impugned order is set aside and the matter is remanded back for deciding the objections under Section 34 of the Act afresh, including the issue of limitation.

10. The appeal is disposed of.

[AVNEESH JHINGAN]
JUDGE

24th May, 2023
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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |