

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

FAO 406/2019 & CM. APPLs. 44529 & 44531/2019

Reserved on: 20.01.2023

Date of decision : 10.02.2023

IN THE MATTER OF:

NDMC

..... Appellant

Through: Ms.Kanika Agnihotri, ASC with
Ms.Snehal Kaila, Advocate.

versus

M/S SHREE CONSTRUCTION COMPANY

..... Respondent

Through: Mr. Sunil Kumar Agarwal and
Ms. Neelam Agarwal, Advs.

CORAM :

HON'BLE MR.JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

CM. APPL.No.44531/2019 (delay in re-filing)

1. The present application has been filed under Section 151 CPC on behalf of the appellant seeking condonation of delay of ten days in re-filing the appeal.
2. For the reasons stated in the application, the same is allowed and the delay of ten days in re-filing the appeal is condoned.
3. The application stands disposed of.

FAO 406/2019 & CM. APPL. No. 44529/2019 (Stay)

1. By way of the present appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter, '*the Act*'), the appellant seeks to assail order dated 24.05.2019 passed by the learned ADJ-04, New Delhi in Arbitration Petition No.4245/2017, whereby appellant's objections filed under Section 34 of the Act to the arbitral Award dated 25.02.2017 were dismissed, solely on the ground that the same were barred by limitation.

2. Ms.Kanika Agnihotri, learned ASC for the appellant, submitted that the impugned Award was passed on 25.02.2017 but the same came to be signed on 26.02.2017, as is apparent from the concluding page of the Award. The copy of the Award was received in the office of the respondent on 28.02.2017 and by excluding the said date, limitation period would begin from 01.03.2017. On the strength of these submissions, it was contended that the appellant's objections under Section 34 of the Act filed on 29.05.2017 were within the period of limitation.

It was also brought to the notice of the Court that after passing of the impugned order, the appellant had filed an application seeking recall thereof, as concerned counsel of the appellant had noted wrong date of hearing i.e. 28.05.2019 instead of 24.05.2019, and the impugned order came to be passed in its absence. In support, it was submitted that alongwith the recall application, the appellant had also attached a copy of its register showing that copy of the Award was received on 28.02.2017.

3. Per contra, Mr. Sunil Kumar Agarwal, learned counsel for the respondent, supported the impugned order. He denied the appellant's

submission that a copy of the Award was received by it on 28.02.2017 and submitted that the objections filed by the appellant were not accompanied by any application under the Limitation Act seeking condonation of delay.

4. Having heard the learned counsels for the parties, this Court finds merit in the submissions made on behalf of the appellant for the reasons discussed hereinafter.

5. A reading of Section 9 of the General Clauses Act, 1897 would show that it stipulates thus:-

“9. Commencement and termination of time.—(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “or”.

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

6. In terms of the above provision, the first day is to be excluded while computing period of limitation if the word used in the relevant provision is ‘from’. To determine if the objections filed by the appellant were within limitation, it is apposite to advert to Section 34 of the Act, which reads as under:-

“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).

xxx

(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. ...”

(emphasis added)

7. From a legal vantage point, the issue raised also calls for reference to the decision of the Supreme Court in State of Himachal Pradesh and Another v. Himachal Techno Engineers and Another reported as **(2010) 12 SCC 210**, wherein while explaining the method of computation of period of three months under Section 34 of the Act, it was observed as under:-

“15. Sub-section (3) of Section 34 of the Act and the proviso thereto significantly, do not express the periods of time mentioned therein in the same units. Sub-section (3) uses the words “three months” while prescribing the period of limitation and the proviso uses the words “thirty days” while referring to the outside limit of condonable delay. The legislature had the choice of describing the periods of time in the same units, that is, to describe the periods as “three months” and “one month” respectively or by describing the periods as “ninety days” and “thirty days” respectively. It did not do so. Therefore, the legislature did not intend that the period of three months used in sub-section (3) to be equated to 90 days, nor intended that the period of thirty days to be taken as one month.

16. Section 3(35) of the General Clauses Act, 1897 defines a “month” as meaning a month reckoned according to the British calendar.

17. In Dodds v. Walker, the House of Lords held that in calculating the period of a month or a specified number of months that had elapsed after the occurrence of a specified event, such as the giving of a notice, the general rule is that the period ends on the corresponding date in the appropriate subsequent month irrespective of whether some months are longer than others. To the same effect is the decision of this Court in Bibi Salma Khatoon v. State of Bihar.

18. Therefore when the period prescribed is three months (as contrasted from 90 days) from a specified date, the said period would expire in the third month on the date corresponding to the date upon which the period starts. As a result, depending upon the months, it may mean 90 days or 91 days or 92 days or 89 days.”

8. Recently, in Dakshin Haryana Bijli Vitran Nigam Limited v. Navigant Technologies Private Limited reported as (2021) 7 SCC 657, the Supreme Court reiterated that the period of limitation for filing of objections under Section 34 of the Act commences from the date of receipt of the arbitral award. Relevant excerpt from the decision is reproduced hereunder:-

“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 ...

28. In Union of India v. Tecco Trichy Engineers & Contractors, a three-Judge Bench of this Court held that the period of limitation for filing an application under Section 34 would commence only after a valid delivery of the award takes place under Section 31(5) of the Act. In para 8, it was held as under : (SCC p. 243, para 8)

“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)

xxx

36. ... The period of limitation for filing the objections to the award under Section 34 commences from the date on which the party making the application has “received” a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act. Section 34(3) provides a specific time-limit of three months from the date of “receipt” of the award, and a further period of thirty days, if the court is satisfied that the party was prevented by sufficient cause from making the application within the said period, but not thereafter.

xxx

46. We are of the considered opinion that the period of limitation for filing objections would have to be reckoned from the date on which the signed copy of the award was made available to the parties i.e. on 19-5-2018 in the instant case.”

9. In the present case, the respondent has denied the appellant's submission that a copy of the Award was received by it on 28.02.2017. However, no material in support of the same has been placed on record by the respondent. On the contrary, the appellant has placed on record a copy of its register, showing an entry to the effect that the Award was received in its office on 28.02.2017. As such, the appellant's claim of 28.02.2017 being the date of receipt of Award is accepted.

10. In view of the foregoing, the period of three months is to be reckoned from 01.03.2017 after excluding 28.02.2017, i.e. the date on which the appellant claims to have received a copy of the Award. Beginning 01.03.2017, the period of three months for filing of objections under Section 34 of the Act would end on 31.05.2017. Indisputably, the objections were filed by the appellant on 29.05.2017. Thus, the objections filed under Section 34 of the Act were well within time. The impugned order suffers from the vice of non-application of mind and deserves to be set aside.

11. Accordingly, the appeal is allowed and the impugned order is set aside. The matter is remanded back to the Trial Court for consideration of the case on merits. The matter be listed before the concerned Court, at the first instance, on 20th February, 2023. Pending applications stand disposed of.

12. A copy of this judgment be communicated to the concerned Court for information.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 10, 2023/sa

