



2024:DHC:7776



\$~

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

%

***RESERVED ON –16.08.2024.
PRONOUNCED ON – 01.10.2024.***+ O.M.P. (COMM) 276/2023, I.A. 14020/2023, I.A. 14021/2023, I.A.
14022/2023**RELIANCE COMMERCIAL FINANCE LIMITEDPetitioner****Through: Mr. Jayant Mehta, Sr. Adv. with Mr.
Aditya Panda, Mr. Akshay Sinha,
Advs.****versus****TARAASHNA FINANCIAL SERVICES LIMITEDRespondent****Through: Mr. Manik Dogra, Mr. Viral Mehta,
Mr. Shaheezad Kazi, Ms. Ishita
Mathur, Mr. Dhruv Pande, Advs.**

S. No	Particulars	Para Nos.
A.	Brief facts	1-17
B.	Submissions of Petitioner	18-26
C.	Submissions of Respondent	27-31
D.	Finding and Analysis	32-51

**CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA****J U D G M E N T**



DINESH KUMAR SHARMA,J.:

A. BRIEF FACTS

1. The present petition has been filed under Section 34 of the Arbitration and Conciliation Act “A&C Act” challenging an arbitral award dated 17.01.2023 (“the Impugned Award”) passed by the learned Arbitrator.
2. Initially, the petitioner’s case was that the impugned award was received from the learned Arbitrator on 05.02.2023, However, subsequently the petitioner stated that the Award was received on 06.02.2023 along with the petition applications for condonation of delay was filed bearing I.A. 14020/2023 & I.A. 14022/2023 in O.M.P. (COMM) 276/2023 stating therein that the period of 03 months from 05.02.2023, the limitation for filing the petition expired on 06.05.2023 taking into account the period of 03 months as provided in the law. However, it has been submitted that there is a minor delay of 30 days on the part of petitioner in filing the arbitration petition. The petitioner stated that the relief sought in the arbitration proceedings pertains to a transaction that commenced in the year 2015 and the events that transpired subsequent thereto. It has been submitted that the documents and events referred to in the arbitration therefore, span a period of approximately 8 years. The transaction was also stated to be highly complex.
3. The petitioner submitted that upon receipt of the Impugned Award, the Petitioner’s internal legal team went through the same and sought to collate information for the purpose of preparing and finalising the Arbitration Petition to challenge the Impugned Award. It has also been



submitted that several of the Petitioner's personnel who were familiar with the subject transaction and who directly dealt with the Respondent were no longer employed with the Petitioner on account of the high attrition faced by the Petitioner in recent times. It was submitted that therefore Petitioner's legal team for the purpose of preparing the Petition, required to collate documents and brief counsel pertaining to the subject transaction without the assistance of the said personnel. It was also submitted that the Petitioner's legal team is situated in Mumbai and the Petitioner's management has recently changed.

4. The petitioner submitted that therefore these circumstances led to the delay. The delay was stated to be wholly unintentional and constitute "Sufficient cause" within the meaning of the term used in the proviso to Section 34(3) of the Arbitration and Conciliation Act.
5. An application bearing I.A. 14022/2023 was also filed for the purpose of delay in refilling the arbitration petition. It was submitted the present O.M.P. was uploaded vide Diary No. E-1078242/2023 on 05.06.2023 during the summer vacation. The Registry of this court on 30.06.2023 after scrutiny of the petition, marked the defects which were then communicated to the Advocate of the Petitioner on his email at 2.06 P.M. The petitioner after curing defects which were pointed out on 30.06.2023, re-filed the petition on 05.07.2023 at 03:01 PM. The defects were again noted and communicated to the advocate of the petition on 06.07.2023 at 05:17:31 PM. After curing the defects the petition was re-filed on 12.07.2023 at 04:46 PM. The Registry again marked some defects which were communicated on 13.07.2023 at 5:06:23 PM. The petitioner after curing the defects re-filed the petition



on 15.07.2023 at 01:08 PM. The Registry, after scrutiny re-filed the petition, again registry marked some defects, which were communicated on 15.07.2023 at 05:16 PM and the petition was re-filed on 19.07.2023 at 12:20 PM. The petition was again found having some defects on 24.07.2023 which were duly cured. It has been submitted that there is a delay of 14 days in re-filing the petition which is bonafide and therefore may be condoned.

6. The petition was taken up by this court on 01.08.2023 and the same was ordered to be taken on 02.08.2023 at the request off the petitioner. On 02.08.2023 the averment of the petitioner that the award was received on 05.02.2023 was contradicted on behalf of the respondent saying that actually award was deemed to have been received on 19.01.2023. Learned counsel for the petitioner sought a period of one week to place on record the documents to prove date of receipt of the award. Petitioner was directed to file an affidavit of a senior official of the Petitioner. Petitioner also filed a note showing the computation on the premises that the award was received on 05.02.2023.
7. Mr. Pradeep Kumar Mandal, Manager-Legal filed an affidavit dated 28.08.2023 interms of order dated 02.08.2023. In the affidavit Mr. Pradeep Kumar Mandal stated that on 16.01.2023 learned Arbitrator listed the arbitration for pronouncement of award on 17.01.2023 and intimated that a copy of the award will be sent to both the parties by registered post. The petitioner on not having received the award addressed an email dated 30.01.2023 to the learned Arbitrator intimating non-receipt of the award and the petitioner requested the learned Arbitrator to send the hard copy of the arbitral award dated



2024:DHC:7776



17.01.2023 in the captioned matter to the address of the respondent mentioned herein below:

“Address:

Reliance Commercial Finance Limited

Kamala Mills, Trade One Building ‘D’ Wing, 4th Floor,

Kamala Mills Compound, Senapati Bapat Marg,

Lower Pare/, Mumbai - 400013.”

8. The respondent stated that the petitioner received the hard copy of the award on 06.02.2023 at the aforementioned address. It was stated that as per standard protocol of the Company, on receipt of the said Courier, certain details i.e. the date of receipt, name of recipient, the department of the recipient, name alongwith address of the sender, name of the person receiving the Courier alongwith his signature, name of the Courier agency (DTDC) and tracking number (ZI2701850) alongwith remarks by the concerned department of the Petitioner were entered into the Inward Courier Register of the Petitioner. The copy of the relevant page of the Register was filed along with the affidavit.
9. The deponent further stated that subsequently, on verification from the office of the learned Arbitrator, it was learnt by the Petitioner that the learned Arbitrator had sent a copy of the Award via India Post (Article No. ED28335I5381N) to the erstwhile address of the Petitioner i.e. Reliance Centre, 6th Floor, South Wing, Near Prabhat Colony, Santacruz(East), Mumbai - 400055. The respondent stated that this office was vacated by the petitioner on 04.10.2020. The copy of the India Post receipt was also filed along with the affidavit as Annexure-4.
10. The respondent stated that as the consignments sent by the learned



Arbitrator could not be tracked on the websites of DTDC and India Post, the Petitioner has addressed separate emails to the Customer Support of both DTDC and India Post on 10.08.2023 requesting for the date of delivery/status of the said consignments. Copy of the status page of consignment sent through DTDC was filed as Annexure-5. The Customer Support of DTDC vide email dated 11.08.2023 informed the petitioner that as per the Company's SOP, Data beyond 3 (three) months' are removed from their system. Copy of DTDC's email dated 11.08.2023 along with the Petitioner's email dated 10.08.2023 was filed as Annexure-6.

11. The deponent stated that on pursuing with the Customer Support of India Post, the tracking details/status were finally shared by India Post with the Petitioner on 17.08.2023. It was stated that from the tracking details, it can be, inter alia, seen that the consignment, bearing Article No.ED28335I538IN, booked by the learned Arbitrator on 17.01.2023, was returned from India Post's Santacruz(East) Sub Office on 04.02.2023 and received at the New Delhi National Sorting Hub on 07.02.2023, thereby clearly indicating that the said consignment was never delivered to the Petitioner. The copy of the correspondence with India Post along-with the Tracking details/status are annexed herewith and marked as Annexure-7.
12. The deponent stated that the copy of the Arbitral Award dated 17.01.2023 was received by the Petitioner only on 06.02.2023, which can be ascertained from the entry at SI. No. 6309 of the Inward Courier Register maintained by the Petitioner.
13. The respondent in its reply stated that the petitioner is taking



contradictory stand as in the affidavit it was stated that the award was received on 06.02.2023 which is in contradiction with the earlier statement of the date of receipt of award mentioned in the petition and the application for condonation of delay. It was stated that in the application the petitioner has specifically stated that the award was received on 05.02.2023. The respondent stated that in the statement of truth which has been filed by the petitioner along with the petition and the application for condonation of delay, the petitioner has stated and verified that the statements made in the application for condonation of delay are true and the statements made in the application for condonation of delay are true and no false statement has been made.

14. The respondent stated that only after noting the Respondent's submissions on limitation at the hearings held on 02.08.2023 and 18.08.2023, the Petitioner realized that its original statement on the date of receipt of the Award would be fatal to its case and hence conveniently deviated from its original factual statement in the Affidavit. The respondent submitted that the petitioner has nowhere explained regarding such different date of receipt of the Award (i.e., 05.02.2023) in the application for condonation of delay and 06.02.2023 in the affidavit. The respondent submitted that the date of receipt of Award is a matter of fact and the Petitioner cannot change the same to overcome the statutory period of limitation. It has also been submitted that the petitioner has committed the offence of perjury and criminal offence by filing a false affidavit.
15. The respondent stated that affidavit dated 28.08.2023 filed by Petitioner is liable to be rejected out rightly as it contradicts the earlier



position taken by the petitioner in the application for condonation of delay and the statement made by the Petitioner's counsel on 02.08.2023. It was submitted that by taking the date of receipt of award as 05.02.2023 the present petition is beyond the period of limitation. The respondent further submitted that in fact the petitioner was already in possession of a soft copy of the award prior to sending an email to the learned Arbitrator on 30.01.2023 and therefore the request was only made for a "hard copy" of the award. The respondent submitted that there is no statutory requirement of a hard copy to be delivered to the parties and the limitation starts from the date of receipt of award or acquisition of knowledge award.

16. It was stated that in any case, the petitioner had received a hard copy of the award on 01.02.2023 from the Respondent's Counsel, which was sent with a demand letter by the Respondent's counsel on 31.01.2023 enclosing a copy of the Award. Respondent stated that such demand letter was sent at both the addresses of the petitioner i.e., at Lower Parel Office and Santacruz Office. The respondent submitted that delivery of the award to the petitioner by the Arbitrator at its last known address constitutes deem service of the award. The respondent submitted that at no stage in the arbitration proceedings while filing the pleading or the hearing, the Petitioner informed the Tribunal that it had vacated the Santacruz Office and shifted to Lower Parel Office. The respondent stated that even on 16.01.2023 when the learned Arbitrator informed that the award shall be sent by the registered post the petitioner did not inform about the shifting of office from Santacruz to Lower Parel.



17. The respondent stated that Section 3(1)(b) of the Arbitration Act provides that “*a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver.*” The respondent also submitted that Section 27 of the General Clauses Act, 1897, as amended ("General Clauses Act") provides for "*meaning of service by post*". The respondent submitted that it is a settled proposition that the cumulative effect of Section 3 of the Arbitration Act and Section 27 of the General Clauses Act is that a communication would be deemed to have been delivered when the tribunal properly addressed it to a party at the last known address, and service would be deemed to have been effected at the time when the post would have been delivered in the ordinary course. It was stated that it is irrelevant if such post is returned unclaimed or has not been returned by the postal authority. Reliance has been placed upon *Tata Capital Financial Services v. A.G.Aerovision Electronics Pvt. Ltd. &ors.* 2018 SCC OnLine Del 6663 and *Francisco A. D'Souza and another v. L & T Finance Limited Mumbai* 2015(5) Mh.L.J. The averments made in the affidavit were denied by the respondent.

B. SUBMISSIONS OF PETITIONER

18. Sh. Jayant Mehta learned senior counsel for the petitioner submitted that the present petition has been filed within the statutory period as prescribed under Proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996 and has also been re-filed within the time prescribed. Learned senior counsel submitted that after the petitioner



did not receive the soft or hard copy of the award, the petitioner's advocate vide email dated 30.01.2023 requested the Arbitrator for the hard copy of the Award. Learned senior counsel submitted that the request for the "hard copy" of the Award was made as the Arbitrator had clearly indicated that he would be sending a copy of the Award by registered post. It was submitted that therefore it cannot be assumed that the Arbitrator had sent a soft of the Award to the Petitioner solely on the basis of the Petitioner requesting for the hard copy of the Award.

19. Sh. Jayant Mehta learned senior counsel for the petitioner submitted that the Petitioner received the hard copy of the Award from the Arbitrator on 06.02.2023 by DTDC at Lower Parel, Mumbai office of the petitioner. Learned counsel submitted that as per standard protocol of the Company the particulars were entered into the Inward Courier Register of the Petitioner. Learned senior counsel further submitted that on verification from the office of the Arbitrator it was learnt that a copy of the Award was sent via India Post to the erstwhile address of the Petitioner i.e., Santacruz Office. However, the Petitioner had vacated the said office on 04.10.2020. Learned senior counsel further submitted that the petitioner made the enquiry from the Customer Support of DTDC. However, it was learned that as per their SOP the data is removed beyond 03 months from their system. Similarly, after enquiry made from India Post it was transpired that the consignment booked by the Arbitrator on 17.01.2023 to Santacruz Office was returned from India Post's Santacruz(East) Sub Office on 04.02.2023, and was received at the New Delhi National Sorting Hub on 07.02.2023. Learned senior counsel submitted that therefore the said consignment



was never delivered to the Petitioner.

20. Learned senior counsel submitted that the petitioner in its Petition as well as in its Application for Condonation of Delay, inadvertently mentioned that the Petitioner received the Impugned Award from the Arbitrator on 05.02.2023 and this was rectified after being granted liberty by this Court in its affidavit dated 28.08.2023. Learned senior counsel submitted that even assuming that the Award was delivered to the Petitioner on 05.02.2023 the date of receipt of Award as per Section 34(3) of the Act would be presumed to be 06.02.2023 owing to the fact that 05.02.2023 was a Sunday, a non-working day. In this regard, reliance was placed upon *State of Himachal Pradesh & Anr. v Himachal Techno Engineers & Anr.* (2010) 12 SCC 210.
21. Learned senior counsel submitted that in *State of Himachal Pradesh & Anr. v Himachal Techno Engineers & Anr. (Supra)* it was inter alia held that 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. It was further inter alia held that 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. The Apex Court held that necessarily the date of receipt will have to be the next working day.
22. Learned senior counsel further submitted that the delivery of the Arbitral Award has to be made by the Arbitral Tribunal and for the delivery to be effective, it has to be “received” by the party. Reliance has been placed upon *Union of India v TeccoTrichy Engineers &*



Contractors (2005) 4 SCC 239. Learned senior counsel submitted that in *TeccoTrichy Engineers & Contractors* (Supra) it was inter alia held that the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It was further inter alia held that the delivery of arbitral award to the party, to be effective, has to be “received” by the party. The Apex Court inter alia held that as the delivery of the copy of award has the effect of conferring certain rights on the party as provided under Section 33(1) of the Arbitration and Conciliation Act 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.

23. Learned senior counsel further submitted that in *State of Maharashtra and Ors v. Ark Builders Pvt. Ltd.* (2011) 4 SCC 616, the Court while following *TeccoTrichy Engineers & Contractors* (supra), has inter alia held that “period of limitation prescribed under Section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act”. Learned senior counsel submitted that the Apex Court held that even if the party appears to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the Award, it will not change the legal position.
24. Sh. Jayant Mehta, learned senior counsel for the petitioner submitted that the attempted service of the Award by the Arbitral Tribunal on the Petitioner’s erstwhile address would not constitute deemed service of



the Award under Section 3 of the Act, as it can be clearly seen from the tracking details of India Post Article No. ED283351538IN that the consignment was never delivered to the said address and was in fact returned back to the Arbitrator. Learned senior counsel submitted that there is no evidence or proof of there being any “reasonable enquiry” made by the Arbitrator so as to satisfy the conditions for deemed delivery under Section 3(1)(b) of the Act. Learned counsel submitted that Section 3(2) deems the receipt of the communication on the day it is so delivered and in the absence of delivery, there cannot be any such presumption.

25. Learned senior counsel submitted that it was never the intention of the Petitioner to withhold its updated address from the Arbitrator as the Petitioner and its witnesses had provided the company’s updated address in their Affidavit in lieu of Examination in Chief of the witnesses and the Rejoinder filed before the Tribunal. Learned senior counsel submitted that the delay in filing the instant Petition was wholly unintentional and was occasioned due to the fact that the subject matter of the Arbitration proceedings pertained to transactions spanning approximately 8 years commencing from 2015 and the process of collating information and documents was significantly time intensive. Learned counsel submitted that the award was received by the Petitioner from the Arbitrator on 06.02.2023 i.e. date on which the Petitioner received the Award from the Arbitrator, and the present petition has been filed on 05.06.2023 i.e., within the statutory period as prescribed under Section 34(3) of the Act.
26. Learned senior counsel submitted that after the petition was filed, the



defects were marked by the Registry which were rectified. It has been submitted that therefore the delay in filing and re-filing of the petition may be condoned.

C. SUBMISSIONS OF RESPONDENT

27. Sh. Manik Dogra, learned counsel for the respondent submitted that since beginning the petitioner had given its Santacruz Office address in the arbitration proceedings and only after the award was passed, the petitioner for the first time in its email dated 30.01.2023 disclosed that it had vacated Santacruz Office on 04.10.2020. Learned counsel submitted that on 04.10.2020 when the petitioner stated to have vacated the Santacruz Office the arbitration proceedings were at a nascent stage and the Petitioner had not even filed its statement of defence. Learned counsel submitted that the petitioner did not disclose its statement of defence and counterclaim dated 21.11.2020 and in the affidavit filed along with the statement of defence and counterclaim mentions the Santacruz Office postal code as the Petitioner's address.
28. Learned counsel submitted that at no stage during the arbitration proceedings did the Petitioner notify the Tribunal that it had shifted from the Santacruz Office to a new location. Learned counsel submitted that even in the rejoinder dated 24.04.2021 and affidavit of admission and denial dated 18.05.2021 the Santacruz Office was mentioned as the Petitioner's registered office address. Learned counsel submitted that even on 16.01.2023 when the learned Arbitrator notified the matter for pronouncement of award on 17.01.2023 and indicated that same will be sent by registered post, the petitioner did not inform about the change of the address.



29. Learned counsel submitted that the award was duly sent by the learned Arbitrator in accordance with Section 3 of the Arbitration Act and Section 27 of the General Clauses Act and therefore the award which is being undisputedly sent by the learned Arbitrator at Santacruz Office is deemed to have been served upon the petitioner. Learned counsel submits that after copy of the award being sent by the learned Arbitrator at Santacruz Office there is sufficient compliance of Section 31(5) of the Arbitration and Conciliation Act.
30. Learned counsel for the respondent submitted that even assuming without admitting that the petitioner received the award on 05.02.2023, it is still barred by limitation. Learned counsel submitted that presuming that the award was received on 05.02.2023, the period of 03 months under Section 34(3) would start on 06.02.2023 and would expire on 05.05.2023. Learned counsel submitted that thereafter the period of 30 days under the proviso to Section 34(3) would expire on 04.06.2023 and the present petition has been filed on 05.06.2023. Learned counsel submits that as per Section 34(3) there is no jurisdiction with court to condone any delay beyond 03 months as provided under Section 34(3) and 30 days as provided under the proviso.
31. Learned counsel submitted that the petitioner's act of filing a false affidavit constitutes perjury. Learned counsel also submitted that in fact the copy of the award had already been received on 01.02.2023. In support of his contention the respondent has relied upon ***Logic Eastern India Pvt Ltd vs KEC International Limited (Cables SBU) 2018 SCC OnLine Bom 916.***



D. FINDING & ANALYSIS

32. Before proceeding further, it is necessary to advert to the relevant provisions of the Arbitration and Conciliation Act, 1986. Section 34 Sub-Section 3 provides as under:

“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.”

33. It is also necessary to refer to Section 3 of the Arbitration and Conciliation Act which provides as under:

“3. Receipt of written communications.

(1) Unless otherwise agreed by the parties,

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressees last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on



the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.”

34. Part 3 of the Limitation Act, 1963 provides about Computation of Period of Limitation. Section 12 Sub-section 1 provides that while computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.
35. It is pertinent to mention that the petitioner in the list of dates and events filed along with the petition stated 05.02.2023 as date of receipt of impugned award from the learned Arbitrator. Similarly, in para 9 of the petition also the petitioner stated that the copy of the impugned award was received from the learned Arbitrator by the petitioner on 05.02.2023. In the statement of truth filed along with the petition, it was stated that there was no false statement or concealment of material fact, document on record and information has been included which is according to the deponent relevant for the present petition under Section 34.
36. It is also relevant to mention here that in the application for condonation of delay also in para 5 it was stated that the impugned award was received on 05.02.2023. The application was also accompanied with statement of truth under first schedule Order VI Rule 15(A). It is also pertinent to mention here that on 02.08.2023 the date of receipt of the award was mentioned as 05.02.2023. For the first time the date of receipts as 06.02.2023 was mentioned in para 4 of the affidavit of Mr. Pradeep Kumar Mandal. It is also pertinent to note that on 02.08.2023 the petitioner had handed over a note on limitation



which reads as under:

Sl. No.	Particulars	Dates
1.	Impugned Award	17 th January 2023
2.	Award received by the Petitioner on	05 th February 2023
3.	Period of limitation of 3 months to be computed from	06 th February 2023
4.	Limitation period of 3 Months Expired on	05 th May 2023
5.	30-day period uninterrupted from	06 th May 2023
6.	Period of 30 days to expire on	05 th June 2023
7.	Date of filing the present O.M.P.	05 th June 2023

“The Award was received by the Petitioner on 05-02-2023. For the purpose of calculating the 3 months period, the said date shall have to be excluded as per Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897. Consequently, three months should be calculated from 06-02-2023 and would expire on 05-05-2023. Thirty days from 05-05-2023 under the proviso should be calculated from 06-05-2023 and would expire on 05-06-2023.

The said computation is consistent with the judgments of the Hon'ble Supreme Court, more particularly in the State of Himachal Pradesh and Another vs. Himanchal Techno Engineer and Another (2010) 12 SCC 210, which inter alia holds that:

“.....

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.”

19. 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 the Limitation Act, 1963 and Section 9 of the 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.

.....”

37. Thus, taking into account the petitioner’s note on limitation if the date of receipt of the award is taken as 05.02.2023 as stated by the petitioner in its list of date, petition and the application for condonation of delay, the limitation period of 03 months expired on 05.05.2023 and 30 days thereafter as provided in proviso to Section 34(3) would expire on 04.06.2023.
38. The petitioner in the present case has consistently taken the plea in the list of dates, petition under Section 34 of the Arbitration and Conciliation Act and in the note filed on 02.08.2023 that the award was received by the petitioner on 05.02.2023. Only in the affidavit filed pursuant to the direction of the Court on 02.08.2023, the date of receipt of the award was taken as 06.02.2023. The petitioner in this regard has



- relied upon the Inward Register maintained by the petitioner company.
39. I consider that the petitioner cannot be allowed to blow hot and cold in the same breath. The Inward Courier Register of the petitioner's company, the copy of which is being filed along with the affidavit also cannot come to the rescue of the petitioner as it is a self-serving document. The date of service of the award on the petitioner has to be taken as 05.02.2023 and if 05.02.2023 is taken into account the limitation would start on 06.02.2023 and three months would expire on 05.05.2023. The 30 days as provided under the proviso would expire on 04.06.2023.
40. The Court has also taken into account the fact that 05.02.2023 was holiday. In any case, the limitation has been taken running from 06.02.2023. Thus, the petition is barred by limitation.
41. The Court has also considered another argument of the petitioner that the office of the petitioner was shifted from Santacruz to Lower Parel and the award was sent at Santacruz Office. The Court is of the considered opinion that this argument is also noted to be rejected only. It is not the petitioner's case that the award was not sent to the Santacruz Office by the learned Arbitrator by the registered post. There is no material/document on the record to show that the learned Arbitrator was informed about the change of address from Santacruz Office to Lower Parel.
42. In ***Logic Eastern India Pvt. Ltd. v. KEC International Limited (Cables SBU) 2018 SCC OnLine Bom 916*** in Para 21 & 22, it was *inter alia* held as under:

“21. It is also not the appellant's case that the change of



address, if any, namely an address different from the address as appearing in the agreement or the address already known to the respondent and for that matter even the registered address, was at any point of time informed to the respondent. We are not impressed with the case of the appellant that in view of the change in address of the appellant, the service of the award on the addresses as incorporated in the letter dated 10 December 2012 ought to be considered as invalid.

22. In the circumstances, considering the provisions of sub-clause (b) of section 3 (1) of the Act read with provisions of Section 31(5). we are of the clear opinion that when the learned arbitrator had forwarded the award at the last known address of the appellant namely B-2, Sector-31, Noida 201 301 and the same being returned by the postal authority with the said remarks as noted above, it is required to be held as an appropriate and lawful delivery of the award on the appellant, on the day, the same was attempted to be delivered namely on 17 December 2012 and 18 December 2012 respectively as clearly seen from the postal remark on page Nos. 558 and 559 of the paper book. The appellant has no material by which the appellant can rebut the presumption of the deemed delivery of the award as noted above.

23. We may also refer to the provisions of Section 27 of the General Clauses Act, 1897 which provides for "Meaning of service by post", which in our opinion is applicable when we consider the issue of "delivery of the award" under Section 31(5) read with Section 3 of the Act. Section 27 of the General Clauses Act, 1897 reads. thus:-

"27 Meaning of service by post. Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be



deemed to be effected by properly addressing, pre- paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

(emphasis supplied.)

24. Section 31(5) uses the expression "delivered" and thus, would squarely fall within the connotation "or any other expression is used" as provided under Section 27 of the General Clauses Act. The cumulative effect of Section 3 of the Act read with Section 27 of the General Clauses Act would be that the communication and/or the award in the present case would be deemed to have been delivered when the learned Arbitrator properly addressed the same to the appellant on the known addresses, and on pre-paying and posting by registered post the envelop containing a covering letter and the award. The services would be deemed to be effected at the time at which the said envelop was being delivered in the ordinary course of post, as Section 27 of the General Clauses Act would provide. As noted the consequence and effect of Section 27 of the General Clauses Act qua the delivery of the award on the appellant is further amplified by the clear provisions of sub-clause (b) of Section 3(1) of the Act.

25. If we are to accept the submissions as urged on behalf of the appellant, then, the consequence would be to render, the provisions of not only Section 3 of the Act which is a Special Act but also the provisions of Section 27 of the General Clauses Act, nugatory. We need to bear in mind that the duty of the Court when confronted with such pleas as raised by the appellant would be to safeguard the intention of the legislature behind Section 3 of the Act read with the provisions of Section 27 of the General Clauses Act in its applicability to Section 31(5) of the Act, namely to maintain the salutary efficacy of arbitral procedure which cannot be left to be frustrated.



26. We may also refer to the provisions of Order XXIX of the Code of Civil Procedure which concerns "Suits by or against Corporations". Rule (2) of Order XXIX provides for 'Service on Corporation' in the following terms:-

"2. Service on corporation.- Subject to any statutory provision regulating

service of process, where the suit is against a corporation, the summons may be served-

(a) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business.

(emphasis supplied)

27. Thus, for the purpose of sub-rule (2) 'service on corporation' would be recognized as a good service by leaving it or sending it by post addressed to the corporation at the registered office, or when there is no registered office then at the place where the corporation carries on business.

28. We also refer to the provisions of Section 114 of the Evidence Act which enables the Court to presume the existence of certain facts which the Court thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases. Applying the test to the communication sent by post, as prescribed under Section 114 of the Evidence Act, the Court can draw a presumption that in the common course of natural events, in public and private business, the communication has been delivered at the address of the addressee. There is no material whatsoever, on the basis of which it can be held that the presumption of deemed delivery of the award was rebutted by the appellant."



43. Thus the Bombay High Court after taking into account Section 3 of the Arbitration and Conciliation Act inter alia held that sub-clause (b) of Section 3(1) would become applicable to the written communication of the learned arbitrator dated 10.12.2012, as the learned arbitrator forwarded the award by registered post to the appellant, at the last two known places of business or mailing address of the appellant and therefore there was an attempt to deliver the said communication. The court inter alia held that in this situation, sub-clause (b) of Section 3(1) of the Act would come into play which provides that a written communication is deemed to have been delivered.
44. In ***Tata Capital Financial Services v. Ag. Aerovision Electronics Pvt. Ltd. & Ors.*** (Supra) the co-ordinate bench of this court after relying upon the earlier judgment of ***Shabnam Gulati v. Religare Finvest Pvt. Ltd.***, in FAO (OS) 338/2016 in context of Section 3(1) has inter alia held that the service deemed to have been affected if it is sent to the addresses last known place of habitual residence. It was further inter alia held that this is a deeming provision in the Act, which is a special legislation and would, therefore, override the general law of service as contained in the Code of Civil Procedure.
45. In ***A.G. Aerovision Electronics Pvt. Ltd. and Others v. Tata Capital Financial Services Ltd.*** 2018 SCC OnLine Del 10825 inter alia held that unclaimed service amounts to good service and should be treated as deemed service of the arbitral award, if it is demonstrated that the signed copy of the award had been dispatched by the learned Arbitrator at the correct addresses of the parties. In ***Simplex Infrastructure Limited v. Union Of India*** (2019) 2 SCC 455 it was inter alia held that



a plain reading of sub-section (3) along with the proviso to Section 34 shows that the application for setting aside the award on the grounds mentioned in sub-section (2) of S. 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. It was held that the extension cannot be beyond thirty days even it is pleaded that the delay was caused due to inevitable administrative difficulties of obtaining directions from higher officials. The Apex Court *inter alia* held that the administrative difficulties would not be a valid reason to condone a delay and beyond the statutory prescribed period under Section 34.

46. The judgments cited by the learned counsel for the petitioner in ***Union of India v. Tecco Trichy Engineers and Contractors (Supra)*** can be respectfully distinguished on the facts and circumstances of the case. In that case the service of the arbitral award was made on the General Manager by way of receipt in his Inward Register and the same was held to be not sufficient notice so as to activate the department to take appropriate steps in respect and in regard to the award passed by the arbitrator to constitute the starting point of limitation for the purpose of Section 34(3) of the Act. The facts in the present case are clearly distinguishable from the facts of the ***Union of India v. Tecco Trichy Engineers and Contractors (Supra)***.
47. In ***Logic Eastern India Pvt Ltd (Supra)*** cited with approval the judgment of the Hon'ble Supreme Court in ***Madan and Co. v. Wazir Jaivir Chand*** 1989 AIR 630, wherein it was *inter alia* held as under:

“34. The respondent's would be justified in relying on the



decision of the Supreme Court in Madan & Co. v. Wazir Chand (supra) wherein the Court was considering the issue 'whether notice sent by the respondent therein by registered post was said to have been served on the petitioner.' The evidence on record indicated that the petitioner had gone away from the premises without intimating landlord or neighbours of his correct address. The Supreme Court in the context held that dispatch of notice by registered post AD was sufficient compliance for landlord for eviction of the tenant. In the said context, the Supreme Court in paragraph 5 has observed thus:-

"5..... The difficulty is where the postman calls at the address mentioned and is unable to contact the addressee or a person authorised to receive the letter. All that he can then do is to return it to the sender. The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the assessee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate



matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal PG NO 990 course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

48. In ***Logic Eastern India Pvt Ltd (Supra)***, the case of ***N. Parameswaran Unni v. G. Kannan*** (2017) 5 SCC 737 of the Apex Court was cited wherein the Apex Court in examining the provisions of Section 27 of the General Clauses Act read with Section 114 of the Evidence Act, held that when a notice is sent by registered post and is returned with postal endorsement "refused" or "not available in the house" or "house locked" or "shop closed" or "addressee not in station", due service is



required to be presumed.

49. In *Apex Encon Projects v. L&T Finance Ltd.* Laws(BOM)-2015-11-53, while referring to the judgments in *Union of India v. Tecco Trichy Engineers and Contractors(Supra)*, *The State of Maharashtra v. Ark Builders Pvt. Ltd. (supra)*, *Benarsi Krishan Committee v. Karmyogi Shelters Pvt. Ltd. (supra)*, while considering the issue as to whether the arbitral award was served within the meaning of the provisions of Section 31(5) of the Act and the provisions of Section 27 of the General Clauses Act, *inter alia* held that the packets sent by registered post were properly addressed to the corporate office of the appellants and the presumption would be if it is properly addressed and sent by registered post after pre-payment upon the correct address of the addressee, the award was served properly as per the provisions of Section 3(1)(a) read with Section 27 of the General Causes Act. It was *inter alia* held as under:

“8. The communication made to the appellants at his place of business, therefore, is sufficient for proving receipt of written communication. The learned Single Judge therefore relying on Section 51 of the Companies Act, 1956 and 3(1) (a) of the Arbitration and Conciliation Act has, in our view, correctly held that the award was served properly as per the provision of law and therefore, since it was duly served at the registered office, it was deemed to be served upon the Corporate Office.

10. The learned Single Judge, therefore, in our view, has rightly recorded a finding of fact that the packets sent by registered post are properly addressed to the corporate office of the appellants. A perusal of the said provisions reveals that a presumption is raised about proper service if it is properly addressed and sent by registered post after



pre-payment upon the correct address of the addressee.”

50. It is not the case of the petitioner that the award was not sent by the learned Arbitrator at the last known available address of the petitioner. The petitioner himself has placed the document on the record that the packet sent to the address was returned back. The plea of the petitioner that since it was returned back and not actually “received” by the petitioner, the award is not delivered to the petitioner in terms of the provisions of Arbitration and Conciliation Act. This Court is of considered opinion that this argument of the petitioner if accepted, will make the Section 3 of the Arbitration and Conciliation Act and Section 27 of the General Clauses Act redundant. The Arbitration Act provides a strict regime for making the challenge to the award. The Court in it’s limited jurisdiction cannot dilute such regime by accepting flimsily and unsubstantiated pleas. Learned Arbitrator had duly sent the Award by registered post at the last known address of the petitioner. There is nothing on record to suggest that the change of address was notified to the learned Arbitrator. Thus both the submissions of the petitioner are rejected.
51. In view of the fact and circumstances the petition has been filed beyond limitation and, therefore, the present petition along with pending application(s) stands dismissed.

DINESH KUMAR SHARMA, J

OCTOBER 1, 2024/AR/NA