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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of Decision: 27th May, 2024

+ O.M.P. (COMM) 239/2024
KRISTAL VISION PROJECTS PRIVATE LIMITED Petitioner
Through: Ms. Amrita Panda & Mr. Udbhav
Gady, Advs. with Mr. Avva Sita Rama
Rao, MD of the Petitioner in person.
(M: 8106436160)

versus

UNION OF INDIA Respondent
Through: Ms. Nidhi Raman (CGSC) with Ms.
Archana Surve (Govt. Pleader) & Mr.
Zubin Singh (Adv.) (M: 9921498000)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

I.A.30413/2024 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

O.M.P.(COMM) 239/2024 & I.As.30414/2024 & 30415/2024

Background

3. The present petition has been filed by the Petitioner-Kristal Vision Projects Pvt. Ltd. under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter, 'the Act'*). The Petitioner vide the present petition seeks to challenge the order dated 16th October, 2023 (*hereinafter, 'arbitral arbitral award'*) passed by the Id. Arbitral Tribunal in '*Kristal Visions Projects Private Limited v. Union of India.*'

4. *I.A. 30415/2024* has been filed on behalf of the Petitioner seeking condonation of delay of 128 days in filing the present petition.

5. Mr. Avva Sita Rama Rao, the Managing Director of the Petitioner



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company is present in Court today.

6. A preliminary objection has been raised on behalf of the Respondent-Union of India as to the maintainability of this petition as the same is barred by limitation under Section 34(3) of the Act.

Submissions made by Id. Counsels for the parties

7. On the issue of preliminary objection, the submission of Ms. Panda Id. Counsel for the Petitioner is that the arbitral award is dated 16th October, 2023 but the same was received by the Petitioner, only on 9th March, 2024. Id. Counsel for the Petitioner further submits that the email dated 16th October, 2023 sent by the Id. Arbitrator shows that the said arbitral award was sent only to Mr. Minocha, the Id. Counsel on record and not to the parties. She relies upon the decision of the Supreme Court in ***Benarsi Krishna Committee & Ors. v. Karmyogi Shelters Private Limited, [(2012) 9 SCC 496]*** to argue that the term 'party' under Section 31 (5) of the Act as also Section 34 of the Act, has to mean the 'party' as defined under Section 2(h) of the Act. Hence, the delivery of the arbitral award under Section 31 (5) of the Act, could not have been made to the advocate appearing on behalf of the said party.

8. Ms. Nidhi Raman, Id. CGSC has vehemently objected to the submissions made by the Id. Counsel for the Petitioner. She has placed on record the proceeding sheet of the Id. Arbitrator Justice Aftab Alam (retd.) dated 16th October, 2023 wherein the arbitrator has recorded as under:



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“Present:

Claimant: Mr. Rama Varma Ch., Representative;	Respondent: Mr. R.K. Kayesth, Representative
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Minutes of the sitting held and the directors made therein on 16.10.2023 at 10:30 AM through video conferencing

1. The parties are present and are represented as shown above.
2. The sitting is held online on Google meet platform arranged by the Tribunal.
3. The Arbitral award was written by me on my laptop and three sets of prints were taken out from the printer in my office. **Two sets of prints were taken out on Non-Judicial Stamp Papers of Rs.500/- submitted by each side.** A third copy of the Arbitral award was taken out on plain paper as the Office Copy.
4. **At the sitting, the Arbitral award is signed by me and it is pronounced via video conferencing attended by the representatives of the two sides.**
5. **A hard copy of the arbitral award may be collected by the parties from the Tribunal's office through their authorized representatives /messenger.**
6. A scanned copy of the Arbitral award will be emailed to each party in course of the day.
7. The party taking step for the execution of the arbitral award would be liable to pay the requisite court fee and stamp value in accordance with law.
8. **The parties are directed to collect their respective records from Tribunal's office within 15 days from today.**



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9. On the strength of the above proceeding sheet, it is her submission that the representative on behalf the Petitioner namely-Mr. Rama Varma was present when the arbitral award was pronounced and communicated on the Google Meet platform. The order dated 16th October 2023, itself records that the parties have to collect the arbitral award from the Id. Arbitrator's office through their authorized representatives. Further, the parties were also directed to collect the respective records from the tribunal's office within 15 days. It is further submitted by the Id. CGSC that this was sufficient communication of the arbitral award and the obligation of collecting the arbitral award was upon the Petitioner and the Id. Arbitrator cannot be blamed. The Petitioner had proper notice of the pronouncement of the arbitral award itself and has failed to collect the copy of the arbitral award. Hence, the present petition is clearly barred by limitation.

10. Id. Counsel for the Petitioner at this stage submits that the Managing Director of the Petitioner company is present in Court. Accordingly, upon queries being put to him, Mr. Rama Rao states as under:

“ My name is Mr. Avva Sita Rama Rao. I am the Managing Director of the Petitioner company. Mr. Rama Varma was the technical person, who was deputed by Mr. K. Bhagwan Reddy, CEO of my company. There is no CEO now as the operations have been closed. The project has come to an end and there are no operations in the company now. The CEO no longer works with us. The company went into financial difficulties. For the last two years there is no work. On 16th October, 2023 we did not authorize Mr. Rama Varma to appear before the Arbitrator. The mobile number of Mr. Rama Varma is (M: +91 9849224387). Mr. Rama Varma is not in the employment of the Petitioner-company since June, 2023.”



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11. Ld. Counsel for the Respondent further submits that the Petitioner has now challenged the arbitral award, merely because the Respondent has filed an execution petition being ***O.M.P.(ENF.) (COMM.) 104/2024***.

12. The Court staff have tried to contact the said authorised representative Mr. Rama Varma. He, however, refused to answer the call and has also not responded in any manner.

Analysis

13. The Court has considered the matter. Clearly, as recorded by the Id. Arbitrator on 16th October, 2023, the Id. Arbitrator has taken two sets of prints of the arbitral award on stamp paper *submitted by each side*. Thus, both the parties were very well aware that the arbitral award was to be pronounced. If not, there was no question of submitting stamp papers. Secondly, the arbitral award has been signed during the Google Meet hearing which was presided over by the Id. Arbitrator, and attended by both parties. Holding of virtual arbitral proceedings is as good as holding physical hearings. The mere fact that a virtual meeting is held and the pronouncement is done virtually, does not in any manner take away the sanctity of the pronouncement of the arbitral award. The Id. Arbitrator then records that physical copies of the award can be collected from his office. If the parties were present physically, the parties would have collected the physical copies immediately after the pronouncement.

14. In addition, the Id. Arbitrator records categorically that Mr. Rama Varma, representative of the Petitioner's company was present at the time of pronouncement of the arbitral award. The Managing Director of the Petitioner company i.e. Mr. Avva Sita Rama Rao who appeared today, does not state



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that Mr. Varma was not from his company or was not authorised. He in fact states that Mr. Rama Varma was a technical person who was deputed by the CEO of the Petitioner company to handle the arbitral proceedings. Mr. Avva Sita Rama Rao merely clarifies that Mr Varma is not currently working for the Petitioner company.

15. The stand taken by Mr. Avva Sita Rama Rao that Mr. Rama Varma is presently not an employee of the Petitioner company would not make any difference, so long as Mr. Varma was representing the Petitioner before the Id. Arbitrator. Instead of a virtual hearing, if the hearing was a physical one, the Id. Arbitrator would have obviously handed over the physical copies of the arbitral award signed by him to the parties. Merely because it was a virtual hearing, the non-handing of physical copies of the arbitral award, after the same was pronounced in presence of parties and parties were asked to collect the same from his office, cannot cast a higher obligation on the Id. Arbitrator of ensuring, sending of physical copies. The Id. Arbitrator has done whatever is reasonably expected for ensuring communication of the Arbitral award viz.,

- i. Printing of two copies of the Arbitral award on stamp paper;
- ii. Arranging the Google meet hearing;
- iii. Pronouncing the arbitral award in presence of parties;
- iv. Signing the same in the virtual hearing;
- v. Directing parties to collect physical copies of the Arbitral award;
- vi. Emailing the arbitral award to the Counsels for the respective parties.

16. Thus, the Petitioner cannot be heard to argue that Mr. Rama Varma is not an authorised person who did not communicate the arbitral award to the



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Petitioner company. Mr. Rama Varma belonged to the Petitioner company. A stamp paper of Rs. 500/- was submitted which was used for printing of the arbitral award. The pronouncement took place in his presence. Hence, he is presumed to have communicated the same to the management of the Petitioner company.

17. Further, the order categorically states that the authorised representative of the Petitioner company could have collected the arbitral award from the Id. Arbitrator's office which the Petitioner failed to do. The Id. Arbitrator has also emailed the arbitral award to the Id. Counsel for the Petitioner.

18. All these facts recorded above would constitute compliance of Section 31(5) of the Act, which reads as under:

“31(5) After the arbitral award is made, a signed copy shall be delivered to each party.”

19. The expression ‘*signed copy*’ as contemplated in the said provision shall include a copy which is signed in the presence of the parties during a virtual hearing.

20. The expression ‘*delivered to each party*’ in Section 31(5) of the Arbitration and Conciliation Act, 1996 would include the record of proceedings by the Id. Arbitrator stating that the arbitral award can be collected by the parties. The parties however, cannot be recalcitrant in collecting the physical copy of the arbitral award, especially when virtual hearings of the arbitral proceedings are held, and thereafter, claim that the arbitral award was not communicated to them. Moreover, in this case, the Id. Arbitrator has emailed the copy of the arbitral award to the Id. Counsel for the Petitioner after pronouncing the same, in the presence of the parties. Thus, the facts of this case are distinguishable from the judgment of ***Benarsi Krishna***



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Committee (supra). In the said case, copies of the arbitral award duly signed were only served to the Counsels for the parties. There was no formal pronouncement of the arbitral award in the presence of the parties and neither was the hearing a virtual one.

21. It is further observed that the very same manner in which the Petitioner collected the arbitral award in March, 2024 could have been the manner in which the Petitioner could have collected the arbitral award in October, 2023 i.e., by contacting the office of the Id. Arbitrator. A delay of five months by the Petitioner in collecting the physical copy of the arbitral award cannot extend the period of limitation for filing the petition under Section 34 of the Act.

22. Thus, it is observed that the Petitioner has not exercised diligence. The blame cannot be shifted upon the Id. Arbitrator. The arbitral award having been pronounced and signed in the presence of the parties and the same having been emailed to the Id. Counsels for the parties, it is concluded that the responsibility of collecting the physical copy of the arbitral award was cast upon the parties, as the hearing for pronouncement was a virtual hearing.

23. The delivery of the arbitral award even if reckoned within 15 days from 16th October, 2023 i.e., around 1st November, 2023, which was the time given by the Id. Arbitrator to collect the arbitral award, the filing of this petition on 21st May, 2024 is clearly barred by limitation.

24. The petition is, accordingly, dismissed. All pending applications are disposed of.

**PRATHIBA M. SINGH
JUDGE**

MAY 27, 2024/dk/rks