



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th January, 2024.

Pronounced on: 5th April, 2024.

+ O.M.P. (COMM) 449/2022

CONTAINER CORPORATION OF INDIA LIMITED Petitioner

Through: Mr. Sanjay Jain, Senior Advocate
with Ms. Lalit Mohini Bhat, Ms. Hetu
Arora Sethi, Mr. R.K. Joshi,
Ms. Soumya Tandon, Mr. Siddharth
Agarwal, Mr. Abhas Kumar,
Ms. Ojusya Joshi and Mr. Arjun,
Advocates.

versus

ROADWINGS INTERNATIONAL PVT. LIMITED Respondent

Through: Mr. P. Chidambaram, Senior
Advocate with Mr. Abhishek Swarup,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J.:

I.A. 18180/2022 (under Section 34(3) of the Arbitration and Conciliation Act, 1996, seeking condonation of delay in filing petition)

1. The present petition under Section 34 of the Arbitration and Conciliation Act, 1996 [***“the Act”***] challenges the arbitral award passed by Arbitral Tribunal comprising of Hon'ble Mr. Justice (Retd.) Rajesh Tandon as Presiding Arbitrator and Mr. O.P. Gupta and Mr. Madhuresh Kumar as



Co-Arbitrators. The majority award was received by the parties on 1st June, 2022, and this petition has been filed on 10th October, 2022, which is beyond the three-month period prescribed under Section 34(3) of the Act. The timeline of filing also eclipses the additional thirty-day extension permitted under the proviso to Section 34(3) of the Act, which ostensibly precludes the Court's discretion to condone the delay. Despite this, the Petitioner asserts that the petition is filed within time, attributing any delay to substantial justifiable grounds, warranting leniency under the prescribed legal thresholds. Against the backdrop of the parties' conflicting views on the start date for the limitation period, we proceed to determine whether the petition has been filed within the legally permissible timeframe.

THE CONTROVERSY BEFORE THE COURT:

2. The Petitioner advances two primary arguments to justify the timelines of filing their application under Section 34 of the Act. The first argument is predicated on the fact that since the Arbitral Tribunal was constituted under the aegis of 'Standing Conference of Public Enterprises' [**"SCOPE"**], the arbitral proceedings would be categorised as an Institutional Arbitration. Thus, the limitation period would be calculated from the date the parties received the certified copy of the arbitral award from SCOPE. This date, as per the Petitioner, was on 19th July, 2022, and if it is accepted as the start date of the limitation period, their filing, made within three months thereafter, encounters no delay. Alternatively, the Petitioner contends that an arbitral award attains finality and completeness only upon the delivery of both the majority award and any minority or dissenting opinions. Given that the dissenting opinion was received by the



Petitioner on 14th June, 2022, the limitation period must be reckoned from this date, which places the petition's filing within the condonable limit of three months plus thirty days, as provided under Section 34(3) of the Act. Since they have sufficient cause to justify this delay, the same deserves to be condoned. By either account, the Petitioner asserts adherence to the statutory limitation and claims that this application has been filed to preclude any procedural objections by the Respondent.

3. The Respondent vehemently opposes the application, arguing that the limitation period should commence from the day the parties received the majority award, i.e. from 1st June, 2022. According to this interpretation, the instant petition is filed beyond the maximum allowable period for condonation—three months plus an additional thirty days—as stipulated by Section 34(3) and its proviso. Therefore, Respondent argues that the Court lacks the discretionary power to condone such delay, rendering the petition to be barred by limitation and liable to be dismissed.

CASE SET OUT BY THE PETITIONER

4. Mr. Sanjay Jain, Senior Counsel for the Petitioner, sets out the sequence of events leading to filing of the instant application as follows:

4.1. Petitioner executed a contract dated 18th March, 2010 with the Respondent. This contract came into existence following the Petitioner's issuance of Tender No. CON/T/RST/2009, which was accompanied by General Conditions of Contract [**"GCC"**] detailed in Section III thereof. Over time, several disputes arose from this contractual relationship, leading to the initiation of arbitration proceedings under the aegis of the institution SCOPE.



4.2. Despite the clear mandate of Clause 14.4 of the GCC, which required the parties to exhaust all efforts towards an amicable resolution of disputes, the Respondent proceeded to escalate the matter by submitting a Statement of Claim to SCOPE on 7th April, 2018. This action deviated from the prescribed initial step of seeking mutual resolution, yet was accepted by SCOPE. Eventually an Arbitral Tribunal was constituted with Hon'ble Mr Justice (Retd.) Rajesh Tandon acting as the Presiding Arbitrator upon nomination by SCOPE. Mr. O.P. Gupta and Mr. Madhuresh Kumar were nominated as Co-Arbitrators by the Respondent and the Petitioner, respectively.

4.3. The Arbitral Tribunal passed the award on 1st June, 2022 [***“Majority Award”***]. This Majority Award was signed by all three members of the Tribunal and directly communicated to the parties on the same date, i.e. 1st June, 2022, by the Presiding Arbitrator on behalf of the Arbitral Tribunal. Pertinently, within the Majority Award, it was expressly acknowledged that Mr. Madhuresh Kumar had reservations about certain aspects of the decision and that he intended to elaborate on his differing viewpoints concerning specific claims and counterclaims through a dissenting note, to be submitted within ten days following the issuance of the Majority Award. The said dissent note was completed and signed on 11th June, 2022 [***“Dissenting Opinion”***], and received by the Petitioner on 14th June, 2022.

4.4. On 7th June, 2022, SCOPE issued a letter to the parties informing them that on account of an inadvertent error, the previously calculated arbitral fee, administrative fee and other charges were required to be re-fixed. As a result of this recalibration, it was determined that an additional sum of INR 20,000/- was owed by each party. The letter underscored the



necessity of settling this balance to facilitate the dispatch of the arbitral award's certified copies for the parties' records and reference. The communication specifically highlighted, "*so that certified copy of the award can be sent to the parties for their record and reference*", emphasising the importance of this step in the procedural formalities following the arbitration process.

4.5. The Respondent fulfilled their financial obligation by depositing the re-calculated balance on 18th June, 2022 with SCOPE, and subsequently received the certified copy of the arbitral award on 22nd June, 2022. The Petitioner, after undertaking an independent verification of the re-calculated fees within their own administrative channels, settled the outstanding balance on 12/14th July, 2022. Following this payment, the certified copy of the award was furnished to the Petitioner on 19th July, 2022. Relying upon this document, on 10th October, 2022, the Petitioner proceeded to file the present petition under Section 34 of the Act challenging the arbitral award, asserting that their action falls within the permissible timeframe established by Section 34(3) of the Act.

5. Against the above detailed background, Mr. Jain has advanced the following submissions on behalf of the Petitioner:

5.1. Firstly, it is emphasised that the parties deliberately chose institutional arbitration as their preferred mechanism for resolving disputes. This is articulated within Clause 14.5 of the GCC, which categorically states "... *either party may require that the dispute be referred for resolution by arbitration in accordance with the Rules of Arbitration of the "Standing Committee on Public Enterprises: of India (SCOPE) and award made in pursuance thereof shall be binding on the parties.*" This preference for



institutional arbitration differentiates from ad-hoc arbitration, as it entails the parties' agreement, per Sections 2(6) and 2(8) of the Act, to incorporate the institution's procedural rules within their arbitration agreement. Consequently, parties have committed to resolving their disputes in accordance with the SCOPE Forum of Conciliation and Arbitration (SFCA) Arbitration Rules, 2003 [**"SCOPE Rules"**]. To substantiate this assertion, Mr. Jain references the authoritative commentaries of Gary B. Born¹ and Redfern and Hunter².

5.2. Notably, Rule 6(iv) of the SCOPE Rules delineates the procedure for communications between the Arbitral Tribunal and the parties involved. This Rule stipulates that all communications between the Arbitral Tribunal and the parties, including the orders and directions of the Tribunal, must be channelled through the Secretariat of SCOPE. The said Rule reads as under:

"6 (iv) The Secretariat shall also receive all communications made to the Arbitrator by the parties and communicate to them the orders and directions of the Arbitrator, keep a register of communications in the Forum and proper records of settlement made by the Arbitrator, keep such other books or memoranda and make such other records or returns as the Governing Body shall from time to time require and generally carry out the directions of the Arbitral Tribunal so constituted under these rules and take such other steps as may be necessary to assist the Arbitrator in carrying out of its functions and duties under the Act, and these rules. The Secretary shall monitor the progress of each arbitration proceedings as also suggest measures for expeditious and cost effective arbitration."

5.3. Throughout the arbitration proceedings, all exchanges between the parties and the Arbitral Tribunal were consistently conducted through SCOPE. This established communication protocol led both parties to

¹ Gary B. Born, *International Commercial Arbitration*, vol 1 (Wolters Kluwer 2014) 1613-1615.

²Nigel Blackaby KC, Constantine Partasides KC, and Alan Redfern, *Redfern and Hunter on International Arbitration* (7th edn, OUP 2022) 40-41.



anticipate that the arbitral award, too, would be conveyed to them *via* SCOPE. This expectation finds support in a specific communication from SCOPE, dated 7th June, 2022, a pertinent excerpt whereof is extracted below:

“...xxx... ...xxx... ...xxx...”

Subject: - Arbitration between M/s Roadwings International Pvt. Ltd. and M/s CONCOR. CON/T/RST/2009 dated 18.03.2010 and NOAM No. CON/T/RST/2009-10 dated 13.05.2010.

Dear Sir,

This has reference to our letter of even no. dated 03.09.2020 (copy enclosed) wherein forum have raised fee and other charges from the parties in the subject matter.

In the said matter, Arbitral Tribunal has sent an award to this forum on 03.06.2022 in which it is noted that due to mistake fee and other charges were wrongly calculated. Now the forum has recalculated the fee and other charges as detailed below:

<i>Details</i>	<i>Amount</i>
<i>a. Claim Amount</i>	<i>Rs. 66,01,47,108/-</i>
<i>b. Interest for non-payment upto 31.03.2018 @ 10%</i>	<i>Rs. 11,45,45,628</i>
<i>c. Total (a+ b)</i>	<i>Rs. 77,46,92,736/-</i>
<i>d. Counter Claim</i>	<i>Rs. 12,00,58,299/-</i>
<i>Administrative Fee</i>	<i>Rs 12,70,000/-</i>
<i>Arbitrator's Fee</i>	<i>Rs. 16,65,000 * 3 = Rs. 49,95,000/-</i>
<i>Fee for Study of the Pleadings, Case Material, Writing Work Awards etc.</i>	<i>Rs. 70,000/-x 3 = Rs. 2,10,000/-</i>
<i>Total</i>	<i>Rs. 64,75,000/- (to be equally shared by both the parties i.e.) Rs. 32,37,500/- by each.</i>
<i>Amount already paid by the parties</i>	<i>Rs. 64,35,000/- (Rs. 32,17,500/- by each.)</i>
<i>Difference to be paid by both the parties</i>	<i>Rs. (64,75,000 -64,35,000) = Rs. 40,000/- which is equally shared by both the Parties which comes to Rs. 20,000/- each.</i>

...xxx... ...xxx... ...xxx...



Parties are advised to deposit fee and other charges within a week so that certified copy of the award can be sent to the parties for their record and reference.

...xxx... ...xxx... ...xxx... ”

5.4. This communication from SCOPE explicitly indicates that the issuance of certified copies of the arbitral award to the parties is contingent upon the settlement of the outstanding fees. Thus, the initiation of any legal proceedings under Sections 34 and 36 of the Act aimed at setting aside or enforcing the arbitral award respectively, also presupposes the parties receiving the certified copy of the award from SCOPE. However, this procedure was contravened on 1st June, 2022, when the Presiding Arbitrator directly emailed the Majority Award to the parties. This method of direct delivery does not conform to the stipulated procedures for communication between the Tribunal and parties, being in conflict with Rule 6(iv) of the SCOPE Rules as previously discussed. Consequently, the direct emailing of the Majority Award by the Presiding Arbitrator cannot reasonably be considered to be the triggering event for the purpose of limitation period as prescribed under Section 34(3) of the Act.

5.5. Furthermore, the specific wording of the communication dated 7th June, 2022, suggests that the arbitral institution exercised a form of control or lien over the arbitral award, in accordance with Section 39(1) of the Act. This lien hinged on the settlement of the re-calculated fees and charges—until the parties fulfilled this financial obligation, the certified copy of the award would be withheld and thus, SCOPE would continue to exercise a lien over the delivery of the award. Therefore, even if the arbitral award is held to be *made* on 1st June, 2022, until the payments as demanded by SCOPE



were made and the certified copy was delivered, it cannot be said that the Petitioner *received* the arbitral award, as contemplated under Section 34(3) of the Act. This distinction is crucial, as it is the receipt of the certified copy of the arbitral award that marks the formal conclusion of the arbitral process and triggers the commencement of the limitation period for actions under the Act.

5.6. Consequently, the initiation of the limitation period for setting aside the arbitral award under Section 34 of the Act must be considered from the date that the party seeking to challenge the award receives the signed copy in accordance with the procedures established by law. This interpretation is supported by the Supreme Court's observations in *State of Maharashtra v. ARK Builders Pvt. Ltd.*³, where it was determined that the limitation period commences from the date on which the certified copy of the arbitral award is received by the applicant. Hence, based on the date the Petitioner received the certified copy of the award, which is 19th July, 2022, the limitation period would conclude on 19th October, 2022. Given this timeline, the instant petition is definitively within the statutory limitation period. Consequently, the instant application for condonation of delay, filed as a precautionary measure, deserves to be allowed.

5.7. In addition, and without prejudice to the arguments presented above, it is pertinent to underline that the timeframe for filing a petition under Section 34 of the Act should commence only upon the receipt of the arbitral award by the concerned parties. In this particular instance, the Arbitral Tribunal did not yield a unanimous award. The Majority Award was issued

³(2011) 4 SCC 616



on 1st June, 2022, while the Dissenting Opinion, authored by Mr. Madhuresh Kumar, was finalised on 11th June, 2022, and delivered to the Petitioner on 14th June, 2022. Therefore, it is logical to conclude that the arbitral award was only finalised and completed when both the Majority Award and Dissenting Opinion were made accessible to the parties, thereby enabling the parties to fully appreciate the Tribunal's reasoned decision and triggering the start of the limitation period for assailing the same under Section 34 of the Act.

5.8. The significance of the Dissenting Opinion, in the context of Section 34 of the Act, is underscored by the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.***⁴. This judgment highlights how a dissenting opinion serves as an indispensable tool for a party intending to contest an arbitral award, as it often lays the foundation for effectively constructing a challenge to the conclusions of the majority. Thus, the necessary corollary is that the limitation period for filing an application under Section 34 of the Act will only commence from the date of receipt of the Dissenting Opinion. Accepting the Respondent's view that the limitation begins with the delivery of the Majority Award would, in essence, disregard the value and utility of the Dissenting Opinion. Such a stance is at odds with the Supreme Court's reasoning in the aforementioned case.

5.9. In this instance, the Majority Award expressly stipulates that Co-Arbitrator Mr. Madhuresh Kumar had reservations about several findings, and the Dissenting Opinion was received by the Petitioner on 14th June, 2022. Subsequent to this, the Petitioner faced an unexpected setback due to

⁴ (2021) 7 SCC 657



the severe illness of their counsel, Mr. Abhas Kumar, necessitating the engagement of a new counsel, Mr. R.K. Joshi. This change required a comprehensive review of the extensive case records and the formulation of arguments, culminating in the filing of the petition on 10th October, 2022. This timeline falls within the additional thirty-day grace period permitted by the proviso to Section 34(3) of the Act for the condonation of delays. Therefore, the circumstances narrated above disclose sufficient cause for the Petitioner to seek condonation of delay, if any, in filing the instant petition under Section 34 of the Act.

CONTENTIONS ON BEHALF OF THE RESPONDENT

6. Submissions advanced by Mr. P. Chidambaram, Senior Counsel for the Respondent, are summarised as follows:

6.1. There can only be one arbitral award under the scheme of the Act, which, on a conjoint reading of Sections 29 and 31 of the Act, would be the award signed by a majority of the members of the arbitral tribunal. In the present case, the Majority Award was signed by all three members of the Arbitral Tribunal and communicated to the parties on 1st June, 2022. The Petitioner does not at any stage deny having received the Majority Award on 1st June, 2022, and thus the limitation period in terms of Section 34(3) of the Act would run from the said date. Accordingly, three months lapsed on 30th August, 2022 and the additional condonable period of thirty days lapsed on 29th September, 2022. In such circumstances, the Court would be barred from condoning any further delay by virtue of the phrase “*but not thereafter*” used in the proviso to Section 34(3), which is a well-established position of the law established by the Supreme Court in, *inter alia*, ***Simplex***



Infrastructure Ltd. v. Union of India⁵.

6.2. Petitioner cannot be permitted to sail on two boats at the same time. On one hand, they argue there is no delay whatsoever as they received the certified copy on 19th July, 2022, and the limitation period should be calculated from the said date. However, on the other hand, they take a contradictory stand that the limitation period should commence from 14th June, 2022, being the date on which they received the Dissenting Opinion, resulting in a 25-day delay in filing the instant petition. In any event, the Petitioner has not given any sufficient cause for condonation in their application for condonation of delay. The originally filed application does not disclose any reasons justifying the delay, and the reasons belatedly supplied in the rejoinder to the Respondent's reply to the instant application do not make out any sufficient cause, and therefore do not warrant condonation of delay.

6.3. Petitioner's submissions *qua* the relevance of the Dissenting Opinion are misconceived. At the time of passing the Majority Award, which satisfies the requirements for an arbitral award as per Section 31 of the Act, the mandate of the Arbitral Tribunal was categorically terminated in terms of Section 32 of the Act. Thus, the Dissenting Opinion passed thereafter has no legal significance when it comes to limitation, which begins to run from the date of receipt of the award of the majority. In the instant case, in fact, the Majority Award has been signed not just by the two Arbitrators delivering the same, but by all three members of the Tribunal. Thus, Petitioner's narrative that limitation would start from the date of receipt of

⁵ (2019) 2 SCC 455



the Dissenting Opinion by them on 14th June, 2022, resulting in a 25-day condonable delay, is misconceived and untenable.

6.4. The Dissenting Opinion does not meet the pre-requisites of an award delineated in Section 31 of the Act, and therefore has no legal effect. It cannot be the subject of challenge under Section 34 nor enforcement under Section 36 of the Act. In fact, the term “minority award”, which has been used by the Petitioner in their pleadings, finds no mention anywhere in the scheme of the Act, nor in the SCOPE Rules. The Dissenting Opinion serves merely as an expression of the dissenting arbitrator’s opinion, which may only be referred to for the purposes of formulating grounds of challenge under Section 34. However, this does not have any bearing on the rights and obligations of the parties. In this regard, reliance is placed on the judgment of this Court in *Government of India BSNL v. Acome and Ors*⁶, and the High Court of Bombay in *Axios Navigation Co. Ltd. v. Indian Oil Corporation Limited*⁷. Furthermore, the Supreme Court’s judgment in *Dakshin Haryana (supra)*, which is relied on heavily by the Petitioner, also supports the Respondent’s aforementioned understanding that the arbitral award shall be the award passed by the majority.

6.5. The Arbitral Tribunal was well within their power to directly communicate the award to the parties, and would not be barred by Rule 6(iv) of the SCOPE Rules, which does not address the manner in which the arbitral award ought to be communicated. Petitioner has wrongly attempted to equate this Rule with the provisions contained in the procedural rules of

⁶2007 SCC OnLine Del 226.

⁷2012 SCC OnLine Bom 4.



other institutions which specifically direct communication of the award by the institution. In fact, on the contrary, the communication dated 28th September, 2020, issued by SCOPE at the time of appointing the Presiding Arbitrator, clearly indicates that the Tribunal was at liberty to publish the award. The relevant portion of the said communication is extracted as follows:

“SUBJECT:-APPOINTMENT OF PRESIDING ARBITRATOR IN THE MATTER OF ARBITRATION BETWEEN ROADWINGS INTERNATIONAL PRIVATE LIMITED AND CONTAINER CORPORATION OF INDIA LTD Contract No., CON/T/RST/2009 dated 18.03.2010 and NOAM No. CON/T/RST/2009-10 dated 13.05.2010)

Dear Sir,

We are pleased to inform you that you have been appointed as Presiding Arbitrator in the matter of Arbitration between M/s Roadwings International Private Limited and M/s Container Corporation Of India Limited.

It is to mention here that as both the parties had nominated Co-Arbitrators in this case so that Presiding Arbitrator in this case could be appointed by the SCOPE Forum of Conciliation and Arbitration.

You are, therefore, requested to please take further action in the matter. A copy of the SCOPE Forum of Conciliation & Arbitration (SFCA) Rules of Conciliation & Arbitration Ruies, 2003 (as amended from time to time) is enclosed.

...xxx...

...xxx...

...xxx...

After publication of the Award, Hon'ble members of the Tribunal are requested to deposit all papers relating to the captioned Arbitral Tribunal matter with the Forum.

Fees and other charges i.e. Arbitrators' fee, fee for study of the pleadings, case material, writing of the award etc. shall be released to the Arbitrators only after publication of the Award.”

6.6. There is also no basis for the Petitioner's claims regarding the



limitation period commencing from 19th July, 2022, when they received the certified copy of the award. There is no concept of an institution certifying an award, and neither is there any requirement of a certified copy mentioned in the Act. The only requirement in this regard is that a signed copy of the award must be communicated to the parties, which in this case was already done on 1st June, 2022. Moreover, it must be noted that the communication issued by SCOPE directing payment of the balance amount was issued on 7th June, 2022, being prior to the passing of the Dissenting Opinion. This in itself indicates that the award had already been finalised on 1st June, 2022. Furthermore, while the Respondent had promptly cleared their dues on 18th June, 2022 and received the certified copy of the award on 22nd June, 2022, the Petitioner unnecessarily and unreasonably delayed in applying for the certified copy, only making the payment on 12/14th July, 2022, five weeks after receiving the communication from SCOPE. The Petitioner cannot be permitted to take advantage of their own delay by creating a false basis to calculate the period of limitation from 19th July, 2022. Thus, SCOPE's letter dated 7th June, 2022 has no significance regarding the period of limitation and only relates to payments of fees and expenses of SCOPE.

6.7. In view of the aforementioned contentions and caselaw, it is submitted that the arbitral award is that of the majority, which was made and delivered to the parties on 1st June, 2022, in accordance with law. Thus, the period of limitation would run from the same date. Considering the excessive delay in filing the instant petition and absence of sufficient cause for the same, the Court must dismiss the present application.



ANALYSIS AND FINDINGS

7. The contentions advanced by the Senior Counsel for both parties raise two critical issues for the Court's consideration:

(A) ***What constitutes 'decision making' by a panel of arbitrators:*** What is the precise date on which the arbitral award is made by a panel of arbitrators? Additionally, we must determine whether an arbitral award is deemed final upon being signed by the majority of the tribunal's members, or is the incorporation of the dissenting opinion essential for its completion and finality?

(B) ***Receipt of the Arbitral Award by the Petitioner:*** On what exact date did the Petitioner receive the award? Identifying this date is imperative for ascertaining the initiation of the limitation period under Section 34 of the Act.

When was the arbitral award made?

8. First and foremost, we must highlight an important clarification made by Mr. Jain during the arguments. He acknowledged that the term "minority award" as used in the pleadings does not have a basis in the Act, nor is it a concept recognised in the legal precedents rendered by the courts. Be that as it may, he strenuously argued that the Majority Award, in and of itself, does not constitute the arbitral award. Mr. Jain asserts that if there is a dissenting opinion, it must accompany the majority award to give it the status of an arbitral award.

9. The critical issue before us is regarding the point at which an arbitral award, issued by a panel of arbitrators (more than one), is considered to have attained finality, or in other words, is deemed to be "made" or "delivered" as



per the Act. In order to effectively address the question of decision making by the arbitral tribunal comprising of a panel of arbitrators, we must begin by delineating the relevant provisions. Section 2 of the Act lays the groundwork by defining key terms essential for understanding the framework of the Act. Section 2(1)(c) of the Act offers a definition of “arbitral award”, broadening the scope of what constitutes an award to include interim awards, however, this definition stops short of providing a detailed exposition that could assist us in deciding the issue we are confronted with. Nevertheless, a clearer understanding of what constitutes an arbitral award, particularly in the context of this case, can be derived from Sections 29 and 31 of the Act. These sections are instrumental for understanding the procedural and substantive aspects of how an arbitral award is made and when it is considered to be delivered. By dissecting these provisions, we can identify the legislative intent and operational mechanism that govern the decision making of an arbitral tribunal. The pertinent extracts from these provisions are extracted hereinbelow.

*“29. **Decision making by panel of arbitrators.**—(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.*

...xxx...

...xxx...

...xxx...

***31. Form and contents of arbitral award.**—(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.*

(3) The arbitral award shall state the reasons upon which it is based, unless—

(a) the parties have agreed that no reasons are to be given, or

(b) the award is an arbitral award on agreed terms under section 30.

(4) The arbitral award shall state its date and the place of arbitration as



determined in accordance with section 20 and the award shall be deemed to have been made at that place.

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

10. Section 29(1) of the Act specifically addresses the decision-making protocol in arbitral proceedings that involves a panel of more than one arbitrator. This section explicitly requires that any decision from the arbitral tribunal must garner the support of a majority of its members. This mandate is crucial as it ensures the arbitral award embodies a consensus or, at the very least, represents the majority’s viewpoint among all the tribunal members.

11. Section 31 delineates the form and contents of an arbitral award. This provision is crucial for understanding when an award is considered to be “made” and “delivered”. It specifies that an award must: be in writing; state its date and place of arbitration; and include the reasons on which it is based, barring exceptions agreed upon by the parties or stipulated by the Act. Section 31(2) specifically provides that, in case of an arbitration having multiple arbitrators, for an award to be considered as “made”, it needs to be signed by the majority of the members of the tribunal, as long as the reason for any omitted signature is stated. Moreover, Section 31(5) mandates the delivery of a signed copy to each party. Thus, an arbitral award is “made” once it fulfils the criteria set out in Section 31, whereas it is considered to be “delivered” once a signed copy thereof has been received by the parties, thereby making the parties aware of the tribunal’s findings and conclusions.

12. The fact that Sections 29(1) and 31 of the Act do not mandate unanimity among the members of the panel of arbitrators implies that the



Act acknowledges the possibility of dissenting opinions. Nonetheless, the Act gives legal recognition to the decision of the majority of all the members of the arbitral tribunal as a valid and binding arbitral award, even in the absence of dissenting opinions. Thus, the act of signing by the majority symbolises the collective assent of the tribunal to the award's contents, thereby marking the award's formal completion and its readiness for delivery to the parties.

13. In conclusion, an arbitral award rendered by a panel of arbitrators under the Arbitration and Conciliation Act, 1996, is considered to have been “made” when it is finalised in writing, signed by the majority of the panel, and contains all elements required by Section 31. It is deemed “delivered” once it has been handed over to the parties, fulfilling the Act's requirements for a formal decision communication. This inference is supported by the jurisprudence set out by this Court in **BSNL (supra)**. This judgment explains the process and conditions under which an arbitral award reaches the crucial milestone of finality, thereby binding the parties as per the Act. The relevant excerpts of this judgment have been reproduced as follows:

“28. Section 31 (1) of the Act makes it clear, and this is the common case of both the parties, that the law contemplates the passing of only one arbitral award. Reading of Section 31(2) makes it clear that in an arbitral proceedings before a Tribunal consisting of more than one arbitrator, the award of the Tribunal would be sufficiently made, if it is signed by the majority of arbitrators, so long as the reason for the omission to sign by other arbitrators who are in minority is so stated in the award itself. It therefore follows, that a document containing the opinion of a minority of arbitrators cannot be called an award within the meaning of Section 31 of the Act. Apart from the decisions cited by the Respondent, I find that a Division Bench of this Court in Fertilizer Corporation of India Ltd. v. IDI Management (USA), AIR 1984 Delhi 333 has held that opinion of a minority of arbitrators cannot be looked at for any purpose. The award with which the law is concerned is the award of the majority. Reasons given by the minority are not reasons of the majority and as such does not form part of



the majority.

...xxx...

...xxx...

...xxx...

31. ... Only when the award of the majority of arbitrators is received, which is the award of the Tribunal, it would give a cause to the aggrieved party/parties to object to the same. Limitation would therefore begin to run from the time the majority award is communicated to the party concerned.

...xxx...

...xxx...

...xxx...

33. Once the award is signed and communicated by the majority of arbitrators, (since the decision of the panel of arbitrators is to be governed by majority under Section 29, unless otherwise agreed) the parties are put to notice, and are aware of the determination made by the Arbitral Tribunal. Each party knows his rights and obligations as crystallised in the award of the majority and the consequences flowing therefrom. If a party is aggrieved by the majority award, he can and must challenge the same within the time provided for the purpose. His grounds of challenge have to be gathered from the majority award and the arbitral proceedings. They are not dependent upon the giving of the minority opinion by the minority of arbitrators. If and when it is given, such a minority opinion(s) may be used by a party challenging the award to bolster his challenge. However, the aggrieved party cannot await the giving of the minority opinion to challenge the majority award, which binds him and affects his rights.

34. Consequently, it is immaterial whether the opinion of the minority of arbitrators, if any, is made available to the parties at the same time as the award of the majority or not. From the decisions cited above, it is evident that it has always been the law that an award which is signed by the majority of arbitrators is a valid and enforceable award....

...xxx...

...xxx...

...xxx...

35. In my view the limitation for filing of objections would begin to run from the date the parties are put to notice of the majority award. That to my mind is also the purposive interpretation of the provisions of the Act. The party succeeding before the Arbitral Tribunal, in whose favour the award has been rendered, would be left high and dry if it is taken that the majority award cannot be challenged or executed unless all the arbitrators give their respective opinions. Such an interpretation would have the potential to frustrate the scheme of the Act whenever there is a multi-member Arbitration Tribunal constituted. The object of the Act is to provide speedy and alternative resolution of disputes. This would be defeated if one or more arbitrators in minority choose to either delay the publication of their opinion, or choose not to give it at all."



[Emphasis Supplied]

14. In the aforementioned judgment, the Court categorically holds that the award of the majority constitutes the only award which the law recognises. It further holds that the limitation period in terms of Section 34(3) of the Act would run from the date on which the said award is signed and communicated by the majority of the arbitrators. In view of the above, it is clear that in an arbitration comprising of more than one arbitrator, the signatures of the majority of all members would be sufficient to make an award, so long as the reason for any omitted signature is stated. Pertinently, although the ***BSNL (supra)*** judgment was challenged by way of Special Leave Petition No. 18309/2008, the same was dismissed *vide* order dated 11th August, 2008.

15. Let us now turn to the facts before the Court in the present case. On 1st June, 2022, the Majority Award was finalised and signed by all three members of the Tribunal. The issue of omitted signatures in terms of Section 31(2) of the Act therefore does not arise and the Majority Award satisfies the requirements set forth in Sections 31(1) and 31(2) of the Act. Notably, the Majority Award acknowledges the dissent of Mr. Madhuresh Kumar on specific claims and counterclaims, with an indication that a separate dissent note would be forthcoming. The relevant portion of the Majority Award is excerpted hereinbelow:

“*AWARD*

...xxx...

...xxx...

...xxx...

7. *I (Madhuresh Kumar) do not agree with the award on the claim numbers 6, 7, 10 and 11 as well as counter claim number 1 and 2. Minority award/ dissent note on these claims/ counter claims will be*



- submitted / made within ten days with intimation to all concerned.*
8. *The Presiding Arbitrator as well as Co-Arbitrator Mr. O.P. Gupta are passing the present majority Award.*
 9. *The majority Award is being passed with the reasons as contained u/s 31 of the Arbitration and Conciliation Act, 1996.*
 10. *In view of the majority Award the proceedings are terminated as per Section 32 of the Arbitration and Conciliation Act 1996 by the present final Award.*

Passed on this 01st day of June, 2022 at New Delhi”

16. On the said date, the Arbitral Tribunal also passed an order titled “Procedural Hearing No. 19 Dated 01.06.2022” [**“Procedural Order”**] to the following effect:

- “1. The Presiding Arbitrator and Co-Arbitrators are present physically.*
- 2. The internal meetings of the aforesaid matter have taken place today.*
- 3. On the last dates i.e. 25.05.2022 and 31.05.2022, there were some differences between the nominated Arbitrator and therefore the matter was adjourned for another internal meeting i.e. today.*
- 4. Today also, the matter of differences among the Arbitrators was discussed; however the differences could not be resolved.*
- 5. Therefore, the Presiding Arbitrator is taking up the matte for final Award. On the consideration, the Presiding Arbitrator is agreeing with Mr. O.P. Gupta, Co-Arbitrator.*
- 6. Mr. Madhuresh Co-Arbitrator, do not agree with the award on claim numbers 6,7,10 and 11 as well as counter claim number 1 & 2. Minority award/dissent note on these claims/counter claims will be submitted /made within ten days with intimation to all concerned.*
- 7. The Award is published on Rs. 500/- rest of duty shall be paid at the time of execution proceedings.*
- 8. The Claimant has complied the last order dated 31.05.2022 by clearing the dues (Rs. 38,000/- to both the Co-Arbitrators and Rs. 2,02,500/- to the Presiding Arbitrator) of the Tribunal members towards Fees and expenses.*
- 9. The same shall be reimbursed by the Respondent to the Claimant.*
- 10. The Award has been declared today i.e. 01.06.2022 and the same shall be sent by email as well as courier service.”**

[Emphasis Supplied]

17. The above excerpts from the Majority Award and Procedural Order make it abundantly clear that the award assented to by a majority of the



arbitrators, was made/ declared/ published on 1st June, 2022. This serves as critical piece of evidence in illustrating that the decision of the arbitral tribunal to conclusively terminate the arbitral proceedings on 1st June, 2022 effectively marked the date of “making” or “determining” or “declaring” the arbitral award. Although the Majority Award signed by all three arbitrators notes the impending dissent note from Mr. Kumar, the same was inconsequential to render it valid and enforceable. The opinion of the minority of arbitrators, if there is one, does not carry weight in determining the validity and enforceability of an award. As long as the majority of arbitrators sign off on the award, it is considered valid and enforceable under the law. This means that Mr. Kumar’s opinion does not affect the validity or enforceability of the Majority Award. This view of the Court aligns with the jurisprudence outlined in *BSNL (supra)*, and is also supported by the view expressed by High Court of Bombay in *Axios Navigation (supra)*, wherein it was observed as follows:

*“11. There is no bar that dissenting Arbitrator should not express his opinion/view on the subjected dispute. It is relevant to note that Section 31 of the Arbitration Act, which provides that an Arbitral Award shall be signed by the members of the Arbitral Tribunal, at least the majority of the members of the Arbitral Tribunal, unless explained for the omission of the signature by others specifically when the Tribunal is of more than one Arbitrator. **The dissenting view, if any, cannot be treated as award. Omission of the dissenter member's signature will not make the award invalid. But in a situation where dissenter member also permitted to give reasons and/or expressed his dissenting opinion separately, still the majority assenting opinion shall be treated as an award.** The Court under Section 34 of the Arbitration Act is not debarred from looking into the reasonings and/or the view expressed by the dissenting Arbitrator.”*

[Emphasis Supplied]

18. Thus, it is the Majority Award, signed and communicated by the majority on 1st June, 2022, which constitutes the arbitral award in law. This



award was made and declared on the said date, thereby triggering the procedural timelines for any challenges. The inclusion of a subsequent dissent note, while indicative of the tribunal's comprehensive deliberation, does not alter the making or declaring of an award for the commencement of the limitation period for filing objections. Accordingly, Mr. Jain's contention that the Dissenting Opinion of Mr. Kumar is an integral part of the arbitral award, and the absence thereof rendered the award incomplete, cannot be sustained. We must also refer to the Supreme Court in ***Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.***⁸ which discusses the relevance of a dissenting opinion in an arbitral award:

“Relevance of a dissenting opinion

39. The dissenting opinion of a minority arbitrator can be relied upon by the party seeking to set aside the award to buttress its submissions in the proceedings under Section 34. At the stage of judicial scrutiny by the court under Section 34, the court is not precluded from considering the findings and conclusions of the dissenting opinion of the minority member of the Tribunal.

40. In the commentary of Russel on Arbitration, the relevance of a dissenting opinion was explained as follows:

"6-058. Dissenting opinions.-Any member of the Tribunal who does not assent to an award need not sign, it but may set out his own views of the case, either within the award document or in a separate "dissenting opinion". The arbitrator should consider carefully whether there is good reason for expressing his dissent, because a dissenting opinion may encourage a challenge to the award. This is for the parties' information only and does not form part of the award, but it may be admissible as evidence in relation to the procedural matters in the event of a challenge or may add weight to the arguments of a party wishing to appeal against the award."

(emphasis supplied)

41. Gary B. Born in his commentary on International Commercial

⁸ (2021) 7 SCC 657



Arbitration opines that:

...xxx...

...xxx...

...xxx...

It is further observed that:

"... the very concept of a reasoned award by a multimember Tribunal permits a statement of different reasons - if different members of the Tribunal in fact hold different views. This is an essential aspect of the process by which the parties have an opportunity to both, present their case, and hear the reasons for the Tribunal's decision; not hearing the dissent deprives the parties of an important aspect of this process."

(emphasis supplied)"

19. Although the above excerpts do expound upon the significance of a dissenting/ minority opinion, however, the Court does not find any basis to conclude that the same is an essential part of the arbitral award to make it valid. This understanding is also supported by the authoritative commentary of Russel on Arbitration, as cited by the Supreme Court in the aforementioned excerpt, which notes that while a dissenting opinion may be provided for the parties' consideration, it does not constitute a part of the arbitral award itself. Besides, as pointed out by Mr. Chidambaram, it must also be emphasised that the Petitioner has selectively relied upon the *Dakshin Haryana (supra)* judgment. We must also note pertinent observations within the same judgment that have not been alluded to by the Petitioner. These overlooked segments reinforce the understanding that while dissenting opinions may enrich the procedural history of an arbitration by offering alternative perspectives, they do not alter the legal status or enforceability of the majority's award:

"22. An "arbitral award" is the decision made by the majority members of an arbitral tribunal, which is final and binding on the parties. Section 35 provides that an arbitral award shall be "final and binding" on the parties and persons claiming under them. A dissenting opinion does not determine the rights or liabilities of the parties which are enforceable under Section 36 of the Act.



23. The reference to the phrase “arbitral award” in Sections 34 and 36 refers to the decision of the majority of the members of the arbitral tribunal. A party cannot file a petition u/S. 34 for setting aside, or u/S. 36 for enforcement of a dissenting opinion. **What is capable of being set aside u/S. 34 is the “arbitral award” i.e. the decision reached by the majority of members of the tribunal.** Similarly, u/S. 36 what can be enforced is the “arbitral award” passed by the majority of the members.”

[Emphasis Supplied]

20. Thus, the Supreme Court has held in no uncertain terms that while an arbitrator retains the right to dissent and author a reasoned dissenting opinion, the same would not constitute part of the arbitral award. Therefore, ***Dakshin Haryana (supra)*** does not support Mr. Jain’s hypothesis. The Petitioner’s argument that the concept of an arbitral award ought to incorporate the breadth of the Tribunal’s deliberations – including the Dissenting Opinion – to give it the colour of finality, does not align with the statutory framework or the established jurisprudence on the matter.

21. In conclusion, a majority award constitutes an arbitral award within the meaning of the Arbitration and Conciliation Act, 1996, notwithstanding the absence of a minority or dissenting opinion, as long as the award is made in compliance with the requirements set forth in the Act. The incorporation of a dissenting opinion subsequently does not detract from the finality and enforceability of the majority’s award, which, as signed and communicated by the majority of arbitrators, constitutes the definitive arbitral award from a legal standpoint, setting into motion the limitation period for any challenges under Section 34 of the Act.

22. We shall now deal with Mr. Jain’s argument pertaining to the mandate of the Arbitral Tribunal. Since the passing of an arbitral award would, in terms of Section 32 of the Act, terminate the mandate of the Arbitral Tribunal, Mr. Jain argues that the arbitral award must necessarily include the



Dissenting Opinion. If not, it would lead to a situation of absurdity wherein the mandate of the Tribunal would have terminated prior to the delivery of the Dissenting Opinion, rendering such an opinion to have been passed without any mandate. Thus, the date on which the arbitral award is completed must get postponed till the dissenting opinion is annexed thereto. To bolster this argument, Mr. Jain relies upon the following excerpts from the ***Dakshin Haryana (supra)*** judgment:

“31. Section 32 provides that the arbitral proceedings shall be terminated after the final award is passed. With the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal terminates, and the Tribunal becomes functus officio.

32. In an Arbitral Tribunal comprising of a panel of three members, if one of the members gives a dissenting opinion, it must be delivered contemporaneously on the same date as the final award, and not on a subsequent date, as the Tribunal becomes functus officio upon the passing of the final award. The period for rendering the award and dissenting opinion must be within the period prescribed by Section 29-A of the Act.”

23. Mr. Jain’s perspective, while theoretically compelling, is misconceived, as it essentially relies on the assumption that the Dissenting Opinion is an integral part of the arbitral award to arrive at that very same conclusion. The Act, particularly through Sections 29 and 31, clarifies that the decision-making process is anchored in the majority’s determination, with the award attaining finality upon being signed by the majority of the tribunal’s members. The inclusion of a minority opinion does not alter the finality of the award as established by the majority’s consensus. The termination of a tribunal’s mandate upon the delivery of the award, as outlined in Section 32, underscores the conclusion of the tribunal’s decision-making role. The delivery of a dissenting opinion subsequent to this point does not signify an extension of the tribunal’s mandate, but rather, serves as



an adjunctive document providing insight into the tribunal's deliberative process. It does not bear the legal weight to either extend the tribunal's mandate or postpone the arbitral award's date of effectiveness. The purported anomaly of the situation posited by Mr. Jain, wherein the tribunal has become *functus officio* prior to the passing of the Dissenting Opinion, rests on the erroneous premise that the same is a necessary element for concluding the arbitral proceedings. Since the Dissenting Opinion can neither be challenged under Section 34 nor enforced under Section 36, it would have no legal effect *per se* which would require exercise of the Tribunal's jurisdiction. The Supreme Court's observation that a dissenting opinion must be delivered contemporaneously with the arbitral award cannot be construed to mean that the said dissenting opinion is essential for the award to be considered made or declared. In fact, if any constraint emerges from the aforesaid comments of the Supreme Court, it would be on the dissenting arbitrator to ensure that their minority opinion, if any, is completed and delivered prior to the termination of the tribunal's mandate on the date of the majority award being passed. Further, there is no sound legal basis to suggest that since the Majority Award records the fact that Mr. Kumar had dissented, it would have the effect of tagging the pending Dissenting Opinion with the Majority Award so as to extend the mandate of the Tribunal till such date when the Dissenting Opinion is delivered. Accordingly, the Court finds the reasoning advanced in this regard to be fallacious and circular, and thus untenable.

24. In light of the aforesaid, it is concluded that the Dissenting Opinion does not form part of the 'arbitral award' for the purposes of challenge under Section 34 of the Act. Rather, the arbitral award would be the Majority



Award, which was signed by all three arbitrators and stood completed as on 1st June, 2022. Further, as recorded in the Majority Award, the mandate of the Arbitral Tribunal stood terminated in terms of Section 32 of the Act on the same date.

When was the arbitral award delivered to the parties?

25. Having established that the Majority Award is the arbitral award for all intents and purposes, it stands resolved that the date on which the Dissenting Opinion was submitted and received would be irrelevant insofar as triggering the limitation period under Section 34(3) of the Act is concerned. Hence, Mr. Jain's contentions regarding construing the period of limitation from either 11th June, 2022 or 14th June, 2022, are of no avail. With the above position, the Court shall proceed to assess whether the delivery of the award was done in accordance with the procedure.

26. Section 34(3) of the Act delineates that the limitation period for applying to set aside an award would commence from the date on which the award is received by the party making such an application. Accordingly, Mr. Jain has argued that the making and delivery of an award are different stages of the arbitral process, and therefore, even if the Majority Award is held to be the arbitral award, the limitation period would not be triggered until such time that the certified copy of the said award was received by the Petitioner in accordance with law. Accordingly, the issues emerging for the Court's consideration are as follows: Firstly, whether the SCOPE Rules mandate communication of the award by the institution; secondly, whether the certified copy of the arbitral award is essential for the purposes of delivery; and thirdly, whether SCOPE exercised a lien over the arbitral award till such



time that the balance payments in terms of their communication dated 7th June, 2022 had been cleared by the parties.

Whether communication of the award had to be done by SCOPE

27. It is not disputed that the Majority Award was received by both parties on 1st June, 2022 itself. However, Mr. Jain has pressed that direct communication of the award by the Arbitral Tribunal to the parties would be of no legal consequence. He has underscored the fact that since the arbitral proceedings were conducted under the aegis of SCOPE, the delivery of the award must have been in accordance with the SCOPE Rules, being the procedural framework agreed upon by the parties. In this regard, Mr. Jain has emphasised on the following excerpts from *Dakshin Haryana (supra)* to support his argument:

“26. Section 31(1) is couched in mandatory terms, and provides that an arbitral award shall be made in writing and signed by all the members of the Arbitral Tribunal. If the Arbitral Tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures. An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. The making and delivery of the award are different stages of an arbitration proceeding. An award is made when it is authenticated by the person who makes it. The statute makes it obligatory for each of the members of the Tribunal to sign the award, to make it a valid award. The usage of the term “shall” makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.

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.—

* * *

(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.”

...xxx...

...xxx...

...xxx...

29. The judgment in Tecco Trichy Engineers was followed in State of Maharashtra v. ARK Builders (P) Ltd. , wherein this Court held that Section 31(1) obliges the members of the Arbitral Tribunal to make the award in writing and sign it. The legal requirement under sub-section (5) of Section 31 is the delivery of a copy of the award signed by the members of the Arbitral Tribunal/arbitrator, and not any copy of the award. On a harmonious construction of Section 31(5) read with Section 34(3), the period of limitation prescribed for filing objections would commence only from the date when the signed copy of the award is delivered to the party making the application for setting aside the award. If the law prescribes that a copy of the award is to be communicated, delivered, despatched, forwarded, rendered, or sent to the parties concerned in a particular way, and since the law sets a period of limitation for challenging the award in question by the aggrieved party, then the period of limitation can only commence from the date on which the award was received by the party concerned in the manner prescribed by law. The judgment in Tecco Trichy has been recently followed in Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel.”

28. Further, relying on Rule 6(iv) of the SCOPE Rules, Mr. Jain has argued that the period of limitation would only commence upon communication of the award to the parties by the Secretariat of SCOPE. To this effect, he has also placed reliance on the procedural rules of other arbitral institutions to drive home the point that it is the institutional rules which would govern the proceedings and not the provisions of the Act. These institutional rules have been reproduced hereunder for the sake of



steady reference:

<i>“Institutional Rules</i>	<i>Relevant provision</i>
<i>Indian Council of Arbitration (ICA) ICA Rules of Domestic Commercial Arbitration, 2022</i>	<i>Rule 67- The arbitrators constituting the arbitral tribunal or the Presiding Arbitrator where Rule 61 is applicable, shall sign the award and the Registrar shall give notice in writing to the Parties of the making and signing thereof and of the amount of fees shall be payable by the Council on receipt of the award and requisite deposit made by the parties. Rule 68 –(a) When an award has been made, the Registrar shall furnish a true copy of the award to the parties by registered post provided the arbitration costs have been fully paid to the Council by the parties or by one of them.</i>
<i>International Centre for Settlement of Investment Disputes (ICSID) ICSID Convention of Arbitration (2022 Rules)</i>	<i>Rule 60 Rendering of the Award (1) Once the Award has been signed by the members of the Tribunal who voted for it, the Secretary-General shall promptly: (a) dispatch a certified copy of the Award to each party, together with any individual opinion and statement of dissent, indicating the date of dispatch on the Award; and (b) deposit the Award in the archives of the Centre, together with any individual opinion and statement of dissent. (2) The Award shall be deemed to have been rendered on the date of dispatch of certified copies of the Award, (3) The Secretary- General shall provide additional certified copies of the Award to a party upon request</i>
<i>International Chamber of Commerce (ICC) ICC Rules of Arbitration, 2021</i>	<i>Article 35 Notification, Deposit and Enforceability of the Award 1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal,</i>



	<i>provided always that the costs of the arbitration have been fully paid to ICC by the parties or by one of them.</i>
<i>International Centre for Dispute Resolution (ICDR or AAA ICDR) ICDR International Dispute Resolution Procedure, Amended and Effective 1.3.2021</i>	<i>Article 33: Time, Form, and Effect of the Award</i> <i>...xx.. ..xx.. ..xx..</i> <i>3. The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator.</i>
<i>Hong Kong International Arbitration Centre (HKIAC) Rules, 2018</i>	<i>Article 35 – Form and Effect of the Award</i> <i>...xx.. ..xx.. ..xx..</i> <i>35.6 The arbitral tribunal shall communicate to HKIAC originals of the award signed by the arbitral tribunal. HKIAC shall affix its seal to the award and, subject to any lien, communicate it to the parties.</i>
<i>London Court of International Arbitration</i>	<i>Article 26 Award(s)</i> <i>...xx.. ..xx.. ..xx..</i> <i>26.7 The sole or presiding arbitrator shall be responsible for delivering the award to the LCIA Court, which shall transmit to the parties the award authenticated by the Registrar as an LCIA award, provided that all Arbitration Costs have been paid in full to the LCIA in accordance with Articles 24 and 28. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.</i>
<i>Singapore International Arbitration</i>	<i>32. Award</i>



Centre (SIAC) SIAC Arbitration Rules 2016, 6 th Edition	...xx.. ...xx.. ...xx.. 32.8 The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.”
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29. The Court has considered the aforementioned submissions, however, does not find merit in the same. It is crucial to discern whether the Act or the institutional rules hold primacy in instances where there might be a perceived conflict or discrepancy, particularly regarding the procedural aspects like the communication of the award. The provisions of the Act, especially those concerning the form and content of the arbitral award and its communication (i.e. Sections 29 and 31), set forth requirements that must be met for the award to be legally recognised and enforceable. At the same time, the Act allows for the parties' agreement on procedural aspects, including the adoption of institutional rules, to govern specific elements of the arbitration process. In that light, the main object of SCOPE as a forum is to assist in the resolution of disputes between public sector enterprises and their associates. The SCOPE Rules would only apply to such parties that have agreed in writing to resolve their disputes by arbitration under the aegis of SCOPE. Mr. Jain may be correct in submitting that since the parties have opted for institutional arbitration, they would be bound by the procedural rules of the institution. However, as Mr. Chidambaram vitally points out, there is no specific provision in the SCOPE Rules which mandates communication of an award by SCOPE. This is in contrast to the rules of other institutions cited by Mr. Jain in support of his argument, which have categorically incorporated provisions mandating transmission of a draft



award to the institution who would thereafter communicate the arbitral award to the parties. Comparing this with Rule 6(iv) of the SCOPE Rules, which is pressed by the Petitioner, there is no similar mandate set out. Parties would only be bound by the institutional rules to the extent provided therein, and it would be antithetical to the principle of party autonomy, which is foundational to arbitration, to expansively interpret the ambit of Rule 6(iv) of SCOPE Rules to equate it with the aforementioned provisions of other institutions. Thus, in the absence of any specific rule governing communication of the award akin to the rules of other institution, the direct communication of the award by the Arbitral Tribunal to the parties cannot be said to be invalid. Moreover, as highlighted by Mr. Chidambaram, SCOPE itself issued a communication dated 28th September, 2020 (reproduced above) whereby the Tribunal was expressly permitted to publish the arbitral award.

Whether limitation must run from the date of receipt of ‘certified copy’ of the arbitral award

30. The next contention raised on behalf of the Petitioner is that the period of limitation under Section 34(3) of the Act would start from the date on which the certified copy of the award was supplied to the Petitioner. However, on this point as well, the Court remains unconvinced by Mr. Jain’s submissions. The term ‘certified copy’ has not been explained or defined in the scheme of the Act or in the SCOPE Rules. Rather, the only stipulation under the Act is that a *signed* copy of the award must be delivered to the parties, which was also the core focus of the Supreme Court’s consideration in *Dakshin Haryana (supra)*, as evident from the following analysis set out



in the judgment:

“45. Applying the law to the facts of the present case, we find from a perusal of the arbitral proceedings that even though the award was pronounced on 27-4-2018, the signed copy of the award was provided to the parties only on 19-5-2018. The procedural orders of the Tribunal reveal that on 27-4-2018, only a copy of the award was provided to the parties to point out any computation error, any clerical or typographical error, or any other error of similar nature which may have occurred in the award on the next date. It was also recorded that the third arbitrator had dissented, and would be delivering his separate opinion. The proceedings were then posted for 12-5-2018. On 12-5-2018, the third arbitrator pronounced his dissenting opinion. On that date, the Tribunal posted the matter to 19-5-2018, to enable the parties to point out any typographical or clerical mistakes in the dissenting opinion, and for handing over the original record of the proceedings to the parties. On 19-5-2018, the signed copy of the award and the dissenting opinion, along with the original record, were handed over to the parties, as also to each of the arbitrators. The Tribunal ordered the termination of the proceedings.

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.”

31. The above-extracted paragraph demonstrates the distinct nature of the factual matrices before the Supreme Court and the one that this Court is confronted in the present case. While the award communicated to the parties before the Supreme Court had not been signed, thereby negating its finality, that is not the case here. The Majority Award, being the final award, had been duly signed by all three arbitrators, and it was this signed copy of the award which was intimated to the parties by the Arbitral Tribunal on 1st June, 2022. In advancing their argument, the Petitioner appears to have conflated the terms ‘signed copy’ and ‘certified copy’, leading to a misconceived construction that the period of limitation would only run from the date on which the certified copy was received.



Whether SCOPE exercised a lien over the arbitral award

32. This brings us to the final issue before the Court, which pertains to the effect of the communication issued by SCOPE on 7th June, 2022, extracted in the preceding paragraphs. Mr. Jain has argued that until such time that the balance charges were not cleared by the parties, SCOPE effectively exercised a lien over the arbitral award in terms of Section 39(1) of the Act. Accordingly, he has submitted that since the Petitioner received the certified copy of the award from SCOPE, upon clearing such dues, on 19th July, 2022, the limitation period would run from the said date. However, in the opinion of the Court, this argument too does not stand to reason. Firstly, Section 39(1) of the Act only permits the arbitral tribunal to have a lien on the award in case of unpaid costs, and there is no provision in the scheme of the Act extending such a right to an institution as well. While other institutions have specifically incorporated the right to exercise a lien over the award in their respective procedural rules (as extracted above), there is no similar corresponding provision in the SCOPE Rules. Thus, there is no basis for SCOPE's authority to exercise such a lien over the award. The lien, if any, may have been exercised by the Arbitral Tribunal, who have decided not to do so in the present case.

33. Furthermore, as expounded above, there is also no provision mandating the issuance of a certified copy of the award for the purposes of completing delivery of the award. Thus, at the time of SCOPE issuing their communication on 7th June, 2022, the parties had already been put to notice regarding making of the arbitral award on 1st June, 2022, and the period of limitation had already commenced. Moreover, it must be noted that the Petitioner considerably delayed in clearing their dues, which in turn resulted



in their delayed receipt of the certified copy of the award on 19th July, 2022. Thus, to allow limitation to be calculated from the said date would amount to permitting the Petitioner to take unfair advantage of their own delay and unilaterally extend the permissible period for filing their application under Section 34(1) of the Act.

CONCLUSIONS

34. In view of the foregoing reasons and analysis, the following conclusions are arrived at:

34.1. The Majority Award dated 1st June, 2022, which was signed by all three arbitrators, constituted the arbitral award for the purposes of Section 34 of the Act.

34.2. The Dissenting Opinion dated 11th June, 2022, would not form part of the arbitral award. While the reasoning set out therein may be relied on subsequently, the date on which the same was received by the Petitioner would have no bearing on the calculation of limitation under Section 34(3) of the Act.

34.3. The communication of the arbitral award on 1st June, 2022 by the Arbitral Tribunal was valid, as there is no specific provision contained in the SCOPE Rules precluding a direct communication of this kind. In fact, SCOPE's own communication dated 28th September, 2020 highlights that the Arbitral Tribunal had the liberty to publish the award.

34.4. There is no requirement for a certified copy of the arbitral award to be received by the parties. The communication of a signed copy of the Majority Award, which satisfied the pre-requisites delineated in Section 31 of the Act, was sufficient for the purposes of commencing the period of limitation under



Section 34(3) of the Act.

34.5. SCOPE's communication dated 7th June, 2022 would have no effect on extending the date from which the limitation period under Section 34(3) of the Act would run.

35. In light of the above conclusions, let us assess the delay which has occurred in the present case. Since the arbitral award was received by the parties on 1st June, 2022, the period of limitation under Section 34(3) of the Act would be calculated from the following date, i.e., from 2nd June, 2022. Thus, the permissible period of three months expired on 2nd September, 2022 and the extended period of thirty days, as allowed by the proviso to Section 34(3) of the Act, expired on 2nd October, 2022. The instant petition was, however, filed on 10th October, 2022. It is a settled position of the law that any delay beyond the period of three months plus thirty days cannot be condoned, irrespective of whether sufficient cause is made out for such a delay⁹. In view of the above, the delay in filing the present petition, which exceeds the overall condonable period under Section 34(3) of the Act, cannot be condoned.

36. With the aforesaid, the application is dismissed.

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37. In view of the foregoing discussion, the petition is barred by limitation.

⁹*Union of India v. Popular Construction*, (2001) 8 SCC 470; *Simplex Infrastructure Ltd. v. Union of India*, (2019) 2 SCC 455.



38. Dismissed.

SANJEEV NARULA, J

APRIL 5, 2024/nk