

OCD -7

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL JURISDICTION
ORIGINAL SIDE

AP-COM/340/2025
SREI EQUIPMENT FINANCE LIMITED
VS
BOPPANA CIVIL CONSTRUCTION AND ANR

BEFORE:

The Hon'ble JUSTICE SHAMPA SARKAR

Date: 18th June, 2025.

Appearance:
Mr. Swatarup Banerjee, Adv.
Mr. SarifulHaque, Adv.
Mr. RajibMullick, Adv.
.... for the petitioner

The Court:In compliance of order dated May 7, 2025, an attempt was made to serve upon the respondents.The Court finds that the respondents could not be located as the respondents left without instruction. The track record indicates that an attempt was made by the postal authorities to track down the addresses. The communications, notices and copies were sent to the last known address of the respondents. The service returns show that the addressees moved without instructions. Such endorsements are available.

Section 3 of the Arbitration and Conciliation Act, 1996 states as follows :

“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 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 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."

This court holds that Section 3(1)(b) will be applicable in this case. The decision of the Bombay High Court in ***Logic Eastern India Pvt. Ltd. vs KEC International Limited (cables SBU)*** reported in ***2018 SCC Online Bombay 916*** is relied upon. The relevant portions are quoted below:-

"**20.** In the facts as they stand, we are of the opinion that sub-clause (b) of Section 3(1) would become applicable to the written communication of the learned arbitrator dated 10 December 2012, forwarding the award 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. The record indicates that there was an attempt to deliver the said communication. In this situation, sub-clause (b) of Section 3(1) of the Act provides that a written communication is deemed to have been delivered. It is not in dispute that the postal envelopes were returned undelivered with remark "No such firm at this address" and "प्राप्तकर्ता मकान छोड़कर नामालूम कीधर चले गये अतः वापस" as noted above. The requirement of sub-clause (b) of Section 3(1) is that a written communication is deemed to have been received, if it was 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 it. It cannot be disputed that the award was sent by the learned arbitrator by post and there was an attempt to deliver the award in the manner the provision contemplates. We were also shown the originals of the envelopes so returned by the postal authorities bearing the remarks of the postman.

* * *

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.”

The decision of Calcutta High Court is also referred, ***Magma Fincorp Limited vs Ashok Kumar & Ors.*** reported in **2017 SCC Online Cal 13129**, the relevant portions of the decision are quoted below:-

“4. He submits that the arbitrator fulfilled the requirements of section 3(a) of the Act. The words “delivered” and “received” cannot be interpreted in a pedantic fashion i.e. of requiring or insisting upon actual delivery of the award to the parties. The practical view of the existing realities and practices has to be taken in this regard. Once it is held that

the arbitral tribunal is entitled to serve/deliver the award on the parties through the medium of post/courier, the law with respect thereto including the presumptions arising under Section 114 of the Evidence Act would get attracted.

5. He further submits that in a case where the sender has dispatched the notice by post with correct address written on it, the principle incorporated in Section 27 of the General Clauses Act, 1897 could profitably be imported in such a case. By virtue of the provisions of Section 27 of the General Clauses Act and read with Section 3 of the Arbitration & Conciliation Act, 1996, the respondents are deemed to have notice of the arbitral award. The arbitral award is deemed to have been duly served in accordance with law. In support of his arguments, Mr. Sen has placed reliance upon the judgments delivered in the case of C.C. Alavi Haji v. Palapetty Muhammed, reported in (2007) 6 SCC 555, in the case of SRS Entertainment Limited v. Home Stores (India) Ltd., reported in 2010 (2) R.A.J. 477 (Del), in the case of Amrik Singh v. MAGMA Fincorp Ltd., reported in (2011) 2 CAL LT 314 (HC) and in the case of Ajeet Seeds Ltd. v. K. Gopala Krishnaiah, reported in AIR 2014 SC 3057.

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12. The error in the order impugned is that it fails to give due effect to the fiction contained in section 3 of the Act. There is not even a word in the impugned order in support of the finding that the service of the arbitral award on any of the award-debtors could not be demonstrated and on the said count also the impugned order is liable to be set aside since the learned Single Judge ought to have set forth the reasons, howsoever brief, in the order. The “inscrutable face of a sphinx” is ordinarily incongruous with a judicial or quasi-judicial performance [See the judgment delivered in the case of State of Rajasthan v. Rajendra Prasad Jain, reported in 2008 (2) Supreme 133].”

In this case, the application for extension of mandate is deemed to have been served. Moreover, the Court has taken cognizance of the fact that the matter was proceeding ex parte before the learned Arbitrator. The learned Arbitrator had recorded such fact in the minutes. Thus, the matter is taken up for consideration.

It is submitted that the mandate of the learned arbitrator expired on 27th March, 2025. The arbitral proceedings have concluded and the award is to be passed. Under such circumstances and for the ends of justice, this Court deems it fit to extend the mandate by a further period of six months from the date of communication of this order, to enable the learned arbitrator to make and publish his award within the extended period.

The application is accordingly disposed of.

(SHAMPA SARKAR, J.)