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

+ **FAO(OS) (COMM) 103/2024**

DWARIKA PROJECTS LIMITEDAppellant

Through: Mr. Ravikesk K. Singh, Adv.

versus

DIRECTOR OF CIVIL AVIATION & ANR.Respondents

Through: Mr. G. S. Chaturvedi and Mr.
Virat Vaibhav Singh, Advs. for
R-2.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

06.02.2025

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1. The instant appeal has been preferred seeking to question the view expressed by the learned Single Judge and who had proceeded to reject the application for condonation of delay caused in the preferment of the petition under Section 34 of the **Arbitration and Conciliation Act, 1996**¹.

2. The Award undisputedly was originally pronounced on 28 April 2022. In order to enable the **Arbitral Tribunal**² to attend to certain typographical errors, the appellant before us had approached the AT by way of an application dated 23 May 2022 referable to Section 33 of the Act. That application came to be granted by the AT on 27 July 2022 and thereafter a corrigendum was drawn was dispatched via email to the appellant on 28 July 2022.

¹ Act

² AT



3. The appellant appears to have questioned the receipt of that order by email before the learned Single Judge. However, we find that before the learned Single Judge, the respondents had filed an affidavit in terms of which the dispatch of the corrected Award dated 27 July 2022 was duly proved along with the requisite certification contemplated in terms of Section 65-B of the Indian Evidence Act, 1972. Undisputedly, if the period of three months and thirty days which is contemplated under Section 34(3) were to be computed from 28 July 2022, the Section 34 petition would clearly be beyond the maximum time permissible.

4. We find that the issuance of that email is duly certified in terms of what the Secretary to the AT has asserted in the certificate dated 20 July 2023. The same is extracted hereinbelow:

“CERTIFICATE UNDER SECTION 65-B OF INDIAN EVIDENCE ACT

20.07.2023

This is to certify that I had sent email dated 28.07.2022 at Email IDs bkverma@dwarika.com & bkverma@espaninfra.com belonging to Director, Dwarika Projects, inter alia through my email ID reenamehta@rites.com (AM/Secy. to the then Ex. ED/RP Sanjay Agrawal), along with which, order dated 28.07.2022 passed under Section 33 of Arbitration and Conciliation Act passed by Hon'ble Arbitrator Sh. Sanjay Agrawal, ED was attached. The printout of said email communication has been taken using Desktop Brand Dell, Model No.OptiPlex 5070 and Printer Brand HP, Model No. Color Laser Jet Pro MFP M377 dw. The said email dated 28.07.2022 did not bounce back and was duly delivered to its recipients.

I identify the electronic record containing the email sent by me, which is true and correct to the best of my knowledge and belief. The above-mentioned desktop and Printer was used and operated by me at relevant point of time.

[Reena Mehta]
AM/Secy.
Emp. No333
RITES Ltd.”



5. Learned counsel for the appellant, however, would contend that what Section 31(3) contemplates is the parties being served and delivered a signed copy of the Award in original. The provisions of sub-section (3) are thus sought to be interpreted as alluding only to the delivery of a physical copy of the Award. It is in the aforesaid context that learned counsel had sought to rely upon the following observations as rendered by the Supreme Court in **Dakshin Haryana Bijli Vitran Nigam Ltd. v. Navigant Technologies (P) Ltd.**³:

“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.*—(1)-
(2) * * *

(3) *An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the Arbitral Tribunal:*

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.”

(emphasis supplied)

28. In *Union of India v. Tecco Trichy Engineers & Contractors* [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239], a three-Judge Bench of this Court held that the period of limitation for filing an application under Section 34 would commence only after a valid delivery of the award takes place under Section 31(5) of the Act. In para 8, it was held as under : (SCC p. 243, para 8)

³ (2021) 7 SCC 657



“8.The delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be “received” by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award under Section 33(4) and an application for setting aside an award under Section 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.”

(emphasis supplied)

29. The judgment in *Tecco Trichy Engineers [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239]* was followed in *State of Maharashtra v. ARK Builders (P) Ltd. [State of Maharashtra v. ARK Builders (P) Ltd., (2011) 4 SCC 616 : (2011) 2 SCC (Civ) 413]*, 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 [Union of India v. Tecco Trichy Engineers & Contractors, (2005) 4 SCC 239]* has been recently followed in *Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel [Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel, (2018) 15 SCC 178 : (2019) 1 SCC (Civ) 141]*.

30. In *State of H.P. v. Himachal Techno Engineers [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4*



SCC (Civ) 605] , this Court held that if one of the parties to the arbitration is Government, or a statutory body, which has notified holidays, and if the award was delivered to a beldar or a watchman on a holiday or non-working day, it cannot be considered to be “receipt of the award” by the party concerned for the purposes of Section 31(5) of the Act. When the award is delivered, or deposited, or left in the office of a party on a non-working day, the date of physical delivery is not the date of “receipt” of the award by that party. For the purposes of Section 31(5), the date of receipt will have to be the next working day.

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34. There is only one date recognised by law i.e. the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award.

35. The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Arbitration and Conciliation Act, 1996. It is from this date that:

35.1. The period of 30 days for filing an application under Section 33 for correction and interpretation of the award, or additional award may be filed.

35.2. The arbitral proceedings would terminate as provided by Section 32(1) of the Act.

35.3. The period of limitation for filing objections to the award under Section 34 commences.

36. Section 34 provides recourse for judicial scrutiny of the award by a court, upon making an application under sub-sections (2) and (3) for setting aside the award. The period of limitation for filing the objections to the award under Section 34 commences from the date on which the party making the application has “received” a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act. Section 34(3) provides a specific time-limit of three months from the date of “receipt” of the award, and a further period of thirty days, if the court is satisfied that the party was prevented by sufficient cause from making the application within the said period, but not thereafter.

37. In *Union of India v. Popular Construction Co.* [*Union of India v. Popular Construction Co.*, (2001) 8 SCC 470] , this Court held that Section 5 of the Limitation Act, 1963 would not apply to applications filed under Section 34 of the Arbitration Act. It was held that : (SCC pp. 474-75, para 12)

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in



the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

In *Simplex Infrastructure Ltd. v. Union of India* [*Simplex Infrastructure Ltd. v. Union of India*, (2019) 2 SCC 455 : (2019) 1 SCC (Civ) 738] , this Court held that the phrase “but not thereafter” provided under Section 34(3) of the Act makes it evident that the statutory period of limitation for filing an application for setting aside is three months, which is extendable by thirty days, if sufficient cause is made out. No further period of time can be granted for the filing of an application under Section 34.

38. If the objections are not filed within the period prescribed by Section 34, the award holder is entitled to move for enforcement of the arbitral award as a deemed decree of the court under Section 36 of the Act. This Court in *P. Radha Bai v. P. Ashok Kumar* [*P. Radha Bai v. P. Ashok Kumar*, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , held that : (SCC pp. 457-59, paras 32.5 & 36.2)

“32.5. Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase “*where the time for making an application to set aside the arbitral award under Section 34 has expired*” [“36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court.”(emphasis supplied)] . There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award.

36.2. *Second*, extending Section 17 of the Limitation Act to Section 34 would do violence to the scheme of the Arbitration Act. As discussed above, Section 36 enables a party to apply for enforcement of award when the period for challenging an award under Section 34 has expired. However, if Section 17 were to be extended to Section 34, the determination of ‘time for making an application to set aside the arbitral award’ in Section 36 will become



uncertain and create confusion in the enforcement of award.
This runs counter to the scheme and object of the
Arbitration Act.”

(emphasis supplied)”

6. Suffice it to note that in *Dakshin Haryana Bijli Vitran Nigam Ltd.*, the Supreme Court was not considering a case where a copy of the Award was said to have been delivered electronically. The observations which appear in that decision are thus liable to be read in the aforesaid light.

7. As we view Section 31(3), we find no justification to hold or declare that the only mode or manner in which the Act contemplates the delivery of award is in the physical format. In **Ministry of Youth Affairs & Sports v. Ernst & Young (P) Ltd.**⁴, our Court held that the limitation period for filing a petition under Section 34 of the Act commenced when a scanned signed copy of the award was received via email and that the same would constitute a valid delivery under Section 31(5). The Court held that a subsequent physical collection of the signed copy would not extend the limitation period. The Court emphasized that technological advancements allow for authenticated digital copies to be considered valid for all legal purposes. We deem it appropriate to refer to the following passages from that decision:

“44. The contention on behalf of the petitioner that signed copy of the Addendum to Award dated 17th May, 2018 was provided to the petitioner only on 01st June, 2018, is found to be without any merit. Email dated 17th May, 2018 sent on behalf of the Arbitral Tribunal to the counsel for the petitioner clearly shows that the Addendum to the Award dated 17th May, 2018 was attached with the said email dated 17th May, 2018. Additionally, later signed copy of the Addendum to the Award was also collected physically on behalf of petitioner on 01st June, 2018 from the office of Arbitral Tribunal. Email dated 14th August, 2018 sent by the Arbitral Tribunal to petitioner is reproduced as under:

⁴ 2023 SCC OnLine Del 5182



*“Arbitration between Ministry of Youth Affairs & Sports
and E&Y/EKS*

MANJU KARGETI

Tue 8/14/2018 4 : 15 PM

To : Neeraj Choudhary neeraj.lawyer@gmail.com:

Dear Sir,

1. A Scanned copy of the award dated 11/12/2017 was transmitted to you on 11/12/2017 itself by email, while signed copy of the award was sent to the Department of Sports, Ministry of Youth Affairs & Sports, Govt. of India on 13/12/2017 by Registered AD Post. A copy of the postal receipt is attached herewith. Please note that a signed copy of the award was also collected by Mr. Jyoti Kumar Mangalam from this office on 21.01.2018.

2. I may also point out that a scanned copy of addendum to the award dated 17.05.2018 was sent to you on the same day by email. In this regard please refer to my email dated 17.05.2018, addressed to you and others. A signed copy of addendum to the award was also collected by Mr. Jyoti Kumar Mangalam on 01.06.2018 from this office.

Regards

Manju

P.A. to Mr. Justice Anil Dev Singh”

45. It may be noted that along with the email dated 17th May, 2018 sent on behalf of the Arbitral Tribunal to the counsel for petitioner and other parties, scanned copy of the Addendum to the Award dated 17th May, 2018 was also mailed, which was a duly signed copy. Once a duly scanned signed copy of the Addendum to Award dated 17th May, 2018, had been received by petitioner, the period of limitation for the purposes of filing petition under Section 34 of the Arbitration Act for challenging the Award commenced. Subsequent act on behalf of petitioner of physically collecting signed copy of the said Addendum on 01st June, 2018 will not in any manner extend the limitation period to 01st June, 2018.

46. Even receipt of photocopy of a signed Award from an Arbitral Tribunal has been held to be receipt of Arbitral Award in terms of Section 31(5) of the Arbitration Act. It has categorically been held that there is no requirement in Section 34 of the Arbitration Act for filing ink signed copy of the Award. Thus, in the case of *Continental Telepower Industries Ltd. v. Union of India*, it has been held as follows:

“14. I also find that the legislature has while re-enacting the arbitration law made a conscious change in the provision as existing in 1940 Act. Section 14(1) of 1940 Act



merely required the arbitrators to make and sign the award and to give notice in writing to parties of the making and signing thereof. There was no requirement therein as in Section 31(5) of the Act, that upon making of the award, deliver a signed copy thereof to each party to arbitration as in Section 31(5). Under Section 14(2) of 1940 Act, a party to arbitration was required to request to the arbitrator to cause the award or a signed copy of it together with the arbitration record to be filed in the court, and whereafter the court was required to give notice to parties of filing of award. The award was required to be made rule of the court before being executable. However, under the 1996 Act, the award is executable as such, after limitation for filing objections with respect thereto has expired. The grounds of challenge have been considerably restricted. The law, with a view to limit the time whereafter the award becomes executable as a decree of court, has done away with the application of Section 5 of Limitation Act qua the petition for filing of award in the court. Rather by use of the expression “but not thereafter” in proviso to Section 34(3), intent is clear, not to permit the execution of an award to remain in a state of suspended animation. In my view, if it is to be held that a photocopy of a signed award delivered by the arbitrator under cover of letter signed by him in evidence of authentication thereof is not sufficient compliance of Section 31(5), it will lead to indefinite delays in execution and in filing of petition under Section 34(3) and till when the award is inexecutable. Such an interpretation will be an impediment in expediency in arbitration matters, the purpose behind bringing about change in law.

15. *I have recently in Aktiebolaget Volvo v. R. Venkata Chalam, (2009) 160 DLT 100 on an interpretation of various provisions of CPC held that Order 7 Rule 14 and Order 8 Rule 1A requiring filing of documents do not mean the original document and it is open to the parties to, in compliance thereof, file copies/photocopies of the documents. The requirement to “produce” as distinct from “file” the original document for inspection is only at the stage of admission/denial or tendering documents into evidence. In that context the definition of a document in Section 3 of Indian Evidence Act was also noted as including words printed, lithographed or photographed.*

16. *The Apex Court has been extending the meaning of primary as well as secondary evidence. It has been held in Prithi Chand v. State of Himachal Pradesh, (1989) 1 SCC 432 : AIR 1989 SC 702 that the carbon copy of the medical certificate bearing also the carbon copy of the signatures*



appended by the doctor on the original is primary evidence within the meaning of Section 62 of the Evidence Act and the judgments of the courts below holding otherwise were set aside. Similarly, in Y.N. Rao v. Y.V. Lakshmi, 1991 RLR 367 (SC) a photocopy of document has been held to be a secondary evidence within the meaning of Section 63 of the Indian Evidence Act. The judgment of the High Court refusing to see a foreign judgment and decree for the reason of copy provided being a photocopy was set aside.

17. In the absence of there being any words in the Act to indicate the requirement of furnishing award in the form of primary evidence to the parties, the law if laid down so to require an 'ink signed' award would, in my opinion, lead to delays and also give a handle to the unscrupulous litigants to indefinitely delay the execution of the award by contending that the signed copies of the award had not been delivered.

18. Law has to evolve with changing technologies. In today's time it would be unfair to require the arbitrator to sign each and every copy of the award, especially when photocopy has become common place and is the accepted mode.

xxx xxx xxx

21. I am also not inclined to believe the contention that the letter dated 31st December, 2001 of the arbitrator, copy whereof is on the arbitral record and vide which the arbitrator complied with the request of the petitioner in its letter dated 24th December, 2001, had not been received by the petitioner. The said letter appears to have been issued in the normal course and cannot be disputed. The petitioner, also in its letter dated 24th December, 2001, only indicated an intention to execute the award and did not indicate any intention to file objections to the award. The petitioner appears to have decided to file objections after dismissal of the objections of the respondents-Union of India/BSNL to the award. As noticed above, there is no requirement in Section 34 of filing ink signed copy of the award therewith or of award being duly stamped before such petition can be preferred. In view of the pre-emptive language of proviso to Section 34(3), the petition under Section 34(1) ought to have been filed within three months of receipt of photocopy of the award. If the limitation for filing the petition under Section 34 of the Act is to be counted from say after a week of 26th November, 2001, then the petition is definitely barred by time and no application for condonation of delay is entertainable.

xxx xxx xxx”



47. When scanned signed copy of order dated 07th March, 2018 was received by petitioner by email dated 22nd May, 2018 and scanned signed copy of Addendum to Award dated 17th May, 2018 was received by the petitioner on 17th May, 2018 itself, the same was valid delivery in terms of Section 31(5) of the Arbitration Act. The law has to keep its pace in tandem with the developing technology. When service by email is an accepted mode of service, then sending scanned signed copy of the award/order of the Arbitral Tribunal to the parties would be a valid delivery as envisaged under Section 31(5) of the Arbitration Act.

48. A Division Bench of this Court in the case of *Delhi Urban Shelter Improvement Board v. Lakhvinder Singh* has held that the expression ‘signed copy’ in Section 31(5) of the Arbitration Act indicates the legislative intent that a copy authenticated by the Arbitrator is served on each party. It was held that authenticity of correspondence in the technologically advanced times of today does not necessarily pertain to only signatures in writing, and it would be adverse to read the expression ‘signed copy’ of the award/order in a restrictive manner so as to connote a copy bearing the original signatures of the Arbitrator in his hand writing. Thus, it was held as follows:

“15. The reference to the case of ARK Builders Private Limited (supra) where there was a dispute as to the delivery of a copy of the award by the arbitrator, by the Appellant would be inapplicable since, in the present case, the delivery of the copy of the award is not in contention. The only question is whether the copy of the impugned award, delivered to DUSIB by the arbitrator was a signed copy. Similarly, the decision in Tecco Trichy Engineers & Contractors (supra) contemplates the initiation of the limitation described under Section 34 in the light of the delivery of the arbitral award to the party once the party “receives” the award; the same not being in dispute in the present case.

16. As observed by the Single Judge, the expression ‘signed copy’ in Section 31(5) clearly indicates the legislative intent that a copy authenticated by the arbitrator is served on each party. The purpose of enacting the said provision is clearly to ensure that the parties receiving the award are in a position to act on the same. Emphasizing on this legislative intent, the Single Judge elaborated on how the authenticity of correspondence in the technologically advanced times of today does not necessarily pertain to only signatures in writing, and it would be adverse to read the expression “signed copy of the award” in a restrictive manner as to connote a copy bearing the original signatures of the arbitrator in his handwriting. The Single Judge cited Section 3(56) of the General Clauses Act,



1897 that defines 'sign' as under:

“(56) - “sign”, with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include “mark”, with its grammatical variations and cognate expressions;”

17. and also the various definitions of “sign” and “signature” as provided in Black's Law Dictionary, Eighth Edition, to demonstrate the utility of such a sign or a signature, which is primarily for authentication purposes.

18. National Agricultural Co-operative Marketing Federation of India Ltd. v. R. Piyarelal Import and Export Ltd. AIR 2016 Cal 160, a Division Bench of the Calcutta High Court upheld the decision of the Single Judge rejecting the petition under Section 34 of the Act for setting aside an award on the ground of limitation, was also cited by the Single Judge, where the arbitral award was duly signed by all the three arbitrators and a certified copy of the award was forwarded to each of the parties by the Registrar of the Indian Council of Arbitration but the photocopy of the signed award was not signed in original by the arbitrators. Here, the Court held that:

“24 it was not the intention of legislature that all the copies of the award, - dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.

25. Had It been the legislative intent that all copies of the award required to be furnished to the respective parties to a multiparty arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain : the original signatures of the arbitrators. Parliament would perhaps, not have used the expression 'signed copy of the award' but used the expression 'a copy of the award, duly signed by the arbitrators', in Section 31(5) of the 1996 Act.”

xxx xxx xxx”

49. Considering the aforesaid, it is clear that valid delivery of the Addendum to Award dated 17th May, 2018 and order dated 07th March, 2018 took place respectively on 17th May, 2018 and 22nd May, 2018 in terms of Section 31(5) of the Arbitration Act. Thus, the period of limitation for filing of petition under Section 34 of the Arbitration Act in the present case commenced on 22nd May, 2018. Thus, the limitation period for filing the present petition was till 22nd August, 2018.”



8. It becomes pertinent to observe that before us it is not disputed that the e-mail attached a scanned copy of the signed Award. We, consequently, and bearing in mind the observations of the Court in *Ministry of Youth Affairs & Sports*, find no ground to interfere with the view taken by the learned Single Judge.

9. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.
FEBRUARY 06, 2025/DR