

Before Jaishree Thakur, J.

UNION OF INDIA—Appellant

versus

M/S BABA RANGI RAM PVT. LTD. AND ANOTHER—

Respondents

FAO No.9519 of 2014

December 5, 2019

A. *Arbitration and Conciliation Act, 1996—S.33 and S.34 (3)—Arbitral award— Correction of computation, clerical or typographical errors by arbitrator within 30 days on application filed by either party—Extension of limitation—Principle of merger—Held, power to correct the errors is akin to power under S.152 Code of Civil Procedure, 1908— It is not a power of review nor of the same kind— On correction, the original award merges with the corrected award— Period of limitation would then commence from the date of disposal of the request for correction of award—The limitation would extend only if a request/application was made for correction under S.33 by either of the parties, and not in any other situation.*

Held that, powers under Section 33 of the Act 1996 are neither to be equated with the power of review nor can be said to be akin to review. When there is correction to the award, arithmetical or clerical, or the application filed by either party for clarification stands disposed of, the original award passed merges in the corrected award, by applying the principle of merger. However, the period of limitation would commence from the date when the request for correction under Section 33 stands disposed off.

(Para 8)

Further held that a scrutiny of the Section itself would show that the legislature in its wisdom has allowed for extension of limitation from the date of disposal of the application made by a party under Section 33, and not in any other situation.

(Para 10)

B. *Arbitration and Conciliation Act, 1996—S.33(1)(a), S.33(3) and S.34 (3)— Arbitrator’s power to correct the award suo motu— Extension of limitation—Held, the suo motu exercise of power is limited to correction of computation or clerical errors under*

S.33(1)(a)—It does not impact the award itself—Nor would it extend the limitation period, which would commence from the date of receipt of the original/uncorrected award.

Held that, the power of the Arbitrator to correct the award *suo moto* is limited to a correction under Section 33 (1) (a) and nothing beyond that. Such correction would have no impact upon the award itself, which has been received by the party and the contents of the award are in its knowledge. In the present case, no correction has been sought by either party to give an interpretation on any specific point or part of the award, to give the award more clarity so as to be able to challenge the same. It is therefore held that in the case of a simplicior correction of award by the Arbitrator, on his own initiative under Section 33 (3) of the Act of 1996, the limitation would commence from the date of receipt of the uncorrected/original award.

(Para 10)

C. Arbitration and Conciliation Act, 1996—S.34(3)—Condonation of delay—Filing of separate/independent application for the purpose—Whether necessary—Held, S.34 requires an ‘application’ to be filed to challenge an award—Therefore, the term ‘application’ is to be read as synonymous with the word ‘objections’—‘Applicant’ to be read as ‘objector’—S.34(3) would then read, objections may not be filed after three months and the period could be extended on sufficient cause shown for not filing the objections within time—S.34 is a composite one, itself permits extension by a proviso—Would not require a separate application for extension of time.

Held that to challenge an award, an application is to be filed under Section 34 of Act 1996. The term 'application' is to be read as synonym with the word 'objections', therefore, the word 'objections' is interchangeable with the word 'application'. In this background if Section 34(3) is to be read, it will be read as, that objections may not be filed after three months have elapsed from the date on which the party making the objections had received the arbitral award, with the proviso that if the Court is satisfied that the applicant ('applicant' to be read as 'objector') was prevented by sufficient cause in making the objections within the said period of three months, it may entertain the objections within a further period of 30 days, but not thereafter. Therefore, in the opinion of the court, it is not necessary for the applicant-objector to prefer a separate application seeking to file the objections within the extended period of 30 days. It must be borne in mind that the Section

34 (3) itself permits by a proviso, an additional period of 30 days to be allowed for filing an application/objections to the award under Section 34 and if the court is satisfied that the objector was prevented by sufficient cause from filing the objections within 3 months the objections can be entertained. The section itself is a composite one and would not require a separate application.

(Para 12)

Rohan Mittal, Advocate
for the appellant.

P.S. Rana, Advocate
for respondent No.1.

JAISHREE THAKUR, J.

(1) This is an appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 seeking to challenge the order dated 05.08.2014 passed by the Additional District Judge, Ludhiana dismissing the objections filed by the appellant and against the award of the Arbitrator dated 23.09.2008.

(2) In brief, the facts are that an agreement No.CE CHZ-12/98-99 was executed between the Union of India, represented by Chief Engineer, Chandigarh Zone, and M/s Baba Rangi Ram Pvt. Ltd. for "Provision of garages, MT accn and OTM accn for AD Regt at Dholewal near Ludhiana". On account of certain disputes and differences arising between the parties, the matter was referred to an Arbitrator, who was appointed by letter dated 18.06.2007. The Arbitrator entered upon the reference and after giving due opportunities to both the parties, published his award dated 23.09.2008. Dissatisfied with the award, both the parties challenged the same under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to '**the Act 1996**' for short) independently, which culminated in the impugned order dated 05.08.2014.

(3) Against the impugned order dated 05.08.2014, two FAOs have been filed, one by the contractor and other by the Union of India. The objections filed by the Union of India were dismissed on the ground of being time barred. Aggrieved against the said dismissal the instant appeal has been filed. The appeal by the Contractor is still pending as FAO 2433 of 2015.

(4) Mr. Rohan Mittal learned counsel for the appellant would contend that the arbitral award was passed on 23.09.2008 and it was

received on 26.09.2008 by the appellant. It is argued that the award as passed on 23.09.2008 was subsequently amended on 22.10.2008 and thereafter objections were filed on 16.01.2009, and therefore the same is within time. It is argued that once an award is amended by the Arbitrator himself, as has been done in the present case, the original award stands merged with the amended award, and therefore the period of limitation has to be taken from the date when the amended award was received by them which would be 22.10.2008, and if the 3 months period is computed from 22.10.2008 the objections were filed within the specified time.

(5) Per contra, Mr. P.S. Rana learned counsel appearing on behalf of the respondents contends that there is no infirmity in the order of the Additional District Judge, Ludhiana, dismissing the objections being time barred. It is contended that the award that was subsequently corrected on 22.10.2008 was limited only to the extent of a correction in the parties names and under no circumstances could it be said that there was any substantial difference in the award passed. It is further argued that there was no application filed by the appellant herein seeking condonation of delay in filing the appeal beyond a period of 3 months, as envisaged under Section 34(3) of the Arbitration and Conciliation Act, 1996. It is further argued that Section 34(3) envisages that extended period of time under Section 33 of the Act, 1996 can be allowed if there is an amendment in the award on an application filed seeking amendment of the award, which is not so in the present case. It is argued that the Arbitrator suo-motu corrected the award, insofar as making correction in the name of the parties.

(6) I have heard learned counsel for the parties and with their assistance have perused the pleadings of the case and the impugned order. Sections 33 and 34 of the Arbitration and Conciliation Act, 1996 reads as under:-

“33. Correction and interpretation of award; additional award-

(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) A party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) If so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-Section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-Section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-Section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-Section (2) or sub-Section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this Section.”

(7) Section 34 of the Arbitration and Conciliation Act, 1996 reads as under:-

“34. Application for setting aside arbitral award.—(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-Section (2) and sub Section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that—

- (i) a party was under some incapacity, or
- (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or
- (iii) the party making the application was not given proper notice of the appointment of an Arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or 28
- (ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

2 [(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.]

(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.

(4) On receipt of an application under sub-Section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this Section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this Section shall be disposed of

expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-Section (5) is served upon the other party.]”

(8) No doubt Section 33 of Arbitration and Conciliation Act 1996 allows for correction of an award on account of any clerical or typographical errors or any other errors of a similar nature occurring in the award; for interpretation of the award along with an additional award to be made within a period of 30 days from the receipt of the arbitral award. Section 33 of the Act 1996 is akin to Section 152 of the Code of Civil Procedure, 1908 which allows for correction of judgments or decrees or orders on account of clerical or arithmetical mistakes or errors arising from accidental slip or omission. It gives the Court power to rectify any accidental slip or omission in a judgment, decree or order. For the purpose of the case in hand, Section 33 (3) is of relevance which allows an Arbitral Tribunal to correct an error of the type referred to in Clause-A of Sub Section 33 (1) on its own initiative within 30 days from the date of the award of the arbitral Tribunal. In other words, the arbitral Tribunal may correct any error limited to any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award **suo-motu** within a period of 30 days from the date of the award of the arbitral Tribunal.

(9) The powers under Section 33 of the Act 1996 are neither to be equated with the power of review nor can be said to be akin to review. When there is correction to the award, arithmetical or clerical, or the application filed by either party for clarification stands disposed of, the original award passed merges in the corrected award, by applying the principle of merger. However, the period of limitation would commence from the date when the request for correction under Section 33 stands disposed off. The Supreme Court in the judgment rendered in *M/s Ved Prakash Mithal and sons versus Union of India (Special Leave to Appeal (C) No(s). 20195/2017)* clarified that when a party to an arbitral proceedings has filed an application under Section 33 of the Arbitration and Conciliation Act, 1996, for correction and interpretation of an arbitral award, then the period of limitation provided under Section 34 of the Act for challenging an arbitral award would start from the date of disposal of Section 33 application. This disposal can either be by allowing or rejecting the application. Therefore, a party who receives an award and then files an application under Section 33 of the Act, will get the benefit of fresh commencement of limitation from the date of the clarified/modified

and/or corrected award or dismissal of the application.

(10) Mr. P.S. Rana lays great emphasis on the wording used in Section 34 (3) which provides for extension of limitation “if a request had been made under Section 33”, to argue that it is only in those cases where an application has been filed for correction by either of the parties, that benefit can be given of computing limitation from the date of the disposal of the application under Section 33. A scrutiny of the Section itself would show that the legislature in its wisdom has allowed for extension of limitation from the date of disposal of the application made by a party under Section 33, and not in any other situation. The argument as raised by Mr. Rana has merit since the power of the Arbitrator to correct the award suo moto is limited to a correction under Section 33 (1) (a) and nothing beyond that. Such correction would have no impact upon the award itself, which has been received by the party and the contents of the award are in its knowledge. In the present case, no correction has been sought by either party to give an interpretation on any specific point or part of the award, to give the award more clarity so as to be able to challenge the same. It is therefore held that in the case of a simplicior correction of award by the Arbitrator, on his own initiative under Section 33 (3) of the Act of 1996, the limitation would commence from the date of receipt of the uncorrected/original award.

(11) In the instant case, the award was received on 26.09.2008 and the objections were filed on 16.01.2009, which were clearly beyond the period of limitation as allowed under Section 34(3) of the Act 1996. The objections ought to have been filed by 26.12.2008 whereas; the objections were filed on 16.01.2009. Therefore, the next question which arises is, whether appellant has made out sufficient cause for not filing objections within the three months period, as specified in Section 34 (3) and if the same were filed within the additional period of 30 days and if a separate application is to be filed seeking condonation of delay. A perusal of the paper book reflects that there is no independent application filed, however in the objections filed it has been stated that the objections were filed on 16.1.2009 within the period of 90 days, as the corrected award was received on 22.10.2008.

(12) To challenge an award, an application is to be filed under Section 34 of Act 1996. The term 'application' is to be read as synonym with the word 'objections', therefore, the word 'objections' is interchangeable with the word 'application'. In this background if

Section 34(3) is to be read, it will be read as, that objections may not be filed after three months have elapsed from the date on which the party making the objections had received the arbitral award, with the proviso that if the Court is satisfied that the applicant ('applicant' to be read as 'objector') was prevented by sufficient cause in making the objections within the said period of three months, it may entertain the objections within a further period of 30 days, but not thereafter. Therefore, in the opinion of the court, it is not necessary for the applicant-objector to prefer a separate application seeking to file the objections within the extended period of 30 days. It must be borne in mind that the Section 34 (3) itself permits by a proviso, an additional period of 30 days to be allowed for filing an application/objections to the award under Section 34 and if the court is satisfied that the objector was prevented by sufficient cause from filing the objections within 3 months the objections can be entertained. The section itself is a composite one and would not require a separate application.

(13) In the instant case, the objections were filed on 16.01.2009 taking 22.10.2008 as the date of receipt of the corrected award from the Arbitrator. Given the fact that the limitation was to be taken from the date when the award was received i.e. 26.09.2008 and the objections were filed on 16.01.2009, they would be well within the period of limitation i.e. 3 months and additional 30 days. Sufficient cause is made out for not preferring an application under Section 34 of the Act 1996 with three months on the misconception that the limitation would commence from the date of receipt of corrected award.

(14) Therefore, the impugned order of the District Judge is not sustainable and the same is hereby set aside. The appeal is accordingly allowed and the matter is remanded back to the District Judge to decide the objections of the appellant afresh. The parties to appear before the District Judge on 21.1.2020.

Tribhuvan Dahiya