

Before Jaishree Thakur, J.

**DIRECTOR, DEPARTMENT OF FOOD CIVIL SUPPLIES AND
CONSUMER AFFAIRS-CUM-STATE REGISTRAR UID
PROJECT, PUNJAB—Appellant**

versus

**M/S VIRGO SOFTECH LIMITED AND ANOTHER—
Respondents**

FAO No. 4403 of 2019

October 29, 2019

Arbitration and Conciliation Act, 1996—S.2 (h), S.3, S.31 (5), S.37 and S.34 (3)—Arbitral award—Limitation to file objections—Award conveyed to the office of Director on 12.04.2017, put-up to him on 21.04.2017—Objections dismissed by the District Judge on ground of limitation—Held, S.31 (5) requires a copy of the award has to be delivered upon a party to the agreement—S.3 states communication sent to a party deemed as received on date of delivery to the addressee personally or his place of business—Director was signatory to the agreement—His office received the award on 12.04.2017 by registered post—Limitation commences from 12.04.2017 — No benefit of inter-departmental delay in putting-up the award can be allowed—Objections beyond limitation—Appeal dismissed.

Held that, reading of Section 3 of the 1996 Act would clearly substantiate the argument as advanced by the respondents that any communications would be deemed to have been received, if it is delivered to the addressee personally or at his place of business, habitual address or mailing address. The communication would be deemed to have been received by the party on the day it is so delivered. The copy of the award was received in the office of The Director, Food & Supplies on 12.04.2017 by registered post and put up before him by the Nodal officer on 21.4.2017. Admittedly, the Director was the signatory to the agreement. It cannot be argued that the period of limitation would commence from the date, the matter was put up before the Director. The appellant cannot be allowed to take benefit on account of the inter-departmental delay in putting up the matter before Director, the signatory to the agreement, since the award had been sent to the correct address and the competent person. The delay is attributed to the department itself. (Para 13)

Rameeza Hakeem, Addl. A.G., Punjab with
Malvika Singh, Asstt. A.G., Punjab
for the appellant.

Aman Bahri, Advocate and
Aashna Jain, Advocate
for respondent No.1.

JAISHREE THAKUR, J.

(1) By way of the present appeal filed under Section 37 of the Arbitration and Conciliation Act, the appellant seeks to challenge the order of the Addl. District Judge, whereby objections filed to the award of the Arbitrator stand dismissed by order dated 13.03.2019.

(2) In brief, the facts are that the appellant entered into an agreement for setting up an Enrolment station / centre for enrolment of residents for the UID Project Punjab. The respondent claimed to have completed its contractual obligations under the agreement with diligent efficiency and thereafter claimed payment for the same. On account of a dispute that arose between the parties, arbitration was invoked in terms of the said agreement. Consequently a Sole Arbitrator was appointed by the High Court by its order dated 23.04.2014. The matter was contested before the Arbitrator by filing a claim petition by the respondent which was duly controverted by the Appellant by filing a written statement thereto and to which rejoinder was filed. The appellant filed a counter claim as well which was also contested by the respondents. The Arbitrator concluded the arbitration proceedings and passed an order dated 04.04.2017 allowing the claim of the respondents to the extent of Rs. 2,23,05,810/- including interest @ 10% per annum w.e.f. 01.08.2014 till the date of passing of award i.e. 04.04.2017 with future interest @ 12% if claims were not paid within three months while dismissing the counter claim of the appellant herein.

(3) Against the said award, the appellant preferred an objection petition under Section 34 of the Arbitration and Conciliation act, 1996 before the Addl. District Judge, Chandigarh along with an application for condonation of delay beyond 30 days as per the proviso to Section 34(3) of the Arbitration and Conciliation Act, 1996. The said objections were dismissed by an order dated 13.03.2019 resulting in the present appeal. The objections were dismissed purely on the ground that the same had been filed beyond the period of limitation as provided under Section 34(3) of the Arbitration and Conciliation Act.

(4) Ms. Rameeza Hakeem, Addl. A.G., Punjab along with Ms. Malvika Singh, Asstt. A.G., Punjab appearing on behalf of the appellant argues that the Addl. District Judge has erred in dismissing the objections ignoring the well settled law as laid down by the Supreme Court in *Union of India* versus *Tecco Trichy Engineers & Contractors*¹ wherein it has been held that until and unless delivery of award is made upon / award is *received* by such person who has the knowledge of proceedings and who would be the competent person to take a decision in the matter of preferring objections under Section 34 of the 1996 Act, the period of limitation could not be computed merely upon the delivery by way of inward receipt in the department. It is further argued that even in the judgments rendered subsequently in *State of H.P.* versus *Himachal Techno Engineers*² and *State of Maharashtra and others* versus *Ark Builders Private Limited*³ the Supreme Court while relying upon the judgment rendered in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) has held that the period of limitation prescribed under Section 34(3) of the Act, 1996 would be computed only from the date a signed copy of the award is delivered/ received by the party making the application for setting aside under Section 34 of the 1996 Act. It is argued that the Arbitral award was received in the office of the appellant on 12.04.2017 and the same was put up by the Nodal Officer before the appellant on 21.04.2017, therefore, the appellant received the award only on 21.04.2017 and thereafter the objections were filed. Taking the date of 21.04.2017 as the *effective date of receipt of the award*, the objections were filed within the period of limitation.

(5) Per contra, Mr. Aman Bahri, learned counsel appearing on behalf of the respondents herein contends that the objections were filed beyond the period of limitation as prescribed under Section 34(3) of the 1996 Act and, therefore, the Addl. District Judge rightly dismissed the objections. It is argued that the judgments as relied upon by the counsel for the appellant are not applicable to the facts and circumstances of the instant case. It is argued that the judgment as rendered in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) as relied upon would pertain to an award passed against the Railways which is an extremely large organisation. It cannot be equated to the Department of Food & Supplies, the appellant herein. It is submitted

¹ (2005) 4 Supreme Court Cases 239

² 2010(12) SCC 210

³ (2011) 4 SCC 616

that the Supreme Court in the judgment rendered in *M/s Simplex Infrastructure Ltd.* versus *Union of India*⁴ has clearly held that an application for setting aside an award on grounds mentioned in Section 34(2) has to be made within a period of three months and period can only be extended for a further period of thirty days on showing ‘sufficient cause’ and not thereafter. It is submitted that the judgment in *M/s Simplex Infrastructure Ltd.* versus *Union of India* case (supra) has clearly held that the use of words “*but not thereafter*” in proviso to Section 34(3) of the 1996 Act clearly shows that extension cannot be given beyond the period of three months with an addition of 30 days . He further places reliance upon the judgment rendered by the Delhi High Court in *National Highways Authority of India* versus *Afcons Infrastructure Ltd.*⁵ and *Union of India* versus *Wishwa Mittar Bajaj & Sons &Anr.*⁶ in support of his arguments.

(6) I have heard learned counsel for the parties and have perused the impugned order passed as well as the case law as cited by both the parties.

(7) It is an admitted fact that the award came to be passed by the sole Arbitrator on 04.04.2017 which was impugned by the appellant herein before the Addl. District Judge by filing objections on 19.08.2017. The objections so filed were accompanied by an application under Section 5 of the Limitation Act for condonation of delay on the ground that the award were received by the Nodal Officer on 17.04.2017 who further put up the same to the Director, Food & Supplies on 21.04.2017 and thereafter the award along with the relevant file was sent to the counsel for filing a petition vide letter dated 20.06.2017. The application was dismissed by the court holding that the maximum period within which the petition could have been filed was upto 11.08.2017 (inclusive of three months and 30 days) and thereafter the Court had no power or discretion to condone the delay.

(8) The term “party” has been defined under Section 2(h) of the 1996 Act as: “party” means a party to an arbitration agreement. Section 3 provides for receipt of communication, which is reproduced hereunder:

(3) Receipt of written communications. —

⁴ 2019(1) R.C.R. (Civil) 205

⁵ 2013(32) R.C.R. (Civil) 648

⁶ 2007(2) ArbiLR 404

(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.

And Section 31(5) provides for a signed copy of the Arbitral Award to be delivered to each party. The objections are to be filed within the period prescribed under Section 34(3) of the 1996 Act and not thereafter.

(9) In a nutshell, a reading of the aforesaid provisions would reflect that after the passing of an award, the same has to be delivered upon a party i.e. party to the agreement, who if aggrieved may file objections to the same under Section 34(2) of the Act within the specified time as provided under Section 34(3) of the 1996 Act. The time as provided is a period of three months from the date of receipt of the award with an extension of 30 days showing sufficient cause for not being able to file objections within the specified time.

(10) Counsel for the appellant has basically relied upon the judgment rendered in *Tecco Trichy* case (supra) and in *Himachal Techno Engineers* case (supra) in support of her arguments that the objection were filed within a period of limitation being received by the Director, Food & Supplies on 21.4.2017. In the judgment rendered in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) in paragraphs 8, 9 & 10 it has been held that:

“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.

9. In the context of a huge organization like Railways, the copy of the award has to be received by the person who has knowledge of the proceedings and who would be the best person to understand and appreciate the arbitral award and also to take a decision in the matter of moving an application under sub- Section (1) or (5) of Section 33 or under sub-Section (1) of Section 34.

10. In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of

which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19.3.2001 would be the starting point of limitation to challenge the award in the Court.”

(11) The question that needs to be addressed is whether the judgment as relied upon by the counsel for the appellant in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) would be applicable to the facts of the instant case. In the case of *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) Southern Railway entered into a contract with Tecco Trichy Engineers & Contractors for construction of a bridge. The said contract was signed by the then Chief Project Manager, who was the Chief Engineer. On a dispute, the General Manager appointed an Arbitrator, who gave his award and a copy of the same was delivered in the office of the General Manager, Southern Railway on 12.03.2001 whereas the Chief Engineer received the copy of the award from the Tribunal on 19.03.2001. The Chief Engineer filed an application for setting aside the award with an application for condonation of delay, stating that he was made aware of the award on 19.03.2001 and period of limitation ought to be computed from that date instead of the date the award was served upon the General Manager on 12.03.2001. In that background, the judgment rendered in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) was delivered and it was held that it was the Chief Engineer who had signed the agreement and had been pursuing the proceedings before the Arbitrator and not the General Manager of the Railways upon whom the award had been served on 12.03.2001. The General Manager was the competent authority for referring the matter to arbitration and would have no direct knowledge of the arbitral proceedings nor could be held to be a person aware of the factual aspect of the arbitration, capable of taking a decision whether the award was required to be challenged or not. The Supreme Court held that the service of a copy of the award on the Chief

Engineer being the person, who executed the agreement, would be the starting point of limitation to challenge the award in Court.

(12) Whereas in the case of *Himachal Techno Engineers* (supra) a copy of the award had been sent by speed post to the office and received by the Beladar on 10.11.2007 (a Saturday) which was a government holiday. 11.11.2007 being a Sunday was also a holiday. It was received by the Executive Engineer on 12.11.2007. The objection filed to the award were dismissed and the Supreme Court held that :

“10. When the award is delivered or deposited or left in the office of a party on a non-working day, the date of such physical delivery is not the date of “receipt” of the award by that party. The fact that the beldar or a watchman was present on a holiday or non-working day and had received the copy of the award cannot be considered as “receipt of the award” by the party concerned, for the purposes of Section 31(5) of the Act. Necessarily the date of receipt will have to be the next working day.”

(13) A reading of Section 3 of the 1996 Act would clearly substantiate the argument as advanced by the respondents that any communications would be deemed to have been received, if it is delivered to the addressee personally or at his place of business, habitual address or mailing address. The communication would be deemed to have been received by the party on the day it is so delivered. The copy of the award was received in the office of The Director, Food & Supplies on 12.04.2017 by registered post and put up before him by the Nodal officer on 21.4.2017. Admittedly, the Director was the signatory to the agreement. It cannot be argued that the period of limitation would commence from the date, the matter was put up before the Director. The appellant cannot be allowed to take benefit on account of the inter-departmental delay in putting up the matter before Director, the signatory to the agreement, since the award had been sent to the correct address and the competent person. The delay is attributed to the department itself.

(14) In the case in hand, an agreement dated 31.03.2011 was entered into between the Director Food, Civil Supplies and Consumer, Affairs CUM Registrar, UID Project, Punjab with the address of Jeevandeep Building, Sector 17-B, Chandigarh and the respondent herein. The award was then sent by registered post to the very same address on 07.04.2017, and the same was received on 12.04.2017. The

argument raised that the award was only put up before the competent authority on 21.04.2017 would not be sustainable since the award had been received in the office of the Director, Food Supplies on 12.04.2017. It was Director, Food Supplies who would be the competent person to take a decision whether or not objections were to be filed. The case law as relied upon by the Supreme Court in *Union of India* versus *Tecco Trichy Engineers & Contractors* case (supra) where a copy of the award was served upon the General Manager, who was not signatory to the agreement between the parties, would not be applicable in the instant case. It would be worthwhile to note that the Department of Food and Supplies is a separate department within the State of Punjab having its own separate office as described in the agreement. It is not a large organization like the Railways. When there is compliance of section 3 (1) (a) of the 1996 Act, the period of limitation would commence from the date when the award was delivered.

(15) The judgements as rendered in *M/s Simplex Infrastructure Ltd.* case (supra) has clearly held that the period of limitation for filing objections is three months which is extendable by 30 days and not thereafter. The statute also prohibits the court from entertaining such an application. Therefore, applying the ratio of the afore-cited judgement, this court finds no infirmity with the order so impugned.

(16) Appeal is dismissed.

Tribhuvan Dahiya