

LIMITATION PERIOD TO CHALLENGE DOMESTIC ARBITRATION

-Yashita Dalmia¹

LIMITATION PERIOD TO CHALLENGE DOMESTIC ARBITRATION AWARD STARTS FROM THE DATE OF RECEIPT OF THE AWARD AND NOT FROM THE MERE COMMUNICATION THEREOF.

An Arbitration award passed under the Arbitration and Conciliation Act, 1996 can be challenged/set aside/modified or enforced under various provisions of the Act. The difficulty lies in calculating the limitation period to challenge/ set aside/ modify or enforce the award passed in Arbitration proceedings. Hence, the endeavour of the author is to discuss the above said issue and get clarity in calculation of the limitation period as detailed under various sections of The Arbitration and Conciliation Act, 1996 (hereinafter referred to as "The Act").

Section 34 of The Act talks about the grounds for setting aside the Arbitral and subsection (3) of section 34 states that an application for setting aside/challenging the award can only be made within the limitation period of **three months** from the date of **receipt** of the award. Further, if the court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of **three months** then it may after applying its judicious mind may extend WITH a grace period of **thirty days** to challenge the award, but not thereafter.

Section 33 of the Act talks about Correction and interpretation of award or an additional award be made only within **thirty days** from the **receipt** of the arbitral award, unless another period of time has been agreed upon by the parties.

Section 36 of the Act talks about Enforcement of the Award when the time for making an application to set aside the award under section 34 has expired.

Section 3 of the act talks about Receipt of written communications where subsection (2) of section 3 specifies that the communication is deemed to have been received on the day it is so **delivered**.

The Act, clearly lays emphasis on "receipt" of the award.

DECODING THE JOURNEY FROM DELIVERED TO RECEIPT FOR CALCULATING THE LIMITATION PERIOD.

Subsection (5) of section 31 of The Act, states that "after the arbitral award is made, a signed copy shall be **delivered** to each party.' As per which the period of limitation to challenge the award starts from the time the **signed copies** are **delivered** to the parties, correlatively as per **section 3** of The Act, the limitation period begins when those duly signed copies delivered have been duly received by the parties.

To distinguish delivered from deemed receipt for the purpose of calculating the limitation period let us study the recent decision of the Supreme Court passed in the case of **State of Maharashtra v M/s Ark Builders Pvt. Ltd.**² wherein it was examined whether the period of limitation for making an application under section 34 of the Arbitration and Conciliation Act, 1996 for setting aside an arbitral award is to be

¹ The author is an Arbitration lawyer from Law Senate law firm.

² (2011) 4 SCC 616

reckoned from the date a copy of the award is received by the objector by any means and from any source, or would it start running from the date a signed copy of the award is delivered to him by the arbitrator?

The Supreme Court following its own judgement passed in the case of **Union of India v. Tecco Trichy Engineers & Contractors**,³ overruled the judgement of the Bombay High Court, where the High court erred in upholding the decision of the lower court and rejected the contention of the appellant that the specific words used in sub section 5 of section 31 is **delivered not dispatched** and held and observed as follows:

"17. It is to be noted that sub-section (5) of Section 31 prescribes that after arbitral award is made, a signed copy shall be `delivered' to each party. The word `delivered' appearing in Section 31(5) cannot be equated with `dispatched'. A distinction has to be made between these two words. The `Shorter Oxford English Dictionary' gives meaning of the word `delivered' as, "to bring and handover a letter, a parcel to the proper recipient or address". "Deliver" means: (i) bring and handover (a letter or goods) to the proper recipient; formally hand over (someone); and (iii) provide (something promised or expected). Thus, what is important is that the copy of the award should be handed over to the proper recipient or addressee. In this view of the matter, sub-section (5) of Section 31 does not require that a copy of the arbitral award should be sent off by the Arbitrator to the concerned party, but it is required that copy of the arbitral award be handed over to the proper parties.

18. In the instant matter, admittedly the copy of award was received by the Executive Engineer in the month of April 2003. However, appellants did not act till January 2004 for about nine months. Thus, for their inaction, appellants have to blame only themselves. In the instant matter, it cannot be said that there is non-compliance of sub-section (5) of Section 31 of the Act of 1996. There is sufficient compliance of the provisions of Section 31(5), as admittedly, appellants received copy of the award in the month of April, 2003. Appellants thereafter did not take steps in respect of raising challenge to the award and allowed the matter to remain in cold storage. The delay occasioned in presenting the application is essentially because of the lapses committed by the appellants only."

Therefore, unambiguously, the High Court erred in overlooking that **Section 31(1)** obliges the members of the arbitral tribunal/arbitrator to make the award in writing and to sign it and **sub-section (5)** then mandates that a signed copy of the award would be delivered to each party. A signed copy of the award would normally be delivered to the party by the arbitrator himself. The High Court clearly overlooked that what was required by law was the delivery of a copy of the award signed by the members of the arbitral tribunal/ arbitrator and not any copy of the award.

Therefore, The expression "*..party making that application had received the arbitral award..*" in sub-section 3 of section 34⁴ cannot be read in isolation and it must be understood in light section 31(5) that requires a signed copy of the award to be delivered to each party. Reading the two provisions together it is quite clear that the limitation prescribed under section 34 (3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting it aside.

Hence, the Supreme Court taking support of its own decision passed in **Union of India v. Tecco Trichy Engineers & Contractors**,⁵ overruled the judgement passed by the Bombay High court in the matter and clarified that the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality rather it is a matter of substance. In light of the discussions made above the Supreme Court

³ (2005) 4 SCC 239

⁴ The Arbitration and Conciliation Act, 1996

⁵ Supra 3

declared the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error of not correctly following the decision of this Court in **Tecco Trichy Engineers & Contractors** and in taking a contrary view.

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 and proceedings under section 33, 34 or 36 consequently can take place. The delivery of arbitral award to the party, to be effective, has to be "**received**" by the party.

The Supreme Court laid emphasis on the proper delivery and receipt of the award as the delivery of the copy of the award has the effect of conferring the rights on the party to challenge/ set aside/ modify the award and also at the same time it is the delivery of the copy of the award and its receipt thereof that establishes the expiry of these rights so conferred on the parties. Therefore the proper delivery and receipt of the award constitutes an important stage in the arbitral proceedings.

Conclusion:

The above detailed discussion leaves no room for doubt that the period of limitation under the Act would start running only from the date a signed copy of the award is delivered to or received by the party. Law under sub section (5) of 31 is axiomatic and needs to be followed properly for a fair opportunity and execution of the law.