

Delivery of Arbitration awards and Limitation to Challenge

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India being a country of Adhoc arbitrations, the responsibility to manage the arbitrations also is on the arbitrators. The said Management of the case includes framing of arbitration procedure, arranging meetings, fixing deadlines, drafting of proceedings, dispatching of proceedings and dispatching of arbitration awards after the arbitration proceedings are completed. The dispatching of arbitration awards to parties is not done by the arbitrators and normally arbitrators hand over the arbitration awards to the Advocates representing parties, which is a wrong practice. If a party wishes to challenge the arbitration award it should challenge the award within three months from the date of receipt of the same with a strict and maximum extension of another 30 days. That means the said challenge is not maintainable after the said period from the date of receipt of the same. In the case of State of Himachal Pradesh¹ Supreme Court of India held that S.5 of the Limitation Act is not applicable to petitions under S.34 of the Act, since the Act provides for a special limitation. But in the said Judgment, it was held that three months means not 90 days, having regard to 12(1) of the Limitation Act and S.9 of the General clauses Act, 1897 three months means actual three months. It also explained that the date of receipt of the award also should be excluded from the said calculation.

The question arose, whether the said limitation period starts from the date of award or the date of receipt by the lawyer or from the date of receipt of the award by the party. The Supreme Court of India in State of Maharashtra² and in Tecco Trichy case³ held that the Limitation under S.34(3) will start from the date on which the signed copy of the award was received by the party and not the counsel or agent. In the said cases, it was explained that the delivery of an arbitral award is not a mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed the stage of termination of arbitral proceedings within the meaning of S.32 of the Act arises. The delivery of the arbitral award has to be effective, has to be received by the party. This delivery

¹ State of Himachal Pradesh Vs Himachal Techno Engineers (2010)12 SCC 210

² State of Maharashtra Vs ARK Builders (P) Limited (2011) 4 SCC 616

³ Union of India Vs Tecco Trichy Engineers & Contractors (2005) 4 SCC 239

of arbitral award and receipt by the party sets in motion several periods of Limitation. As this delivery of the copy of the 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 signed copy of the award by the tribunal and the receipt thereof by each party constitutes an important stage in arbitration proceedings.

In the case of Benarsi Krishna⁴ the Supreme Court of India held that held that “party to Arbitration” does not include agent or advocate represented by party in the arbitration proceedings. But there was an interesting argument advanced contending that service of award on the advocate for party was sufficient compliance with the provisions of Section 34(3) of the Arbitration and conciliation Act,1996 as had been held by a five Judge Bench of the Supreme Court in Nil Kantha Sidramapaa case⁵ that intimation to the pleaders of the parties amounted to service of the notice on the parties about the filing of the award. It was also contended that the strength of Vakalatnama executed by the party in favour of his advocate/agent and service on the advocate holding such vakalatnama amounted to service of notice on the party himself, relying on the Pushpa Devi judgment⁶. But rejecting those contentions Supreme Court held that, it is the duty of the arbitrators to send signed copies of the arbitration award to all the parties to the arbitration agreement to comply with S.31(5) of the Act.

In a recent case the Division Bench of Bombay High Court in JSC Ispat Pvt Limited case⁷ before allowing the application for condonation of delay, the High Court went to the extent of calling for the records of the arbitrator and examined if the signed copies of the award were sent to the parties to the Arbitration agreement. Since there was no sufficient proof for any such delivery to the

⁴ Benarsi Krishna Committee Vs Karmyogi Shelters Private Limited (2012) 9 SCC 496

⁵ Nilkantha Sidramappa Ningashetti Vs Kashinath Somanna Ningashetti AIR 1962 SC 666

⁶ Pushpa Devi Bhagat Vs Rajinder Singh (2006) 5 SCC 175

⁷ JSC Ispat Pvt Limited Vs HDB Financial Services Ltd 2018 SCC Online Bom 538

parties was available in the file of the arbitrator regarding the sending of the signed copies of awards, it condoned the delay in filing the application under S.34 of the Act.

Hence from the above discussion it can be understood that Arbitrators have to send the signed copies of the arbitration award to all the parties to the arbitration agreement and handing over to the lawyers or agents is not sufficient.

