WHEN DOES DELIVERY OF THE ARBITRAL AWARD TO THE PARTIES COMPLETE

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Introduction:

Under the Arbitration and Conciliation Act, 1996 ("the Act"), as amended up to date, the remedies in respect of arbitral award are to be availed within rigid timelines, which are provided under the Act. A party can seek correction of error, interpretation or even additional award by filing an application before the Tribunal within 30 days from the date of receipt of the arbitral award. If, however, a party wishes to challenge the award, it can do so by filing an application before the competent court having jurisdiction in the matter within 3 months from the date of receiving the arbitral award. For challenging an award a further grace period of 30 days is available, however, in that case the party challenging the award must seek condonation of delay in filing the application by explaining the reasons for such delay. The delay can be condoned by the court if it is satisfied that the party was prevented by sufficient cause from making the application within the stipulated period of 3 months. The application, however, shall not be maintainable on expiry of the additional period of 30 days mentioned above. Since the prescribed period commences from the date of receipt of the award by a party, the date of receipt of award by parties is very crucial. It has also been settled by various judicial pronouncements that arbitral tribunal has the obligation to deliver signed copy of the award to the parties to the arbitration agreement and not to their advocates.[1]

The Apex Court, in a recent judgment decided the issue as to when a signed copy of the award can be said to have been delivered to the parties by the arbitral tribunal in the case of ***Dakshin Haryana Bijli Vitran Nigam Ltd. Vs. M/s Navigant Technologies Pvt. Ltd.***[2]

Factual Matrix:

The dispute between the parties were decided vide arbitral award dated 27.04.2018 by a three members' tribunal by a majority of 2:1. Vide the said award,

[1] **(2012) 9 SCC 496**

[2] Civil Appeal No. 791 of 2021, decided on 02.03.2021

claims of the Respondent were allowed. Aggrieved by the award, the Appellant-Nigam first filed an application under Section 34 of the Act before the District Court, Hisar, Haryana on 10.09.2018 and subsequently filed an appeal before high court. Both the district court as well as the high court held that the application so filed by the Appellant-Nigam was legally untenable being barred by limitation. This view was, however, overturned by the Supreme Court of India after examining the facts of the case. Interestingly, on 27.04.2018, the majority arbitrators supplied copy of their award to both the parties and posted the matter to 12.05.2018 for passing of minority award and also for the parties to point out computation, clerical or typographical errors, if any, in the majority award.

On 12.05.2018, a copy of the dissenting opinion (which was dated 27.04.2018) was provided by the 3rd arbitrator to the parties and the matter was thereafter posted to 19.05.2018 for the parties to point out any typographical or the clerical mistake in the dissenting award delivered by the 3rd arbitrator. On 19.05.2018, the arbitrators delivered signed copies of both the awards to both the parties and terminated the arbitration proceedings. As mentioned above, both, the district court as well as the high court dismissed the application on the premise that the Appellant had received the majority award on 27.04.2018 and accordingly the period of 3 months provided under Section 34(3) commenced from 27.04.2018 itself. The high court noted that majority award signed by two out of 3 arbitrators was received by the Appellant on 27.04.2018 and hence, the objections against the same were to be filed within 3 months from 27.04.2018, which expired on 27.07.2018. The high court further observed that even if the benefit of 30 days was granted to the Appellant, objections ought to have been filed maximum by 26.08.2018. Accordingly, the high court affirmed the order of the district court and dismissed the appeal on the ground of application being barred by limitation.

The Hon'ble Apex Court set aside the order of the district court as well as the high court and remanded the matter back to the district court for decision on merits. The Apex Court examined the scheme of the Act and referred to the definition of the expression "arbitral award" as well as provisions of Chapter VI of the Act dealing with the procedure for making an arbitral award and termination of arbitration proceedings. It was held as under:

- An "arbitral award" is the decision made by the majority members of an arbitral tribunal or a unanimous award, which is final and binding on the parties.
- A dissenting opinion does not determine the rights or liabilities of the parties and therefore, a party cannot file either an application under Section 34 of the Act for setting aside of the dissenting award or an execution petition under Section 36 of the Act seeking enforcement of dissenting award.
  Section 31(1) provides in mandatory terms that an arbitral award shall be made in writing and signed by all the members of the arbitral tribunal. An award becomes legally enforceable only after it is signed by the arbitrators, which gives it authentication. No finality can be attached to the award unless it is signed. The making and delivery of the award are different stages of an

arbitration proceeding. An award is made when it is authenticated by the person who makes it.

- The statute makes it obligatory for each of the members of the arbitral tribunal to sign the award, so as to make it a valid award. Signing of the award by each of the members of the tribunal is not merely a ministerial act, or an empty formality which can be dispensed with. Section 31(1) read with Section 31(4) of 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.
- Receipt of signed copy of the award is the date from which the period of limitation for filing objections under Section 34 would commence. Arbitration proceeding terminates after final award is passed and the tribunal becomes *functus officio*.
- In an arbitral tribunal comprising of a panel of three members, the minority opinion must be delivered contemporaneous with the final award on the same day and not on a subsequent date.
- The period for rendering the award and dissenting award must be within the period prescribed under Section 29A of the Act.
- The law recognizes only one date i.e. the date on which a signed copy of the final award is received by the parties. This is a crucial date as the period of filing of application under Section 33 of the Act, termination of arbitration proceedings, as well as the period for filing objections to the award under Section 34, commences from this very date.
- Dissenting opinion of a minority arbitrator can be relied upon by a party seeking to set aside the award to buttress its submissions in the proceedings under Section 34. Courts are not precluded from considering the findings and conclusions of the dissenting opinion of the minority member at the stage of judicial scrutiny under Section 34.

Having held as above, the Apex Court applied the aforesaid parameters to the fact of the case and found that even though the majority award was pronounced on 27.04.2018, a signed copy of the award and the dissenting opinion were provided to the parties only on 19.05.2018. Accordingly, the period of limitation for filing of application under Section 34 would have to be reckoned from 19.05.2018. Noting the admitted position that the application was filed within the period prescribed under Section 34 (3) from 19.05.2018, the appeal was allowed and the orders passed by the Ld. Forums below were set aside.

Conclusion:

It is no doubt true that signing of the award by members of the tribunal as well as delivery of signed copy of the same to the parties to the arbitration agreement is very crucial under the scheme of the Act. The decision of the apex court in this case appears to be correct in the peculiar facts of the case. However, this decision

should not be considered to have held that time limit under Section 33 and 34 of the Act would not start running unless signed copy of minority opinion is also served on the parties contemporaneously. If such position is taken to be correct, the same would be contrary to the true scope and meaning of Section 31(2) of the Act which provides that in an arbitration proceeding with more than one arbitrator, the signature of majority members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. Also, Section 29 of the Act recognises decision of majority as the decision of the arbitral tribunal. In a given case where a signed copy of majority award is delivered to the parties, with reasons for any omitted signature, the same would amount to receipt of arbitral award by the parties and the limitation period prescribed under Section 33 and Section 34 of the Act would start ticking even if signed copy of minority award is not delivered to the parties simultaneously with the majority award.