Dakshin Haryana Bijli Vitran Nigam Ltd. ... vs M/S Navigant Technologies Pvt. Ltd. on 2 March, 2021

Equivalent citations: AIR 2021 SUPREME COURT 2493, AIRONLINE 2021 SC 116

Author: Indu Malhotra

Bench: Ajay Rastogi, Indu Malhotra

REP

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 791 OF 2021
(Arising out of SLP (C) No. 10372 / 2020)

DAKSHIN HARYANA BIJLI VITRAN NIGAM LTD. …

Versus

M/S NAVIGANT TECHNOLOGIES PVT. LTD. … R

J U D G M E N T

INDU MALHOTRA, J.

Leave granted.

1. The present Civil Appeal arises from a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 by the Appellant-Bijli Vitrain Nigam to challenge the arbitral award dated 27.04.2018 passed by a three-member tribunal (2:1) in favour of the respondent company.

2. The issue which has arisen for our consideration is as to whether the period of limitation for filing the Petition under Section 34 would commence from the date on which the draft award dated 27.04.2018 was circulated to the parties, or the date on which the signed copy of the award was provided.

(i) The background facts emanate from a Service Level Agreement dated 02.05.2011 executed by the appellant-corporation in favour of the Respondent-company providing call centre services.

Clause 13 of the Agreement provided for resolution of disputes through arbitration by a three-member tribunal, under the Arbitration and Conciliation Act, 1996.

Clause 13 reads as :

> "13. Arbitration All matter question, disputes, differences and/or claims arising out of and/or concerning and/or in connection and/or in consequences or relating to the Contract whether or not obligations of either or both parties under the Contract be subsisting at the time of such dispute and whether or not the contract has been terminated or purported to be terminated or completed, shall be referred to the arbitration which shall be conducted by three arbitrators, one each to be nominated by the Service Provider and the Nigam (Arbitrator to be approved by the MD DHBVNL or authority of the Nigam) and the third to be named by the president of the institution of Engineers, India. If either of the parties fails to appoint its arbitrator within thirty (30) days after receipt of a notice from the other party invoking the arbitration clause, the president of the institution of Engineers, India, shall have the power at the request of either of the parties, to appoint the arbitrator. A certified copy of the order of the institution of engineers (India) making such an appointment will be furnished to each of the parties.
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> The decision of the majority of the arbitrators shall be final and binding upon the parties. The parties to the contract agree that the cost of arbitration shall be as per instructions to the Nigam issued/prevalent on the date of appointment of arbitral tribunal. The arbitrators may, from time to time, with the consent of the parties enlarge the time for making the award. In the event of any of the aforesaid arbitrators dying, neglecting, resigning or being usable to act for any reason, it will be lawful for the party concerned to nominate another arbitrator in place of the outgoing arbitrator.
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> The arbitrator shall have full powers to review and/or revise any decision, opinion, direction, certification or valuation of the Engineer in consonance with the Contract, and neither party shall be limited in the proceedings before such arbitrators to the evidence or arguments put before the engineer for the purpose of obtaining the said decision.
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> ... Subject to aforementioned provisions, the provisions of the Arbitration and Conciliation Act, 1996 and the Rules there under any statutory modifications thereof for the time being enforce, shall be deemed to apply to the Arbitration proceedings under the clause."

(ii) On 16.10.2014, the appellant corporation terminated the Service Level Agreement, which led to disputes between the parties. The disputes were referred to arbitration by a three-member tribunal.

(iii) The arbitral tribunal orally pronounced the award [2:1] on 27.04.2018, whereby the claims of the respondent company were allowed. The parties were informed that the third arbitrator had disagreed with the view taken by the majority of arbitrators, and would be rendering his separate opinion. A copy of the draft award was provided to the parties to point out any computation, clerical or typographical errors in the award on the next date of hearing.

The proceedings of the tribunal dated 27.04.2018 read as under :

"27.04.2018 Present:-

Sh. Nishant Shrivastava, Advocate for the claimant with Sh. Ankur Bhatia, M.D. of the Claimant.

Sh. Ashish Goyal, Advocate and Sh. Sanjeev Sharma, JE for the respondent.

Vide separately recorded award dated today, claims of the claimant have been allowed with cost. Dr. Shiva Sharma has agreed with same, whereas Sh. D.S. Yadav has disagreed. He shall file his separate award. Copies free of costs, of the award have been supplied to both the Ld. Counsels for the parties. To come up on 12.05.2017, at 4:30 p.m. for award of Sh. D.S. Yadav, Arbitrator. On that date, parties are also required to show any computation error, any clerical or typographical error or any other error of similar nature occurred in the award if any.

Vinod Jain, D&S Judge(retd.) Presiding Arbitrator Sh. Shiva Sharma, D&S Judge (retd.) Sh.D.S. Yadav, Director, DHBVN (retd.)" (emphasis supplied) The matter was next posted to 12.05.2018.

(iv) On 12.05.2018, a copy of the dissenting opinion was provided by the third arbitrator to the parties (even though the opinion was dated 27.04.2018). The matter was then posted to 19.05.2018, for the parties to point out any typographical or clerical mistakes in the dissenting opinion delivered by the third arbitrator.

The order dated 12.05.2018 reads as :

"12.05.2018 Present:-

Sh. Nishant Shrivastava, Advocate for the claimant Sh. Sanjeev Sharma, JE for the respondent.

Arbitrator Sh. D.S. Yadav has filed his own dissenting Award.

Copies free of cost have been supplied to both the parties to these arbitration proceedings. Both the parties have not pointed out any computation or clerical error

etc. in the award dated 27.04.2018.

Now to come up on 19.05.2018 at the same venue to point out any typographical or clerical mistakes if any in the award of today given by Sh. D.S. Yadav, Arbitrator. Venue the same. Also on that date original record should be handed over to the Ld. Counsel for the claimant for safe custody with pen drives of the record to the other party as well as to the Arbitrators." (emphasis supplied)

(v) On 19.05.2018, the tribunal recorded that both the parties had not filed any application to point out any clerical or typographical mistakes in the award, or dissenting opinion. On this date, the signed copy of the arbitral award was provided to both the parties, and the proceedings were terminated. The proceedings of 19.05.2018 read as :

"19.05.2018 Present:-

Sh. Nishant Shrivastava, Advocate for the claimant Sh. Ashish Goyal, Advocate with Sh. Sanjeev Sharma, JE for the respondent.

Original record has been handed over to Sh. Nishant Shrivastava, Advocate for its safe custody with him and for its production before the appropriate authority in case of need. Pen drives of the record have been provided to both the counsels as well as to the arbitrators. Record is comprised of two files. First file of pleadings is comprised of 270 pages and second file of awards, evidence, zimini orders and misc. papers is comprised of 596 pages. Awards (signed copies) have also been provided to Ld. Counsel for both the parties free of cost. Both the parties also not filed any applications to point out any clerical or typographical mistakes in the awards.

Proceedings now come to an end, so are hereby terminated." (emphasis supplied)

(vi) The Appellant-corporation filed its Objections under Section 34 on 10.09.2018 before the Ld. Civil Court, Hisar, Haryana vide Arbitration Petition No. 316/2018 to challenge the award dated 27.04.2018, along with an Application for condonation of delay.

It was submitted by the appellant corporation that the objections were filed within the period prescribed by Section 34(3) i.e. within 3 months and 30 days from the date of receipt of the signed award on 12.05.2018.

(vii) The Civil Court dismissed the Application for condonation of delay vide Order dated 14.02.2019. It was held that the Appellant had received the majority award on 27.04.2018. Thus, the period of limitation starts running from the same date. Accordingly, the period of limitation of three months starts from 27.04.2018 i.e. the date on which the Appellant received the arbitral award. The proviso to Section 34(3) provides that if the Court is satisfied that the applicant was prevented from

sufficient cause from making the application within 3 months, it may entertain the application within a further period of 30 days. In the present case, the application u/S. 34 was filed even after the expiry of the further period of 30 days. Merely because the dissenting opinion was erroneously styled as an award by the minority arbitrator, it cannot be said that the dissenting opinion attains the status of an award. Consequently, the objections were dismissed solely on the ground of delay.

(viii) The appellant corporation filed Appeal No. 1954/2019 (O&M) under Section 37 of the Arbitration Act before the High Court.

The High Court vide the impugned Order dated 11.12.2019 affirmed the Order passed by the Civil Court. It was held that a reading of Section 31 clearly reflects that once an award is signed and communicated by the majority of arbitrators, the same would constitute an "award". The signed copy of the majority award i.e. signed by two of the three arbitrators was received on 27.04.2018, and u/S. 34(3), the objections had to be filed within 3 months, which would expire on 27.07.2018. Even if the benefit of 30 days had been granted to the Appellants, the objections ought to have been filed by 26.08.2018, whereas the objections had been filed on 10.09.2018. There was no infirmity in the judgment of the Civil Court, and accordingly, the Appeal was dismissed.

(ix) Aggrieved by the rejection of the objections under Section 34 on the ground of delay, the appellant corporation has filed the present Appeal.

3. Submissions of the parties

(i) The appellant corporation inter alia contended that its objections had been erroneously dismissed by the Additional Civil Judge, as well as the High Court on the sole ground of limitation, and not on merits. It was submitted that reference to the 'arbitral award' in the Arbitration Act includes both the majority award as well as the minority opinion.

Section 31(1) of the Act provides that all the members of the tribunal shall sign the award. Section 31(2) which permits an award to be rendered so long as it is signed by the majority of the members, and reasons for omission of the signature of the third arbitrator is mentioned, applies only in the case of a unanimous award. Section 31(2) has no application when there is dissenting view rendered by one of the arbitrators.

Section 34 of the Act provides for objections to be filed against the arbitral award, and not the majority award alone. Consequently, the time limit to file objections against an award under Section 34(3) of the Act, does not relate to only the majority award, but to the arbitral award, which includes the opinion of the dissenting member of the tribunal.

It was contended that if the majority award was taken to mean the arbitral award, the dissenting opinion of the minority would have no relevance. Such a view would cause grave prejudice to the award debtor.

It was further submitted that even though the award of the majority was pronounced on 27.04.2018, the tribunal posted the matter on 12.05.2018 to enable the parties to point out any correction, or any typographical or clerical error in the award. On 12.05.2018, the dissenting opinion was pronounced, and a copy was provided to the parties. The matter was next posted on 19.05.2018, to consider any application for correction in the opinion of the minority. Since no application for correction of the award, or the minority opinion, was filed by the parties, the tribunal terminated the proceedings.

It was further submitted that the dissenting opinion has been held to be the correct view by the Courts in various cases. Reliance was placed on the judgment of this Court in Ssangyong Engineering and Construction Co. ltd. v. NHAI.,1 wherein the dissenting opinion was upheld as being the correct view, and was affirmed. Reference was made to the judgment of the Bombay High Court in Axios Navigation v. Indian Oil Corporation,2 wherein it was held that the view of the minority was relevant for the adjudication of objections under Section 34 of the Act.

(ii) On the other hand, the Respondents contended that the objections filed by the appellant corporation under Section 34 of the Arbitration Act are barred by limitation, and ought to be dismissed as 1 2019 (15) SCC 131.

2 2012 SCC Online Bom 4.

such. The contention of the Respondent is that since the majority award was pronounced on 27.04.2018, the limitation period applicable under Section 34(3) would commence from this date.

The Respondent placed reliance on Section 34(3) of the Act to submit that a party may file objections to the award within a period of three months from the date of receipt of the award. On sufficient cause being shown to the satisfaction of the Court, the three months period could be extended by an additional period of thirty days. The Respondent submitted that the time for filing objections was available till 26.07.2018, or if sufficient cause was made out, an additional period of 30 days' which expired on 26.08.2018.

The dissenting opinion of the minority member was not an award for the purposes of computing the limitation period prescribed under sub-section (3) of Section 34.

Section 29(1) of the Act contemplates that the decision of the majority of members of the tribunal, is the arbitral award. Reliance was placed on Section 31(2) of the Act which provides that the signature of all the members of the tribunal was not required, so long as the award was signed by a majority of the members, and reasons for omission of the signature of the third arbitrator were recorded in the award. The opinion of the minority was only a view, and could not be enforced as an award. It could not be considered to be the arbitral award for the purpose of computing limitation under Section 34(3) of the Act.

Reliance was placed on the judgments of the Delhi and Bombay High Court in Bharat Sanchar Nigam Ltd. v. Acome and Ors.3, Axion Navigation v. Indian Oil Corporation Ltd.,4 and Oriental insurance Co. v. Air India Ltd.,5 wherein it was held that the limitation period under Section 34(3)

of the Act shall commence from the date when the award is passed.

4. Discussion & Analysis We have heard the Ld. counsel for the parties. In order to appreciate the rival contentions of the parties, we will first examine the scheme of the Arbitration and Conciliation Act, 1996.

(i) Section 2 (1)(c) of the 1996 Act defines "arbitral award" to include an interim award. The phrase "arbitral award" has been used in several provisions of the 1996 Act.

The statute recognises only one arbitral award being passed by an arbitral tribunal, which may either be a unanimous award, or an 3 AIR 2009 Delhi 102.

4 (2012) 114 (1) Bom LR 392.

5 (2019) SCC Online Del 11634.

award passed by a majority in the case of a panel of members. An award is a binding decision made by the arbitrator/s on all the issues referred for adjudication. The award contains the reasons assigned by the tribunal on the adjudication of the rights and obligations of the parties arising from the underlying commercial contract. The award must be one which decides all the issues referred for arbitration. The view of a dissenting arbitrator is not an award, but his opinion. However, a party aggrieved by the award, may draw support from the reasoning and findings assigned in the dissenting opinion.

(ii) The phrase 'arbitral tribunal' has been defined by Section 2(1)(d) to mean a sole arbitrator, or a panel of arbitrators.

(iii) Chapter VI of the Arbitration and Conciliation Act provides the procedure for making of an arbitral award, and termination of arbitral proceedings.

Sections 28 to 31 relate to the procedure for making the award. Section 28 provides the rules applicable for the determination of a dispute by arbitration.

(iv) Section 29 of the 1996 Act deals with decision making by a panel of arbitrators. Section 29 reads as :

> "29. Decision making by a panel of arbitrators.- (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.
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> (2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator." (emphasis supplied) Sub-section (1) provides that unless the parties agree otherwise, in arbitral proceedings with more than one arbitrator, "any decision of the

> arbitral tribunal shall be made by a majority of all its members".

An "arbitral award" is the decision made by the majority members of an arbitral tribunal, which is final and binding on the parties.

Section 35 provides that an arbitral award shall be "final and binding" on the parties and persons claiming under them. A dissenting opinion does not determine the rights or liabilities of the parties which are enforceable under Section 36 of the Act.

(v) The reference to the phrase "arbitral award" in Sections 34 and 36 refers to the decision of the majority of the members of the arbitral tribunal. A party cannot file a petition u/S. 34 for setting aside, or u/S. 36 for enforcement of a dissenting opinion. What is capable of being set aside u/S. 34 is the "arbitral award" i.e. the decision reached by the majority of members of the tribunal. Similarly, u/S. 36 what can be enforced is the "arbitral award" passed by the majority of the members.

(vi) Section 29A was inserted by the 2015 Amendment Act. Under sub-section (1), the arbitral tribunal [other than in an international commercial arbitration] is mandated by statute to make the arbitral award within a period of 12 months' from the date of completion of pleadings, as provided by sub-section (4) of Section 23. Section 29A(4) provides that the "mandate" of the arbitrator/s shall terminate if the award is not made "within" the period specified in sub-section (1), or the extended period under sub-section (3). Therefore, by prescription of law, the mandate of the arbitrator/s would terminate if the time limits are not followed.

(vii) Legal requirement of signing the award The legal requirement of signing the arbitral award by a sole arbitrator, or the members of a tribunal is found in Section 31 of the 1996 Act, which provides the form and content of an arbitral award. Section 31 provides that :

> "31. Form and contents of arbitral award.- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal. (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.
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> ....
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> (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
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> (5) After the arbitral award is made, a signed copy shall be delivered to each party.
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> ....

(emphasis supplie

(viii) Section 31 (1) is couched in mandatory terms, and provides t

> an arbitral award shall be made in writing and signed by all the members of the arbitral tribunal. If the arbitral tribunal comprises of more than one arbitrator, the award is made when the arbitrators acting together finally express their decision in writing, and is authenticated by their signatures6 An award takes legal effect only after it is signed by the arbitrators, which gives it authentication. There can be no finality of the award, except after it is signed, since signing of the award gives legal effect and validity to it. 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 tribunal to sign the award, to make it a valid award. The usage of the term "shall" makes it a mandatory requirement. It is not merely a ministerial act, or an empty formality which can be dispensed with.

(ix) Sub-section (1) of Section 31 read with sub-section (4) makes it clear that 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. Section 31 (5) enjoins upon the arbitrator / tribunal to provide the signed copy of the arbitral award to the parties. The receipt of a signed copy of the award is the date from which the 6 Malhotra's Commentary on the Law of Arbitration, Wolters Kluwer, 4th Ed., Vol.1, p.794. period of limitation for filing objections u/S. 34 would commence. This would be evident from the language of sub-section (3) of Section 34(3) which reads :

> "34. Application for setting aside arbitral award.
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> ... ... (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:
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> 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."
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> (x) In Union of India v. Tecco Trichy Engineers & Contractors 7, a three-judge bench of this Court held that the period of limitation for filing an application u/S. 34 would commence only after a valid delivery of the award takes place u/S. 31(5) of the Act. In para 8, it was held as under :

> "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." (emphasis supplied)

7 (2005) 4 SCC 239.

(xi) The judgment in Tecco Trichy Engineers (supra) was followed in State of Maharashtra v. Ark Builders,8 wherein this Court held that Section 31(1) obliges the members of the arbitral tribunal to make the award in writing and sign it. The legal requirement under sub-section (5) of Section 31 is the delivery of a copy of the award signed by the members of the arbitral tribunal / arbitrator, and not any copy of the award. On a harmonious construction of Section 31(5) read with Section 34(3), the period of limitation prescribed for filing objections would commence only from the date when the signed copy of the award is delivered to the party making the application for setting aside the award. If the law prescribes that a copy of the award is to be communicated, delivered, despatched, forwarded, rendered, or sent to the parties concerned in a particular way, and since the law sets a period of limitation for challenging the award in question by the aggrieved party, then the period of limitation can only commence from the date on which the award was received by the concerned party in the manner prescribed by law.

The judgment in Tecco Trichy has been recently followed in Anilkumar Jinabhai Patel v. Pravinchandra Jinabhai Patel.9 8 (2011) 4 SCC 616 9 (2018) 15 SCC 178

(xii) In State of Himachal Pradesh v Himachal Techno Engineers,10 this Court held that if one of the parties to the arbitration is Government, or a statutory body, which has notified holidays, and if the award was delivered to a beldar or a watchman on a holiday or non-working day, it cannot be considered to be "receipt of the award" by the party concerned for the purposes of Section 31(5) of the Act. When the award is delivered, or deposited, or left in the office of a party on a non-working day, the date of physical delivery is not the date of "receipt" of the award by that party. For the purposes of Section 31(5), the date of receipt will have to be the next working day.

(xiii) Section 32 provides that the arbitral proceedings shall be terminated after the final award is passed. With the termination of the arbitral proceedings, the mandate of the arbitral tribunal terminates, and the tribunal becomes functus officio.

(xiv) In an arbitral tribunal comprising of a panel of three members, if one of the members gives a dissenting opinion, it must be delivered contemporaneously on the same date as the final award, and not on a subsequent date, as the tribunal becomes functus officio upon the passing of the final award. The period for rendering the award and dissenting opinion must be within the period prescribed by Section 29A of the Act.

10 (2010) 12 SCC 210

(xv) In the treatise on 'International Commercial Arbitration' authored by Fouchard, Gaillard, Goldman, it has been opined that :

> "1403.- A dissenting opinion can only be issued when the majority has already made the decision which constitutes the award. Until then, any document issued by the minority arbitrator can only be treated as part of the deliberations. However, once the majority decision has been reached, it is preferable for the author of the dissenting opinion to communicate a draft to the other arbitrators so as to enable them to discuss the arguments put forward in it. The award made by the majority could then be issued after the dissenting opinion, or at least, after the draft of the dissenting opinion..." 11 (xvi) There is only one date recognised by law i.e. the date on which a signed copy of the final award is received by the parties, from which the period of limitation for filing objections would start ticking. There can be no finality in the award, except after it is signed, because signing of the award gives legal effect and finality to the award.
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> (xvii) The date on which the signed award is provided to the parties is a crucial date in arbitration proceedings under the Indian Arbitration and Conciliation Act, 1996. It is from this date that: (a) the period of 30 days' for filing an application under Section 33 for correction and interpretation of the award, or additional award may be filed; (b) the arbitral proceedings would terminate as provided by Section 32(1) of the Act; (c) the period of limitation for filing objections to the award under Section 34 commences.

11 Fouchard, Gaillard, Goldman, International Commercial Arbitration, Ed. Emmannuel Gaillard, John Savage,, p.786 (Kluwer Law International).

(xviii) Section 34 provides recourse for judicial scrutiny of the award by a Court, upon making an application under sub-sections (2) and (3) for setting aside the award.

The period of limitation for filing the objections to the award u/S. 34 commences from the date on which the party making the application has "received" a signed copy of the arbitral award, as required by Section 31(5) of the 1996 Act.

Section 34(3) provides a specific time limit of three months from the date of "receipt" of the award, and a further period of thirty days, if the Court is satisfied that the party was prevented by sufficient

cause from making the application within the said period, but not thereafter.

In Union of India v. Popular Construction,12 this Court held that Section 5 of the Limitation Act, 1963 would not apply to applications filed under Section 34 of the Arbitration Act. It was held that :

> "12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result." 12 (2001) 8 SCC 470.

In Simplex Infrastructure v. Union of India,13 this Court held that the phrase "but not thereafter" provided under Section 34(3) of the Act makes it evident that the statutory period of limitation for filing an application for setting aside is three months, which is extendable by thirty days, if sufficient cause is made out. No further period of time can be granted for the filing of an application under Section 34. (xix) If the objections are not filed within the period prescribed by Section 34, the award holder is entitled to move for enforcement of the arbitral award as a deemed decree of the Court u/S. 36 of the Act. This Court in P. Radha Bai v. P. Ashok Kumar,14 held that :

> "32.5. Once the time-limit or extended time-limit for challenging the arbitral award expires, the period for enforcing the award under Section 36 of the Arbitration Act commences. This is evident from the phrase "where the time for making an application to set aside the arbitral award under Section 34 has expired". ["36. Enforcement.—Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."(emphasis supplied)] There is an integral nexus between the period prescribed under Section 34(3) to challenge the award and the commencement of the enforcement period under Section 36 to execute the award.
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> 36.2. Second, extending Section 17 of the Limitation Act to Section 34 would do violence to the scheme of the Arbitration Act. As discussed above, Section 36 enables a party to apply for enforcement of award when the period for challenging an award under Section 34 has expired. However, if Section 17 were to be extended to Section 34, the determination of "time for making an application to set aside the arbitral award" in Section 36 will become uncertain and create confusion in the enforcement of award. This runs counter to the scheme and object of the Arbitration Act." (xx) Relevance of a dissenting opinion 13 (2019) 12 SCC 455 14 (2019) 13 SCC 445.

(a) The dissenting opinion of a minority arbitrator can be relied upon by the party seeking to set aside the award to buttress its submissions in the proceedings under Section 34.

(b) At the stage of judicial scrutiny by the Court under Section 34, the Court is not precluded from considering the findings and conclusions of the dissenting opinion of the minority member of the tribunal.

(c) In the commentary of 'Russel on Arbitration', the relevance of a dissenting opinion was explained as follows :

> "6-058. Dissenting opinions. Any member of the tribunal who does not assent to an award need not sign it but may set out his own views of the case, either within the award document or in a separate "dissenting opinion". The arbitrator should consider carefully whether there is good reason for expressing his dissent, because a dissenting opinion may encourage a challenge to the award. This is for the parties' information only and does not form part of the award, but it may be admissible as evidence in relation to the procedural matters in the event of a challenge or may add weight to the arguments of a party wishing to appeal against the award."15 (emphasis supplied)
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> (d) Gary B. Born in his commentary on International Commercial Arbitration opines that :
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> "Even absent express authorization in national law or applicable institutional rules (or otherwise), the right to provide a dissenting or separate opinion is an appropriate concomitant of the arbitrator's adjudicative function and the tribunal's related obligation to make a reasoned award. Although there are legal systems where dissenting or separate opinions are either not permitted, or not customary, these domestic rules have little application in the context of party-nominated co-arbitrators, and diverse tribunals. Indeed, the right of an arbitrator to deliver a dissenting opinion is properly considered as an element of his / her adjudicative 15 David St. John Sutton, Judith Gill and Matthew Gearing QC, Russel on Arbitration, 24 th ed. (Sweet & Maxwell), p.
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> 313.

mandate, particularly in circumstances where a reasoned award is required. Only clear an explicit prohibition should preclude the making and publication to the parties of a dissenting opinion, which serves an important role in the deliberative process, and can provide a valuable check on arbitrary or indefensible decision making."16 It is further commented that :

> "There is nothing objectionable at all about an arbitrator "systematically drawing up a dissenting opinion, and insisting that it be communicated to the parties". If an arbitrator believes that the tribunal is making a seriously wrong decision, which cannot fairly be reconciled with the law and the evidentiary record, then he / she may

express that view. There is nothing wrong – and on the contrary, much that is right – with such a course as part of the adjudicatory process in which the tribunal's conclusion is expressed in a reasoned manner. And, if the arbitrator considers that the award's conclusions require a "systematic" discussion, that is also entirely appropriate; indeed, it is implied in the adjudicative process, and the requirement of a reasoned award."17 It is further observed that :

"...the very concept of a reasoned award by a multi-member tribunal permits a statement of different reasons – if different members of the tribunal in fact hold different views. This is an essential aspect of the process by which the parties have an opportunity to both, present their case, and hear the reasons for the tribunal's decision; not hearing the dissent deprives the parties of an important aspect of this process."

(e) In Ssangyong Engineering & Construction Co. Ltd v. NHAI,18 this Court upheld the view taken in the dissenting opinion to be the correct position in law. In this case, the Court was hearing a special leave petition from an order passed by a division bench of the Delhi High Court. This Court noted that:

16 Gary Born, International Commercial Arbitration, Wolters Kluwer, Ed. 2009, Volume II, p. 2466. 17 Gary Born, International Commercial Arbitration, Wolters Kluwer, Ed. 2009, Volume II, p. 2469. 18 (2019) 15 SCC 131.

"12. A Section 34 petition which was filed by the appellant was rejected by the learned Single Judge of the Delhi High Court, by a judgment and order dated 9- 8-2016 [Ssangyong Engg. and Construction Co. Ltd. v. NHAI, 2016 SCC OnLine Del 4536] , in which it was held that a possible view was taken by the majority arbitrators which, therefore, could not be interfered with, given the parameters of challenge to arbitral awards. The learned Single Judge also went on to hold that the New Series published by the Ministry could be applied in the case of the appellant as the base indices for 2004-2005 under the New Series were available. Having so held, the learned Single Judge stated that even though the view expressed in the dissenting award is more appealing, and that he preferred that view, yet he found that since the majority award is a possible view, the scope of interference being limited, the Section 34 petition was dismissed. A Section 37 appeal to the Division Bench of the Delhi High Court yielded the same result, by the impugned judgment dated 3-4-2017 [Ssangyong Engg. and Construction Co. Ltd. v. NHAI, 2017 SCC OnLine Del 7864 : (2017) 240 DLT 711]." This Court set aside the award. However, in paragraph 77 of the Judgment, the Court held as under :

"77. The judgments of the Single Judge [Ssangyong Engg. and Construction Co. Ltd. v. NHAI, 2016 SCC OnLine Del 4536] and of the Division Bench [Ssangyong Engg. and Construction Co. Ltd. v. NHAI, 2017 SCC OnLine Del 7864 : (2017) 240 DLT 711] of the Delhi High Court are set aside. Consequently, the majority award is also set aside. Under the scheme of Section 34 of the 1996 Act, the disputes that were decided by the majority award would have to be referred afresh to another arbitration. This

> would cause considerable delay and be contrary to one of the important objectives of the 1996 Act, namely, speedy resolution of disputes by the arbitral process under the Act. Therefore, in order to do complete justice between the parties, invoking our power under Article 142 of the Constitution of India, and given the fact that there is a minority award which awards the appellant its claim based upon the formula mentioned in the agreement between the parties, we uphold the minority award, and state that it is this award, together with interest, that will now be executed between the parties.

The minority award, in paras 11 and 12, states as follows:

> "11. I therefore award the claim of the claimant in full.
>
> 12. Costs — no amount is awarded to the parties. Each party shall bear its own cost."
> In Ssangyong, this Court upheld the view taken by the dissenting arbitrator in exercise of its powers under Article 142 of the Constitution, in order to do complete justice between the parties. The reason for doing so is mentioned in paragraph 77 i.e. the considerable delay which would be caused if another arbitration was to be held. This Court exercised its extraordinary power in Ssangyong keeping in mind the facts of the case, and the object of expeditious resolution of disputes under the Arbitration Act.

(f) In law, where the Court sets aside the award passed by the majority members of the tribunal, the underlying disputes would require to be decided afresh in an appropriate proceeding.

Under Section 34 of the Arbitration Act, the Court may either dismiss the objections filed, and uphold the award, or set aside the award if the grounds contained in sub-sections (2) and (2A) are made out. There is no power to modify an arbitral award.

In McDermott International Inc. v. Burn Standard Co. Ltd., this Court held as under :

> "52. The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, the scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it."
>
> 5. Applying the law to the facts of the present case, we find from a perusal of the arbitral proceedings that even though the award was pronounced on 27.04.2018, the signed copy of the award was provided to the parties only on 19.05.2018.

The procedural orders of the tribunal reveal that on 27.04.2018, only a copy of the award was provided to the parties to point out any computation error, any clerical or typographical error, or any other error of similar nature which may have occurred in the award on the next date. It was also recorded that the third arbitrator had dissented, and would be delivering his separate opinion. The proceedings were then posted for 12.05.2018.

On 12.05.2018, the third arbitrator pronounced his dissenting opinion. On that date, the tribunal posted the matter to 19.05.2018, to enable the parties to point out any typographical or clerical mistakes in the dissenting opinion, and for handing over the original record of the proceedings to the parties. On 19.05.2018, the signed copy of the award and the dissenting opinion, alongwith the original record, were handed over to the parties, as also to each of the arbitrators. The tribunal ordered the termination of the proceedings.

6. We are of the considered opinion that the period of limitation for filing objections would have to be reckoned from the date on which the signed copy of the award was made available to the parties i.e. on 19.05.2018 in the instant case.

7. It is the admitted position that the objections were filed within the period of limitation prescribed by Section 34(3) of the Act, if reckoned from 19.05.2018. Undisputedly, in the instant case, the objections have been filed within the period of limitation prescribed under Section 34(3) from the date of receipt of the signed award.

8. In the aforesaid facts and circumstances, the Appeal deserves to succeed.

The judgment of the Court of the District and Sessions Judge, Hissar, Haryana dated 14.02.2019, and the impugned order passed by the High Court of Punjab & Haryana dated 11.12.2019 are accordingly set aside.

9. The Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 being Arb. Pet. No. 316 of 2018 is restored to the file of the Court of District and Sessions Judge, Hissar, Haryana to be decided on merits in accordance with law.

All pending applications are disposed of. Ordered accordingly.

.....J. (Indu Malhotra) .....J. (Ajay Rastogi)
New Delhi;

March 2, 2021