

Ahluwalia Contracts India Ltd vs Ashok Khanna on 23 November, 2020

Author: Najmi Waziri

Bench: Najmi Waziri

KAMLESH KUMAR

23.11.2020 20:51

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ FAO 216/2020, CM APPL. 29892/2020 & CM APPL. 29927/2020

AHLUWALIA CONTRACTS INDIA LTD

.... Appellant

Through: Mr. Abdhesh Chaudhary, Advocate.
versus

ASHOK KHANNA

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% 23.11.2020 The hearing was conducted through video conferencing. CM APPL. 29893/2020 (Exemption) 1 Exemption allowed, subject to all just exceptions. 2 The application stands disposed-off.

FAO 216/2020, CM APPL. 29892/2020 & CM APPL. 29927/2020 3 The appellant's appeal against the arbitral award was dismissed on the ground that it was barred by limitation. The learned counsel for the appellant submits that albeit, the award was seen on the date it was passed, i.e. on 02.08.2018, the signed copy of the award was made available only on 07.09.2018. When computed from the said date of receipt i.e. 07.09.2018, the appeal is within time. He relies upon the dicta of the Supreme Court in State of Maharashtra and Ors. vs. ARK Builders Private Ltd. (2011) 4 SCC 616. The said judgement inter alia reads as under:

"12. The appellants are now before this court by grant of special leave. The two provisions of the Arbitration and Conciliation Act, 1996, relevant to answer the question raised in the case are sections 31 and 34. Section 31 deals with form and contents of arbitral award; and in so far as relevant for the present provides as follows:

"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) xxxxxxxxxxxx (3) xxxxxxxxxxxx (4) xxxxxxxxxxxx (5) After the arbitral award is made, a signed copy shall be delivered to each party.

(6), (7), (8) xxxxxxxxxxxx"

(emphasis added) 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.

13. Section 34 of the Act then provides for filing an application for setting aside an arbitral award, and sub- section (3) of that section lays down the period of limitation for making the application in the following terms:

"34. Application for setting aside arbitral award.- (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub- section (2) and sub- section (3).

(2) xxxxxxxx (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:

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. (4) xxxxxxxx"

The expression "party making that application had received the arbitral award" (emphasis supplied) can not be read in isolation and it must be understood in light of what is said earlier in 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.

14. We are supported in our view by the decision of this Court in Union of India v. Tecco Trichy Engineers & Contractors, in SCC para 8 of the decision it was held and observed as follows:(SCC p. 243) "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 added)

15. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a signed copy of the award is delivered to/received by the party making the application for setting it aside under section 34(1) of the Act. The legal position on the issue may be stated thus. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law."

4 Issue notice through Speed Post, approved courier, WhatsApp, e-mail, SMS and through other electronic viable modes, through counsel as well, returnable on 11.02.2021.

5 The order be uploaded on the website forthwith.

NAJMI WAZIRI, J NOVEMBER 23, 2020 RW