

(2016) 08 BOM CK 0014

BOMBAY HIGH COURT

Case No: Arbitration Petition No. 432 of 2016 along with Notice of Motion No. 1039 of 2016.

Logic Eastern India Private
Limited having its registered
office at Red Ford Capital
Parsvnath Tower, Level 1, Bhai
Veer Singh Marg, Gole Market,
New Delhi-110 001. Also at B-2,
Sector-31, Noida-201 301 -
Petitioner @HASH KEC
International Limited(Cables

APPELLANT

Vs

RESPONDENT

Date of Decision: Aug. 2, 2016

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 34(3)

Citation: (2016) 6 ALLMR 77 : (2016) 6 ArbILR 134 : (2016) 6 BCR 382 : (2016) 3 DCR 454 :
(2017) 3 RAJ 714

Hon'ble Judges: R.D. Dhanuka, J.

Bench: Single Bench

Advocate: Mr. Simil Purohit a/w Mr. Ram Kutwal, Advocates, for the Petitioner; Mr. A.Y. Sakhare, Senior Advocate a/w Mr. V.B. Pande i/by Mr. S.P. Srivastava, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

R.D. Dhanuka, J. - By this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), the petitioner seeks to impugn the arbitral award dated 7th December 2012 passed by the learned arbitrator allowing the claims made by the respondent herein and directing the petitioner to pay a sum of Rs. 13,31,40,938.56 with interest @ 14% p.a. w.e.f. 27th

February 2012 till realisation and to pay costs to the respondent quantified at Rs. 7,50,000/-. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. At the threshold, Mr. Sakhare, learned senior counsel appearing for the respondent has raised an objection about maintainability of this petition on the ground of limitation in filing this arbitration petition. Since the respondent has raised a plea of limitation in filing this arbitration petition, I have heard learned senior counsel for the respondent first on the issue of limitation.

3. Learned senior counsel for the respondent submits that on 15th November 2002, Memorandum of Understanding was signed between the petitioner and the respondent for bringing the products to the market. On 15th December 2002, the parties signed a License and Technology Development Agreement at Mumbai for development of the agreed product viz. CoT Broad Band Router, Network Management Software etc. on the terms and conditions recorded in the said agreement.

4. It is the case of the respondent that the petitioner had sent a proposal for settlement by way of (a) Purchase of capital equipments used in the project from the respondent at cost; (b) Purchase the components supplied by the respondent for the project at cost; (c) Repay the amount invested by the respondent in the project; and (d) Refund to the respondent by issuing 4,00,000 equity shares of the petitioner at Rs. 100/- per share (Rs. 4 crores) by cheque of Rs. 1 crore and by issuing 25,000 equity shares of the petitioner at Rs. 100/- per share to RPG Group Company. The petitioner issued a cheque of Rs. 20,00,000/- in favour of the respondent on 19th October 2007 pursuant to the said offer of settlement which was, however, dishonoured on presentation. The respondent, thereafter, issued a statutory notice for demand upon the petitioner on 12th December 2007.

5. The respondent also filed a complaint against the petitioner on 14th January 2008 under Section 138 of the Negotiable Instruments Act. The petitioner, thereafter, along with their reply dated 20th February 2008 forwarded two demand drafts of Rs. 9 lacs and Rs. 1 lac both dated 16th February 2008. There was further correspondence exchanged between the parties. Since the matter was not settled between the parties, the respondent vide its advocate notice dated 29th April 2011 called upon the petitioner to confirm the appointment of Shri Dharam Sharma, Advocate to act as a sole arbitrator for resolving the disputes between the parties. The said notice was received by the petitioner in the first week of May 2011. On 13th June 2011, the respondent filed an application under Section 11 of the Arbitration Act for appointment of an arbitrator in this Court. This Court by an order dated 14th October 2011 appointed former Judge of this Court to resolve the disputes between the parties. Learned arbitrator issued various directions to the parties and to file pleadings and documents on 7th January 2012.

6. The respondent filed its statement of claim on 27th February 2012 and sent it to the petitioner upon their address at B-2, Sector-31, Noida-201 301. It is the case of the respondent that the respondent had filed an application on 16th August 2012 under Section 25 of the Arbitration Act before the learned arbitrator and had sent a copy of the said application to the petitioner through speed post with acknowledgement due which was returned with remark "door locked intimation served." The said application filed by the respondent was allowed by the learned arbitrator on 20th November 2012.

7. On 7th December 2012, learned arbitrator made an award allowing the claims made by the respondent. On 10th December 2012, learned arbitrator sent a copy of minutes of meeting and evidence of the respondent herein both dated 20th December 2012 and also a copy of the final arbitration award dated 7th December 2012 to both the parties. Learned arbitrator had sent a copy of the signed award to the petitioner at their last known registered office at Plot No. 4, Road No. 53B, Punjabi Bagh (W), New Delhi - 110 026 and at another office address at B-2, Sector-31, Noida-201 301 through registered post with acknowledgement due.

8. In so far as the signed copy of the arbitration award which was sent by the learned arbitrator at the registered office address of the petitioner is concerned, the said packet was returned with postal remark "No such firm at this address sign, 18/12/12."

9. In so far as the copy of the signed award sent by the learned arbitrator at the another office address of the petitioner i.e. B-2, Sector- 31, Noida-201 301 is concerned, the said packet was returned with postal remarks "izklrdkZ edku NksM+dj ukekywe fd/kj pys x;s vr% okil]" sign. 17/12."

10. On 10th February 2013, the learned arbitrator informed the respondent herein that the award which was sent to the petitioner was returned back to the learned arbitrator. Learned arbitrator issued a direction to the respondent herein to serve the same to the petitioner personally. It is the case of the respondent that the respondent herein made several attempts to serve the petitioner personally but the petitioner deliberately avoided to receive the copy of the signed award.

11. On 18th July 2013, the respondent herein made an application before the learned arbitrator for issuing a direction to publishig the operative part of the arbitration award in daily newspapers in Delhi National Capital Region (NCR). On 19th July 2013, learned arbitrator issued a direction to the respondent to publish the arbitration award in leading daily newspapers in NCR. The respondent accordingly published the operative part of the arbitration award dated 7th December 2012 in two leading daily newspapers having wide circulation in NCR i.e. Hindustan Times (English Edition) and Hindustan (Hindi Edition). On 9th June 2015, the respondent served a copy of the execution petition and award along with summons of the District Court, Noida to the petitioner herein which was duly accepted and

acknowledged by the petitioner. On 11th December 2015, the petitioner lodged the present arbitration petition in this Court.

12. Mr. Sakhare, learned senior counsel appearing for the respondent invited my attention to some of the correspondence annexed to the petition and also affidavit-in-reply filed by the respondent raising various issues including maintainability of the petition on the ground of limitation and also on merits.

13. Learned senior counsel for the respondent submits that though a signed copy of the arbitral award was sent by the learned arbitrator at the office address of the petitioner at B-2, Sector-31, Noida-201 301, the petitioner deliberately avoided to receive the said signed copy of the award. He submits that on the direction issued by the learned arbitrator, the respondent herein had also published the operative part of the said arbitral award in two leading newspapers having wide circulation in NCR viz. Hindustan Times (English Edition) and Hindustan (Hindi Edition).

14. Learned senior counsel invited my attention to the registered office address of the petitioner mentioned in the cause title of the petition i.e. Red Fort Capital Parsvnath Tower, Level 1, Bhai Veer Singh Marg, Gole Market, New Delhi -110 001 and also at B-2, Sector- 31, Noida-201 301. My attention is also invited to paragraph 2(A) of the arbitration petition in which it is averred by the petitioner that the petitioner has its work, Research and Development Centre at B-2, Sector-31, Noida, U.P. My attention is also invited to the verification clause duly signed by Mr.Arun Kumar, authorised signatory of the petitioner declaring that what was stated in paragraphs 1 to 3 was true to his own knowledge. He submits that it is thus an admitted position that at least the address of the petitioner at B-2, Sector-31, Noida, U.P. was the existing address of the petitioner when the copy of the signed award was sent by the learned arbitrator and the said address was all throughout the address of the petitioner even during the period when the arbitration proceedings were being conducted. He submits that the petitioner has avoided to receive the copy of the signed award though it was sent by registered post A.D. by the learned arbitrator. He submits that the service of the signed copy of the award was deemed to have been effected under Section 3 of the Arbitration Act.

15. Learned senior counsel placed reliance on the judgment of this Court in the case of **Zapp India Limited V. Maheshwar Textiles, reported in 2013 (4) Bom CR 698** and in particular paragraph 12 in support of his submission that since the petitioner had avoided service of the signed copy of the award, the limitation for filing an arbitration petition under Section 34 (3) of the Arbitration Act would commence from the date of the petitioner avoiding the service and/or refusing to accept the service of the award though it was sent by the registered post with acknowledgement due by the learned arbitrator.

16. Learned senior counsel for the respondent also placed reliance on the judgment of the Delhi High Court delivered on **24th March 2014 in the case of Vaibhav**

Bhatia & Anr. v. M/s. Rs. & T Finance Ltd. & Anr. in FOA No.88 of 2014 and in particular paragraphs 3 and 4 thereof in support of his submission that since the signed copy of the award was sent by the registered post A.D. at the last known address of the petitioner by the learned arbitrator and if the said copy of the signed award could not be served in normal course and was returned, it could only be attributed to the own conduct of the addressee himself.

17. Learned senior counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **M/s.Madan and Co. v. Wazir Jaivir Chand, reported in AIR 1989 SC 630** and in particular paragraphs 5 and 6 in support of his submission that a letter sent by the registered post A.D. at the correct address of the addressee is presumed to have been delivered under Section 27 of the General Clauses Act, 1897.

18. Learned senior counsel for the respondent placed reliance on the judgment of the Supreme Court in the case of **Union of India v. Popular Construction Co., reported in 2001 (8) SCC 470** in support of his submission that if the application is filed beyond the period of limitation as prescribed under Section 34(3) of the Arbitration Act, such application would not be an application filed in accordance with Section 34(1) of the Arbitration Act. He submits that Section 5 of the Limitation Act, 1963 does not apply to the arbitration application filed under Section 34 of the Arbitration Act. He submits that the Court can condone the delay only for the period of 30 days and that also if a sufficient cause is made out by the applicant for condonation of such delay upto the period of 30 days.

19. Learned senior counsel placed reliance on the judgment of this Court in the case of **Krishnabhagwan Rajaram Sharma v. Tata Motors Finance Ltd. decided on 4th March 2015 in Arbitration Petition No.304 of 2014** and other connected matters and more particularly paragraphs 23 and 57 to 60 and would submit that under Section 3 of the Arbitration Act, any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address.

20. Learned senior counsel for the respondent invited my attention to various correspondence annexed to the arbitration petition filed by the petitioner and to the affidavit-in-reply filed by the respondent and would submit that various letters were addressed by the petitioner from the said Noida address of the petitioner and various letters addressed by the respondent were received by the petitioner at the said Noida address of the petitioner.

21. My attention is also invited to the criminal proceedings filed by the respondent against the petitioner in which admittedly one of the addresses of the petitioner mentioned was that B-2, Sector-31, Noida-201 301 at which address the petitioner had received all the notices in those proceedings.

22. Mr. Purohit, learned counsel appearing for the petitioner, on the other hand, submits that though the respondent was fully aware of the website of the petitioner and also email ID, the petitioner was not served upon the notices or copy of the arbitral award at the website address of the petitioner or through email. He submits that the respondent had filed a company petition against the petitioner inter alia praying for winding up. No relief, however, was granted in favour of the respondent in the said company petition. He submits that the criminal complaint filed by the respondent against the petitioner in the Court of Metropolitan Magistrate was also dismissed.

23. My attention is invited to the track result issued by the Indian Post in respect of the post alleged to have been delivered on 7th March 2012 at Sector -37, Noida and also a track result issued by the Indian Post dated 9th August 2012 showing the alleged delivery on the address Sector-37, Noida. He submits that the address of the petitioner was not of Sector-37, Noida. He submits that these two documents produced by the petitioner itself would indicate that the petitioner was not served with the notices of the arbitral proceedings at the correct address of the petitioner. He invited my attention to the averment made in the arbitration petition alleging that no arbitration proceedings were served by the learned arbitrator upon the petitioner.

24. Learned counsel for the petitioner invited my attention to the averment made in paragraph 12 of the rejoinder alleging that the work station of the petitioner had also been shifted to the address at C-56/39, Sector 62, Noida where it had been operational for last four years. The petitioner, however, did not produce any document in respect of these allegations in the rejoinder which was contrary to the averments made in the arbitration petition filed on 11th December 2015. It is submitted by the learned counsel for the petitioner that even according to the additional affidavit filed by the respondent on 15th July 2016, the endorsement relied upon in paragraph 3 of the said affidavit would indicate that the petitioner was not available at that address.

25. It is submitted that it is not the case of the respondent that the petitioner had refused to accept the service at the address B-2, Sector-31, Noida-201 301. He submits that the registered office of the petitioner is admittedly shifted to Red Fort Capital Parsvnath Tower, Level 1, Bhai Veer Singh Marg, Gole Market, New Delhi-110 001. He submits that the petitioner was served with the copy of the award for the first time pursuant to the order passed by the Gaziabad Court on 9th October 2015. It is submitted by the learned counsel for the petitioner that the petitioner had been contesting all the proceedings filed by the respondent all throughout. He submits that even according to the respondent, the name plate of the petitioner was not there when the respondent had attempted to serve the notice upon the petitioner. He submits that the petitioner company is a company recognised by the Government of India. There was no reason to evade the service of notice alleged to

have been issued by the learned arbitrator and to refuse the copy of the signed copy of the award alleged to have been dispatched by the learned arbitrator. He submits that the learned arbitrator when alleged to have dispatched a signed copy of the award, office of the petitioner had already been shifted.

26. Learned counsel for the petitioner submits that since the signed copy of the award was not delivered by the learned arbitrator in terms of Section 31(5) of the Arbitration Act upon the petitioner, the limitation for filing the arbitration petition under Section 34(3) had not commenced and thus the petition was filed within the time prescribed under Section 34(3) and is not barred by law of limitation as canvassed by the respondent.

27. Learned counsel for the petitioner also addressed this Court on merits and would submit that the learned arbitrator has allowed the time barred claims made by the respondent. In support of this submission, learned counsel for the petitioner invited my attention to various documents annexed to the petition.

28. Learned counsel for the petitioner placed reliance on Section 3 of the Arbitration Act and would submit that Section 3(1)(b) of the Arbitration Act would not assist the case of the respondent since the respondent had not made any reasonable inquiry into the correct place of business i.e. address of the registered office of the petitioner or other addresses of the office of the petitioner and had not made an attempt to serve the petitioner at the new addresses.

29. Mr. Sakhare, learned senior counsel for the respondent also dealt with the submissions made by the learned counsel for the petitioner on merits of the award and would submit that the claims made by the respondent were not barred by law of limitation. Learned senior counsel for the respondent in rejoinder submits that all the notices sent by the learned arbitrator and the copy of the signed award were sent at the two addresses of the petitioner including the address at B-2, Sector-31, Noida-201 301. He submits that admittedly the office of the petitioner is also situated at B-2, Sector-31, Noida-201 301. He submits that the said address is also mentioned in the vakalatnama filed by the petitioner in the present proceedings. He submits that the learned counsel for the petitioner cannot be allowed to urge now that the address of the petitioner which was mentioned in the arbitration petition was also shifted four years ago.

Reasons and Conclusions :-

30. Since the respondent has raised an issue of limitation in filing the arbitration petition by the petitioner beyond the period of three months provided under Section 34(3) of the Arbitration Act from the date of delivery or deemed delivery of signed copy of the arbitration award from the learned arbitrator, I do not propose to go into the merits of the claims whether properly awarded by the learned arbitrator or not.

31. A perusal of the record clearly indicates that it is an admitted position that the petitioner had also an office address at B-2, Sector-31, Noida-201 301 and the said address had been given by the petitioner all throughout in all the proceedings including this arbitration petition. In paragraph 2(A) of the arbitration petition, the petitioner has categorically admitted that the petitioner has its work, Research and Development Centre at B-2, Sector-31, Noida, U.P. A perusal of the verification clause also clearly indicates that the authorised signatory of the petitioner who had signed the verification clause has also admitted that what is stated in paragraphs 1 to 3 of the petition is true to his own knowledge. I am thus not inclined to accept the submission of the learned counsel for the petitioner that the said address of the petitioner as B-2, Sector-31, Noida, U.P. had also been shifted to some other address.

32. It is not in dispute that the learned arbitrator had forwarded a copy of the signed award by the registered post A.D. upon the two addresses of the petitioner including the address at B-2, Sector-31, Noida, U.P. but the same was returned. It is not the case of the petitioner that the petitioner had informed the alleged new address of the petitioner to the respondent and the learned arbitrator. It is also not the case of the petitioner that the petitioner had left necessary instructions with the postal authorities to forward them to the address where the petitioner had alleged to have shifted its work, Research and Development Centre or its registered office or to deliver it to some other person authorised by it.

33. Supreme Court in the case of *M/s. Madan and Co. (supra)* has interpreted the provisions of Section 27 of the General Clauses Act, 1897 and has held that an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it and he can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is held by the Supreme Court that if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it could not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. It is held that in such a situation, the Court has to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post" correctly and properly addressed to a tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. In my view, the said judgment would squarely apply to the facts of this case.

34. This Court in the case of *Krishnabhagwan Rajaram Sharma (supra)* has interpreted Section 3 of the Arbitration Act and has held that any written

communication is deemed to have been received if it is delivered to the addressee by registered acknowledgement due personally or at his place of business, habitual residence or mailing address by the learned arbitrator or by a party at the last known address of the addressee.

35. Supreme Court in the case of **Union of India v. Popular Construction Co.** (supra) has held that section 5 of the Limitation Act, 1963 does not apply while computing the period of limitation under Section 34(3) of the Arbitration Act.

36. This Court in the case of **Jasvinder Kaur v. Rs. & T Finance Ltd. delivered on 12th March 2015 in Arbitration Petition No.1053 of 2012** has construed Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 and also Section 27 of the General Clauses Act, 1897 and has held that Section 3(1)(b) of the Arbitration Act makes it clear that even if a place of business, habitual residence or mailing address of a party cannot be found after making a reasonable inquiry, a written communication is deemed to have been received if it sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides record of the attempt to deliver it. In that case, there was no dispute that the address mentioned by the learned arbitrator on the award as well as in the notices and also on the acknowledgement card was the correct address of the petitioner. It is held by this Court that the copy of the award was deemed to have been received by the petitioner and the limitation would commence from the date of such deemed delivery for the purpose of computation of the limitation under Section 34(3) of the Arbitration Act.

37. In this case, at least one of the two addresses of the petitioner was existing on the date of the learned arbitrator having dispatched the signed copy of the award under Section 31(5) of the Arbitration Act which was the last known address of the petitioner. In my view, the said order and judgment of this Court dated 12th March 2015 in the case of **Jasvinder Kaur v. Rs. & T Finance Ltd.** (supra) squarely applies to the facts of this case. I am respectfully bound by the said judgment.

38. In my view, since the learned arbitrator had sent a signed copy of the arbitral award at the last known address i.e. place of business of the petitioner by registered post A.D., the communication was deemed to have been received on the day it was so delivered by the postman. In my view, the petitioner has evaded the service of the signed copy of the arbitral award though the same was attempted to be served at the last known address of the petitioner by the learned arbitrator.

39. I am therefore of the view that signed copy of the arbitral award was deemed to have been served upon the petitioner and thus the limitation for filing an arbitration petition under Section 34(3) of the Arbitration Act would commence when the postman had made an attempt to deliver the said signed copy of the arbitral award at the last known address of the petitioner in absence of the petitioner leaving necessary intimation with the postal authorities that the petitioner had already

shifted to some other address with further instructions to deliver the same to some other person authorised by him. In my view, the petitioner thus cannot be allowed to take an advantage of its own wrong and to urge that there was no service of the signed copy of the impugned award upon the petitioner.

40. In so far as the submission of the learned counsel for the petitioner that the respondent or the learned arbitrator ought to have made a reasonable enquiry before dispatching the copy of the award, about the latest address of the petitioner is concerned, it is not the case of the petitioner that the petitioner had informed the alleged new address of the petitioner for the purpose of effecting the service of the notices, pleadings and copy of the impugned award. In my view, learned arbitrator was thus justified in dispatching the copy of the signed award upon the petitioner at the last known address of the petitioner available on record. There is no substance in this submission of the learned counsel for the petitioner also for the reason that at least one address of the petitioner remained the same.

41. In so far as the submission of the learned counsel for the petitioner that the petitioner had contested all the proceedings filed by the respondent and there was no reason for evading the service of signed copy of the impugned award is concerned, I am not inclined to accept this submission made by the learned counsel for the petitioner. The fact remains that even in those proceedings which were filed by the respondent including the criminal proceedings, one of the addresses of the petitioner i.e. B-2, Sector-31, Noida, U.P. was continued to be on record.

42. In so far as the submission of the learned counsel for the petitioner that notices were sent by the learned arbitrator in past at the address of Sector-37 Noida which was not the address of the petitioner is concerned, it is not in dispute that the learned arbitrator as well as the respondent had sent notices upon the petitioner at both the addresses including the admitted address i.e. B-2, Sector-31, Noida, U.P. There is thus no substance in this submission of the learned counsel for the petitioner. Since this Court is of the view that the arbitration petition was not filed within three months from the date of deemed service of the signed copy of the award from the learned arbitrator, the petition is barred by limitation and thus this Court is not required to consider the submissions made by the learned counsel for the parties on merits of the award.

43. I therefore pass the following order :-

(a) Arbitration Petition No. 432 of 2016 is dismissed as barred by limitation prescribed under Section 34 (3) of the Arbitration and Conciliation Act, 1996;

(b) It is made clear that this Court has not expressed any views on merits of the matter;

(c) In view of dismissal of the arbitration petition, Notice of Motion No.1039 of 2016 does not survive and is disposed of accordingly.

(d) There shall be no order as costs.