* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.07.2017
Pronounced on: 10.08.2017

\+ **FAO (OS) (COMM) 149/2017, C.M. APPL.25974/2017, 25975/2017 & 25976/2017**

DELHI URBAN SHELTER IMPROVEMENT BOARD..... Appellant
Through : Sh. Rajeev Sharma and Ms. Radha Lakshmi. R., Advocates.

versus

LAKHVINDER SINGH ..... Respondent
Through : Sh. Arun Batta, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE S.P. GARG

MR. JUSTICE S. RAVINDRA BHAT

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1. The Appellant (hereafter "DUSIB") is aggrieved by the judgment and order dated 04.05.2017 by which the learned Single Judge held that O.M.P (Comm.) No. 421 of 2016 filed by the Appellant was barred by limitation. The primary question for consideration in this Court is whether Section 31(5) of the *Arbitration and Conciliation Act, 1996* (the "Act") contemplates the delivery of a copy of the award signed in original or whether a photocopy of the signed award would also suffice the requirement under Section 31(5); and whether the Single Judge was correct in holding that the petition under Section 34 of the Act fell beyond the period of limitation as specified under Section 34(3) of the Act.

2. DUSIB is a statutory body created by the Delhi Urban Shelter Improvement Board Act, 2010 ("the DUSIB Act"). It invited tenders for allotment of parking site at West Delhi District Centre, Shivaji Place, Raja Garden, New Delhi. The Respondent (hereafter "Lakhvinder") successfully bid for the site; a license agreement dated 12.06.2013 was executed between the parties. This also provided for reference of disputes to arbitration. Lakhvinder raised certain disputes *inter alia*, regarding the condition of the site, which were referred for decision by a Sole Arbitrator. The Arbitrator heard arguments in the matter on 02.11.2015 and the matter was reserved for passing of an award. DUSIB submits that no award was received for nearly four months, and a letter, dated 14.03.2016 was sent to the arbitral tribunal by speed post on 15.03.2016 requesting him to pronounce the award. The tribunal passed an award dated 14.03.2016 awarding an amount of ₹ 1,44,28,500/- in Lakhvinder's favour. A photocopy of the signed award was sent to one of the senior officers of DUSIB, its Director (A&M), at its office at Punarwas Bhavan, I.P Estate, New Delhi.

3. DUSIB claimed ignorance to the fact that the award had been made and by a reminder dated 24.05.2016, it requested the Arbitrator to make an award. The letter dated 24.05.2016 was received back un-served; it was sent again, on 02.06.2016. Subsequently, the arbitrator sent a photocopy of the signed award, dated 14.03.2016 to DUSIB at the address as set out in the statement of claim under cover of letter dated 26.5.2016. Thereafter, the petition under Section 34 of the Act was filed on 23.08.2016.

4. In its petition under Section 34 of the *Arbitration and Conciliation Act, 1996* ("the Act") DUSIBsubmitted that the impugned award was received by it on 26.05.2016 and on that basis it was further asserted that the

petition was filed within time. However, it was argued on behalf of Lakhvinder that the letter dated 24.05.2016 was sent mischievously, as the DUSIB had already received a copy of the impugned award and the said letter was written only to extend the period of limitation. This receipt was admitted by DUSIB in the affidavit dated 07.11.2016, where it did not deny having received the award, on 22.03.2016 (this was not disclosed in the petition, however was admitted to otherwise, as noted in the decision by the learned Single Judge) as follows:

> "*6. it seems that the said letter sent by the Arbitrator was received in the said office. The petitioner follows a system of having an e-office wherein all communications are scanned and then sent online. The said letter was received and marked to Director/Assistant Director but on account of breakdown in the computer system, the same could not be acted upon.*"

5. DUSIB, however, contended that the period of limitation would not commence from the date of receipt of the copy of the impugned award, as the said delivery did not comply with the provisions of Section 31(5) of the Act, since the copy of the award forwarded by the arbitrator was not a signed copy. It was also argued that it follows an e-office system wherein all communications are scanned and then sent online; the letter dated 14.03.2016 was received and marked to Deputy Director but on account of breakdown in the computer system, it could not be acted upon.

6. Before the Single Judge, DUSIB relied on *State of Maharashtra and Others v. ARK Builders Private Limited* (2011) 4 SCC 616 and *Hindustan Construction Company Ltd. v. Union of India* AIR 1967 SC 526, in support of its argument that the copy of the award must be signed in the handwriting of and by, the arbitrator and delivered to the parties in compliance of the

requirement of Section 31(5) of the Act. DUSIB also relied on the judgment of the Supreme Court in *Union of India v. Tecco Trichy Engineers & Contractors* (2005) 4 SCC 239. The broad contention was that in the absence of strict compliance with Section 31 (5), there is no delivery of a copy of the award in the eyes of law and that consequently, the period of limitation had not expired. During the course of hearing it was contended by DUSIB that neither the copy of the award sent by letter dated 14.03.2016 nor was the copy of the award sent by letter dated 26.5.2016 were the award signed in original as contemplated by Section 31(5) of the Act. In both cases, it was contended that, what was sent was a photocopy of the award not bearing the signature in original of the Arbitrator and DUSIB submitted that therefore, the limitation period for filing a petition under Section 34 had not commenced.

7. The learned Single Judge, by the impugned judgment, dated 04.05.2017 held that the appeal under Section 34 of the Act filed by DUSIB was barred by limitation. The Single Judge's reasoning is as follows:

> *"13. It cannot be disputed that for the delivery of the arbitral award to a party to be effective, the same has to be 'received' by the party and the period of limitation would also be calculated from the aforesaid date. Indisputably, the period of limitation would commence from the date when the impugned award is served on DUSIB, in the manner as prescribed under Section 31 (5) of the Act. Thus, a signed copy of the award is required to be delivered. Unlike in the case of ARK Builders Private Limited (supra), in the present case, there is no dispute as to the delivery of a copy of the award by the arbitrator. The only question is whether the copy of the impugned award delivered to DUSIB by the arbitrator was a signed copy.*

14. The covering letter enclosing the impugned award was signed in original and also bore the stamp of the arbitrator. The copy of the award enclosed with the letter was stamped with the name of the arbitrator in original on every page. The stamp was, plainly, to authenticate the copy of the award and DUSIB does not dispute that copy of the award authenticated by the arbitrator was received by DUSIB; its only contention is that the copy of the award was not signed in the handwriting of the arbitrator.

15. The requirement of delivering a signed copy of the award must be considered in the context of the scheme of the Act.

16. Section 31 of the Act contains provisions as regards the form and contents of the arbitral award. Sub-section (1) requires that the award shall be in writing and shall be signed by the members of the arbitral tribunal. Sub-section (3) of Section 31 expressly provides that the arbitral award shall state the reasons upon which it is based unless the parties have agreed otherwise or the award is a consent award under Section 30 of the Act. Sub-section (4) of 31 requires that the date of the award and place of arbitration be stated on the award. Sub-section (5) of Section 31 of the Act requires that after the arbitral award is made, a signed copy shall be delivered to each party. The emphasis is clearly on the delivery of the award to each party. In the scheme of the Act, delivering the award in terms of Section 31 (5) of the Act would terminate the arbitral proceedings under Section 32 (1) of the Act. This is undoubtedly important as the period for limitation would commence on the award being delivered. The expression 'signed copy' clearly indicates the legislative intent that a copy authenticated by the arbitrator is served on each party. The purpose of enacting the said provision is clearly to ensure that the parties receiving the award are in a position to act on the same.

17. Obviously, the award would require to be signed by the arbitrator in original, however, it is not necessary that the copy of the award also bear the full signatures in original in writing

of the arbitrator. The words "signed copy of the award" would include a copy of the award duly authenticated by the arbitrator by his mark. A rubber stamp of the signature of the arbitrator or digitally signed copy would be equally compliant with the provisions of Section 31 (5) of the Act. In today's time, where much of the correspondence is by e-mails and in electronic form, other methods of authentication (other than signatures in own handwriting) have been adopted universally. It would not be apposite to read the expression "signed copy of the award" in a restrictive manner so as to only imply a copy bearing the original signatures of the arbitrator in his handwriting."

8. The Single Judge also relied upon Section 3 (56) of the General Clauses Act, 1897 and the definition of the expression "signed"; he also quoted from Black's Law Dictionary. It was then, further held that

> "*the expression "signed copy of an award" would take within its meaning a copy that bears the 'mark' of the arbitrator which authenticates a copy. The mark would clearly include a mark in writing as well as a rubber stamp of the name of the arbitrator or any other mark that is adopted by the arbitrator as his own.*"

9. Mr. Sharma, the learned counsel appearing for DUSIB relied upon the decisions of the Supreme Court in *ARK Builders Private Ltd (supra)* and *Hindustan Construction Company Ltd.* (*supra*), in support of his contention that the copy of the award must be signed in the handwriting of the arbitrator and delivered to the parties in compliance of the requirement of Section 31(5) of the Act. DUSIB also relied on the judgment of the Supreme Court in *Union of India v. Tecco Trichy Engineers & Contractors* (2005) 4 SCC 239 wherein the Supreme Court observed as under:

> "*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 Section34(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."

10. It was argued that in the face of such clear authority, the Single Judge could not have proceeded to hold that the petition under Section 34 was time-barred.

11. Counsel for the claimant/Lakhvinder submitted that as a matter of fact DUSIB had been served with the award vide letter dated 14.03.2016 and calculating the limitation period from the said date, the petition was barred by limitation having been filed beyond 120 days. It was argued that the Appellant cannot gloss over the fact that the copy of the award, upon which the Section 34 petition was ultimately filed, was also similar to the one received in March, by DUSIB; therefore, if its contentions were to be accepted, the time for filing the objection had not even commenced. Learned counsel urged the court to accept the Single Judge's findings, stating that if the Appellant had any doubts about the correctness of either copy, it would have corresponded with the arbitrator. Furthermore, the copies sent, were

under cover of signed letters, which was sufficient compliance with Section 31 (5).

12. The provision, i.e., Section 31 (5) of the Act corresponds to Article 31 of the UNCITRAL Model Law; Section 31(5) of the Act has been extracted from paragraph 4 of Article 31 of the Model Law. It was observed that according to Article 36(1)(a)(v) of the Model Law and Article V (1)(e) of the 1958 New York Convention, recognition or enforcement of an award might be refused if the award did not specify the moment when the award became binding. In an attempt to define that moment, the UN Commission on International Trade Law (hereafter, also "the Commission") considered the following three variants of a possible rule; an arbitral award becomes binding on the parties as of (a) the date on which the award is made, (b) the date on which the award is delivered to the parties, or (c) the date on which the period of time for making an application for setting aside the award expires.

13. Although this proposition was generally approved of, it was pointed out that under Article 34(3) (which corresponds with Section 34(3) of the Act), the setting aside procedure already specified that it was the date on which the party received the award that commenced the three month period after which the award should become binding. Based on deliberations on this premise, the Commission did not adopt the proposal. The same approach was adopted in Section 31(5) of the Act where the arbitral award becomes binding when the party receives a signed copy of the award, and the same receipt becomes relevant for the purposes of sections 33(1), (4) and 34(3). Therefore, the award becomes binding on the expiry of three months from the date of receipt of the award by the parties, unless a party makes an

application to the court within that period for setting aside the award.

14. Section 31 (5) of the Act contemplates the delivery of a signed copy of the arbitral award to be delivered to each party, and Section34(3) states that an application for setting aside of the award may not be made, *inter alia*, after three months have elapsed from the date on which the party making the application had "received" the arbitral award. DUSIB has argued that the copy of the award that had been received was not a signed copy of the award, and as such, the limitation had not been triggered, and that the Single Judge had erred in holding the same to be barred by limitation. However, the covering letter enclosing the arbitral award dated 14.03.2016 was signed in original and also bore the stamp of the arbitrator. The copy of the award enclosed with the letter was stamped with the name of the arbitrator in original on every page. The stamp was, plainly, to authenticate the copy of the award and the DUSIB did not dispute that the copy of the award authenticated by the Arbitrator was received by DUSIB; its only contention was that the copy of the award was not signed in the handwriting of the arbitrator.

15. The reference to the case of *ARK Builders Private Limited* (*supra*) where there was a dispute as to the delivery of a copy of the award by the arbitrator, by the Appellant would be inapplicable since, in the present case, the delivery of the copy of the award is not in contention. The only question is whether the copy of the impugned award, delivered to DUSIB by the arbitrator was a signed copy. Similarly, the decision in *Tecco Trichy Engineers & Contractors* (*supra*) contemplates the initiation of the limitation described under Section 34 in the light of the delivery of the arbitral award to the party once the party "receives" the award; the same not being in dispute

in the present case.

16. As observed by the Single Judge, the expression 'signed copy' in Section 31(5) clearly indicates the legislative intent that a copy authenticated by the arbitrator is served on each party. The purpose of enacting the said provision is clearly to ensure that the parties receiving the award are in a position to act on the same. Emphasizing on this legislative intent, the Single Judge elaborated on how the authenticity of correspondence in the technologically advanced times of today does not necessarily pertain to only signatures in writing, and it would be adverse to read the expression *"signed copy of the award"* in a restrictive manner as to connote a copy bearing the original signatures of the arbitrator in his handwriting. The Single Judge cited Section 3(56) of the General Clauses Act, 1897 that defines 'sign' as under:

> "*(56) - "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions;*"

and also the various definitions of "sign" and "signature" as provided in *Black's Law Dictionary, Eighth Edition*, to demonstrate the utility of such a sign or a signature, which is primarily for authentication purposes.

National Agricultural Co-operative Marketing Federation of Indian Ltd. v. M/s. R. Piyarelall Import and Export Ltd. AIR 2016 Cal 160, a Division Bench of the Calcutta High Court upheld the decision of the Single Judge rejecting the petition under Section 34 of the Act for setting aside an award on the ground of limitation, was also cited by the Single Judge, where the arbitral award was duly signed by all the three arbitrators and a certified

copy of the award was forwarded to each of the parties by the Registrar of the Indian Council of Arbitration but the photocopy of the signed award was not signed in original by the arbitrators. Here, the Court held that:

> "*24 it was not the intention of legislature that all the copies of the award,- dispatched to the respective parties would have to be separately signed by the Learned arbitrators. A certified photocopy of the original award along with the signatures of the members of the Arbitral Tribunal would suffice.*
> *25. Had It been the legislative intent that all copies of the award required to be furnished to the respective parties to a multiparty arbitration, should actually be signed by members of the arbitral tribunal themselves and/or in other words, each of the copies should contain: the original signatures of the arbitrators. Parliament would perhaps, not have used the expression 'signed copy of the award' but used the expression 'a copy of the award, duly signed by the arbitrators', in Section 31(5) of the 1996 Act.*"

17. In *Continental Telepower Industries Ltd.v. Union of India (UOI) and Ors.* ILR (2009) Supp. (7) Delhi 310, a Single Judge (*Rajiv Sahai Endlaw, J*), dismissing the submission that a petition under Section 34 had to be accompanied by an ink-signed copy of the award, held that in the view of the pre-emptive language of the proviso to Section 34(3), the petition under Section 34(1) ought to be filed within three months of receipt of photocopy of the award. The relevant parts of this decision are as follows:

> "*10. At the outset, in my opinion the requirement in Section 31(5) of the Act is not for delivering an ink signed copy of the award. Section 34 also in fact does not require the filing of any ink signed copy of the award along with petition though the award would definitely be required by the court to appreciate the contentions with respect thereto. Hindustan Construction Co. Ltd. (Supra) cited by the Counsel for the petitioner in fact also is not a judgment on the proposition that a copy of the*

award bearing the original signatures of the arbitrator was required to be delivered under the 1940 Act also. The said judgment while dealing with the expression "sign" holds that the same means to writing one's name on some document or paper in acknowledgment of execution thereof. Once the petitioner had received the photocopy of the award also bearing the photocopy of the signatures appended by the arbitrator to the original award (which perhaps may have been sent by the arbitrator to the appointing authority as is borne out from the letter dated 26th November, 2001), the acknowledgment of the arbitrator of having made/published the award is sufficiently borne out. The correspondence subsequently of the petitioner also does not show that the petitioner in any manner doubted the award to be of the arbitrator who was conducting the arbitration proceedings.

11. Not only so, the photocopy of the award admittedly received by the petitioner was under cover of a letter dated 26.11.2001. It is not the case of the petitioner that the said letter did not bear the signatures in original of the arbitrator. The said letter unequivocally states that what was enclosed therewith was the award in the subject arbitration case. Even if what was received as enclosure by the petitioner, to the said letter was the photocopy of the signed award, the letter under signatures in original of the arbitrator, was sufficient authentication of the photocopy of award enclosed.

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13…In my view, if it is to be held that a photocopy of a signed award delivered by the arbitrator under cover of letter signed by him in evidence of authentication thereof, is not sufficient compliance of Section 31(5) it will lead to indefinite delays in execution and in filing of petition under Section 34(3) and till when the award is inexecutable. Such an interpretation will be an impediment in expediency in arbitration matters, the purpose behind bringing about change in law.

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16. In the absence of there being any words in the Act to indicate the requirement of furnishing award in the form of

primary evidence to the parties, the law if laid down so to require an 'ink signed' award would in my opinion lead to delays and also give a handle to the unscrupulous litigants to indefinitely delay the execution of the award by contending that the signed copies of the award had not been delivered.

17. Law has to evolve with changing technologies. In today's time it would be unfair to require the arbitrator to sign each and every copy of the award, especially when photocopy has become common place and is the accepted mode."

18. So far as DUSIB's argument that the award was not sent to the correct address as stated in the statement of claims is concerned, it is noteworthy that in effect, the award was received in the Delhi address, and was being transmitted through electronic channels, and no further information or correspondence was made by the DSUIB at this stage regarding a difference in their address of receiving the award. In fact, in the letter dated 14.03.2016 sent by DUSIB, where the arbitrator was requested by DUSIB to announce the award, the address of DUSIB is shown to be Punarwas Bhawan, I.P. Estate, New Delhi-110002 and that is the address on which the copy of the impugned award was forwarded by the arbitrator on 14.03.2016. The only explanation given regarding why the DUSIB ignored the said letter is that the DUSIB has an online system of communication and its computer systems had broken down during the relevant period. This surely does not suffice for condoning the delay in filing the petition, which is well beyond the period of limitation prescribed for the same in Section 34(3).

19. In a somewhat similar case, in the decision of *National Highways Authority of India v. Bhageeratha Engineering Ltd.* 184(2011)DLT332, where the amended arbitral award was contended to have been received only

at a later date as it was not communicated to the right address was dismissed by the court as a defense to filing the petition under Section 34 beyond the stipulated time period, and the petition under Section 34 of the Act was held to be barred by limitation in terms of Section 34(3) of the Act.

20. In the present case too, DUSIB has, quite clearly received the arbitral award dated 14.03.2016, as it affirmed in the affidavit dated 07.11.2016, and has also confirmed this when it attempted to justify the delay in filing the petition due to technological glitches in their internal communication system, as quoted below from their appeal:

> "*20. The Appellant follows a system of having an e-office wherein all communications are scanned and then sent online. The letter dated 14.03.2016 was received and marked to Deputy Director but on account of breakdown in the computer system, the same could not be acted upon.*"

21. *Hindustan Construction Company Ltd.*(*supra*), was rendered in the context of Section 14(2) of the Arbitration Act, 1940. In that case, the Supreme Court observed "*when a notice is issued by a court to the arbitrators or umpire, it is their duty to file in court either the award in original or a signed copy thereof as directed by the court*". In that case, the original award had not been filed; the umpire had sent a letter stating that he was forwarding the award signed and duly certified by him and along with the letter was a document which began with the words "*now I hereby reproduce a true copy of the said award which is as follows:*". The award was reproduced and at the end, the umpire had written the words "*certified as correct copy of the award dated 27th May, 1961*". The controversy arose whether the said award was a signed copy as contemplated under Section

14(2) of the 1940 Act. It is in that context that the Supreme Court held that a true reproduction of the award, which bears the signature of the umpire, would satisfy the requirements of Section 14(2) of the Act. The Court was not concerned with the question of whether any other mark adopted by the arbitrator could also be considered as a signature. This decision however, is an authority only in terms of whether any additional statement over and above the signature will still retain qualification as a signed copy of the award as required by Section 14(2) of the Arbitration Act, 1940; and does not disqualify a photocopy of a signed award, or strictly interpret a signed copy to be one where the signatures are in the handwriting of the arbitrator only, thus; it cannot be accepted to be applicable in the present case.

22. As previously highlighted, Section 34 (3) stipulates, the period within which an award can be challenged is three months from the date on which the party making the application for setting aside the award receives a signed copy of the same. Thus, by the expression 'received', it is meant that an award complete in itself including signature thereon, which may be original or an attested copy thereof. From a factual observation of the present case, it is evident that the copy of the award was received in the month of March 2016, as has been validated by the Appellant, DUSIB in its affidavit as well as conduct, and their contrary assertion will not impede the petition from being barred by limitation, as was similarly held in *Bhageeratha Engineering Ltd* (*supra*). Moreover, the impugned award, as well as, the award sent to DUSIB on 14.03.2016 sufficiently qualify as a 'signed copy' within the meaning of Section 31(5); the mere technicality that it is not in the handwriting of the arbitrator will not disqualify it from the meaning of a 'signed copy'. The legislative intent behind the Section is to ensure

authenticity of the award and from the facts of the present case, the impugned award satisfies such intent.

23. For the above reasons, the copy of the award sent to the Appellant in March, 2016 (and received by it a few days later) and the copy of the award (sent on 26.05.2016), both suffice the requirements of Section 31(5) of the Act. The Appellant's petition under Section 34 of the Act was filed beyond the period of limitation specified under Section 34(3) of the Act.

24. For the foregoing reasons, this appeal fails and is dismissed without order on costs.

S. RAVINDRA BHAT
(JUDGE)

S.P. GARG
(JUDGE)

AUGUST 10, 2017