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& Solicitors

**The clock of limitation period will start ticking from the date on which the signed copy of the arbitral award is provided.**

**Dakshin Haryana Bijli Vitran Nigam Ltd. v. M/s. Navigant Technologies Pvt. Ltd.**

<b>Citation</b>	<b>2021 SCC OnLine SC 157</b>
<b>Date</b>	<b>2nd March 2021</b>
<b>Court</b>	<b>Hon'ble Supreme Court of India</b>
<b>Coram</b>	<b>Hon'ble Ms. Justice Indu Malhotra and Hon'ble Mr. Justice Ajay Rastogi</b>

## 1. **FACTS & PROCEDURAL HISTORY**

### A. *The Transaction*

1.1 On 02.05.2011, a Service Level Agreement (“**Agreement**”) was executed between Dakshin Haryana Bijli Vitran Nigam Ltd. (“**Appellant**”) and M/s. Navigant Technologies Pvt. Ltd. (“**Respondent**”) for providing call centre services. Clause 13 of the Agreement provided for a dispute resolution clause via arbitration and by a three-member tribunal in accordance with the Arbitration and Conciliation Act, 1996 (“**1996 Act**”).

### B. *The Cause of Action & Proceedings before the Arbitral Tribunal*

1.2 Pertinently, on 16.10.2014, the Appellant terminated the Agreement that led to the disputes with the Respondent. Accordingly, a three-member Arbitral Tribunal was constituted. The Arbitral Tribunal orally pronounced the award [2:1] on 27.04.2018, whereby the claims were passed in favour of the Respondent.

1.3 On 12.05.2018, a copy of the dissenting opinion was provided by the Third Arbitrator. Accordingly, on 19.05.2018, the Arbitral Tribunal signed the copies of the arbitral award and proceedings were terminated.

### C. *Procedural History*

1.4 The Appellant raised objections via an application made under Section 34 of the 1996 Act for setting aside an award dated 27.04.2018 along with an application for condonation of delay. The Civil Court dismissed the Application for condonation of delay and observed that the Appellant had received the majority award on 27.04.2018. Accordingly, the Civil Court was of the opinion that the limitation period would commence from 27.04.2018.

1.5 The Appellant approached the High Court that affirmed the stance and observations made by the Civil Court and was not convinced to set aside the same. Aggrieved by the same, the Appellant approached the Hon’ble Supreme Court of India (“**Supreme Court**”).

## 2. **CONTENTIONS OF THE APPELLANT BEFORE THE SUPREME COURT**

2.1 At the outset, the Appellant argued that both the Civil Court and High Court dismissed the objections on the ground of limitation and not on the merits. Following the same, the Appellant argued that the term ‘arbitral award’ under the 1996 Act includes both the majority and minority opinion.

2.2 The Appellant argued that, Section 31(1) of the 1996 Act provides that all the members of the tribunal shall sign the award whereas Section 31(2) has no application in cases where there is dissenting view rendered by one of the arbitrators. Accordingly, Section 34 provides that, objections must be against the entire award and not against the majority award alone. Additionally, the primary aim of the Appellant was to include the relevance of the dissenting opinion in the term ‘arbitral award’.

- 2.3 The Appellant submitted that, even though the majority opinion was pronounced on 27.04.2018, the tribunal posted the matter on 12.05.2018 for the correction of any typographical or clerical error. On 12.05.2018, the dissenting opinion was also rendered and copies were provided. As no application was made for correction of any error, the tribunal had terminated the proceedings on 19.05.2018.
- 2.4 The Appellant placed reliance on the case of *Ssangyong Engineering*<sup>1</sup> to contend that even the dissenting opinion has been held to be the correct view in certain cases as affirmed by the afore-stated precedent. The Appellant also placed reliance on the case of *Axios Navigation*<sup>2</sup> wherein it was held that the view of the minority was relevant for adjudication of objections under Section 34 of the 1996 Act.

### **3. CONTENTIONS OF THE RESPONDENT BEFORE THE SUPREME COURT**

- 3.1 The primary contention of the Respondent was directed towards not reading the dissenting opinion of the minority member in the term 'arbitral award' for the purposes for computing the limitation period under Section 34(3) of the 1996 Act. To this end, the Respondent argued that, as the majority award was pronounced on 27.04.2018, the limitation period applicable under Section 34(3) would commence from that date itself.
- 3.2 The Respondent argued that Section 29(1) of the 1996 Act that contemplates the decision of the majority of members of the tribunal is the arbitral award. By relying upon Section 31(2), the Respondent provided that the signature of all members was not required as long as it was signed by majority of the members. To buttress his submission, the Respondent submitted that, the dissenting opinion is only a view and could not be enforced as an award nor considered for computing limitation period.
- 3.3 The Respondent placed reliance on judgments of High Courts in the case of *Bharat Sanchar Nigam Ltd.*<sup>3</sup>, *Axion Navigation*<sup>4</sup>, and *Oriental insurance Co.*<sup>5</sup> 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. ISSUE**

- 4.1 Whether the period of limitation for filing an application under Section 34 would commence from the date on which the draft award was circulated or the date on which the signed copy of the award was provided?

### **5. JUDGMENT OF THE SUPREME COURT**

#### **A. *Contours of the term 'Arbitral Award'***

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<sup>1</sup> *Ssangyong Engineering and Construction Co. Ltd. v. NHAI* (2019) 15 SCC 131.

<sup>2</sup> *Axios Navigation v. Indian Oil Corporation* 2012 SCC OnLine Bom 4.

<sup>3</sup> *Bharat Sanchar Nigam Ltd. v. Acome and Ors.* AIR 2009 Delhi 102.

<sup>4</sup> *Supra* note 2.

<sup>5</sup> 2019 SCC OnLine Del 11634.

- 5.1 At the outset, the Supreme Court after having examined and concisely discussed the scheme of the 1996 Act, observed that the statute recognizes only one arbitral award, whether unanimous or divided between majority opinion and minority opinion. Thus, the minority opinion i.e., the dissenting view of an arbitrator is not an award, but only an opinion. However, a party aggrieved by the majority decision may rely upon the reasoning and findings in the dissenting view to buttress their respective submissions.
- 5.2 To further substantiate the term ‘arbitral award’, the Supreme Court observed that, in essence, an arbitral award is the decision made by the majority members of an arbitral tribunal that is ‘final and binding’ on the parties. Even Section 35 of the 1996 Act provides that an award must be final and binding and, in this sense, a dissenting opinion does not satisfy the following; (i) does not determine the rights or liabilities of the parties that are enforceable under Section 36 and (ii) is not final and binding on the parties.
- 5.3 Lastly, an arbitral award to be set aside under Section 34 of the 1996 Act is primarily the decision of the majority members of the tribunal and not the dissenting view. Therefore, what is capable of being set aside is an award i.e., the decision reached by the majority members of the tribunal.

#### ***B. Requirement of signing the Arbitral Award***

- 5.4 After having examined Section 31 of the 1996 Act, the Supreme Court arrived at the decision that the requirement of signing an arbitral award is mandatory and cannot be escaped. It is only after the award is signed that it attains the status of finality and legal effect. The Supreme Court observed as follows:

*“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.”*

- 5.5 The Supreme Court categorically observed that, Section 31(1) read with sub-section (4) make it amply clear that there must be a single date on which the arbitral award is passed i.e., the date on which the signed copies of the award are delivered to the parties. The Supreme Court referred to an earlier decision in *Union of India*<sup>6</sup> that was followed in *State of Maharashtra*<sup>7</sup> and held as follows:

*“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*

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<sup>6</sup> *Union of India v. Tecco Trichy Engineers & Contractors* (2005) 4 SCC 239.

<sup>7</sup> *State of Maharashtra v. Ark Builders* (2011) 4 SCC 616.



*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.”*

- 5.6 Concerning a pressing issue of the date on which the dissenting opinion must be rendered, the Supreme Court clarified and settled that, it must be delivered concurrently on the same date as the final award, and not on a subsequent date, as the tribunal becomes *functus officio* upon passing of the final award.
- 5.7 The Supreme Court authoritatively answered the moot question in the case as follows:  
*“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.”*

### **C. Relevance of Dissenting Opinion**

- 5.8 The Supreme Court went a stretch ahead to make certain pertinent observations concerning the relevancy of dissenting opinions. The Supreme Court opined that; the dissenting opinion could be relied upon by the award-debtor to buttress submissions under Section 34 of the 1996 Act. At that stage, the courts are not precluded from considering the dissenting opinion.
- 5.9 The Supreme Court relied upon the case of *Ssangyong Engineering*<sup>8</sup> to observe that, the courts may even uphold the views of the dissenting opinion and set aside the majority opinion. Additionally, the Supreme Court had invoked its powers under Article 142 of the Constitution of India, 1950 to do complete justice between the parties and upheld the dissenting view of the arbitrator. However, there is no power to modify an arbitral award.

## **6. CONCLUSION**

- 6.1 After a detailed analysis and examination of the scheme and wording employed under the 1996 Act, the Supreme Court on merits, held that, even though the award was pronounced on 27.04.2018, the signed copy of the award was provided only on 19.05.2018. On 27.04.2018, only the copy of the award was provided for the sole purpose of pointing out any error whereas, the parties did not point out any error and hence, the award was signed on 19.05.2018 and was handed over to the parties.
- 6.2 Accordingly, the Supreme Court authoritatively observed 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.

## **7. PSL OPINION/ANALYSIS**

- 7.1 By way of the present judgment, the Supreme Court has settled yet another grey area between the interplay of the 1996 Act and the limitation period. The judgment lays down the correct position of law and concurrently goes a stretch ahead to discuss and make observations concerning the relevancy of the dissenting opinion. Pertinently,

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<sup>8</sup> *Supra* note 1.

the judgment reflects that, dissenting opinions, even though are not binding upon the parties, do hold a value and consideration during the proceedings for setting aside the award.