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**MINISTRY OF HEALTH & FAMILY
WELFARE & ANR VS. M/S HOSMAC
PROJECTS DIVISION OF HOSMAC
INDIA PVT LTD [FAO(OS)(COMM)
326 OF 2019]**

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INTRODUCTION

According to the recent ruling of the Division Bench of the Hon'ble Delhi High Court, it is held that an arbitral award must be served upon all of the parties in order to constitute valid service under Section 34(3) of the Arbitration and Conciliation Act, 1996 ('Act').

The Court also held that the service of the arbitral award upon the counsel or agent of the *'party'* does not constitute proper service.

FACTUAL BACKGROUND

Appellant No. 1, Ministry of Health & Family Welfare ('**MoHFW**') and Appellant No. 2, Dr. Ram Manohar Lohia Hospital ('**RML**') jointly filed a petition under Section 34 of the Act ('**Petition**'), assailing the award dated 20 November 2018 and corrigendum dated 07 January 2019 (hereinafter both collectively referred to as '**Award**') passed by the Ld. Sole Arbitrator in favour of the Respondent. Along with the petition, the Appellants also filed an application under Section 34(3) ('**Application**') of the Act thereby seeking condonation of delay in filing of the Petition.

The Application was preferred on the ground that MoHFW only became aware of the Award after receiving a letter dated 14 March 2029 from RML. MoHFW did not receive the signed copy of the Award on 07 January 2019 and the same was only served upon the authorized representative of the RML, which could not be deemed as a proper service. Therefore, the limitation period shall start from the date of actual receipt of the Award upon the MoHFW. The Appellant relied on Section 31(5) read with Section 2(1)(h) of the Act to contest that that the award needs to be delivered to the party in dispute and not its agent or advocates.

In the current case, the Appellants preferred an appeal under Section 37 of the Act assailing the judgment dated 12 September 2019 whereby the Ld. Single Judge dismissed the petition filed by the MoHFW under Section 34 of the Act, on account of delay.

CONTENTIONS RAISED FOR CONSIDERATION

- A. Section 31(5) of the Act provides that the signed arbitral award shall be delivered to the ‘party’. Section 2(1)(h) of the Act clearly enunciates that ‘party’ means a party to an arbitration agreement, and RML, not being the party to the arbitration agreement would not come under the purview of the ‘party’.
- B. RML not being the ‘party’ under the arbitration agreement, delivery to its authorized representative and counsel would not constitute proper service on the MoHFW.
- C. Effective/ proper service would be affected when the arbitral award is served to a person who is capable of making decisions and understanding the arbitral award. In the present case, MoHFW would be the competent party to decide whether to challenge the Award or not, and the date of delivery to MoHFW would be deemed as the delivery date to calculate the limitation period. Reliance was placed on the judgments of the Supreme Court in *UOI vs. Tecco Trichy Engineers & Contractors*¹ and *Benarsi Krishna Committee & Ors vs. Karmyogi Shelters Pvt. Ltd.*².
- D. Section 34(3) of the Act provides that an Application for setting aside an Arbitral Award may not be made after three months have elapsed from the date on which the party making that Application had “received” the Arbitral Award. The Hon’ble Supreme Court in *State of Maharashtra vs. Ark Builders (P) Ltd.*³ held that the limitation prescribed under Section 34(3) of the Act would commence only from the date a signed copy of the arbitral award is delivered to the party making the application for setting aside of the arbitral award. Therefore, the limitation would be calculated from the date MOHFW received the signed copy of the Award.

¹ (2005) 4 SCC 239

² (2012) 9 SCC 496

³ (2011) 4 SCC 616

DECISION OF THE COURT

The decision of the Division Bench has set aside the judgment of the Single Judge's ruling in an appeal brought by Appellants under Section 37 of the Act and relegated the matter back to the Ld. Single Judge for adjudication on merits. After analyzing *Tecco Trichy Case (Supra) and Benarsi Krishna case (Supra)*, the grounds on which the ruling has been set aside are as follows:

- A signed copy of the award is to be delivered to each party.
- The delivery should be to a party who is competent to take a decision as to whether or not the award is to be challenged.
- The expression 'party' does not include an agent or lawyer of such party.
- The limitation under Section 34(3) of the Act commences when the 'party' making the application has received the award.
- In the case of an application for correction of computational, clerical or typographical errors under Section 33 of the Act, the limitation is to be calculated from the date on which the application is disposed off.

Therefore, the agreement which is the genesis of the present dispute, was executed only between the MoHFW and Respondent. Since the agreement was for construction to be carried out in the RML hospital, RML was arrayed as Respondent No.2 in the arbitral proceedings. Therefore, RML could not be deemed to be a proper party, as far as proper service of the Award is concerned. Hence, the delivery of the Award to the authorized representative or counsel of RML does not constitute a proper service upon the 'party'.

The Court held that the precise date for calculation of the limitation period would be the date when the signed copy of the Award was received by the concerned person of the MOHFW, and the limitation period is to be calculated from the said date. Accordingly, it was held that the Petition was filed within the statutory period.