Arbitration Case Insights

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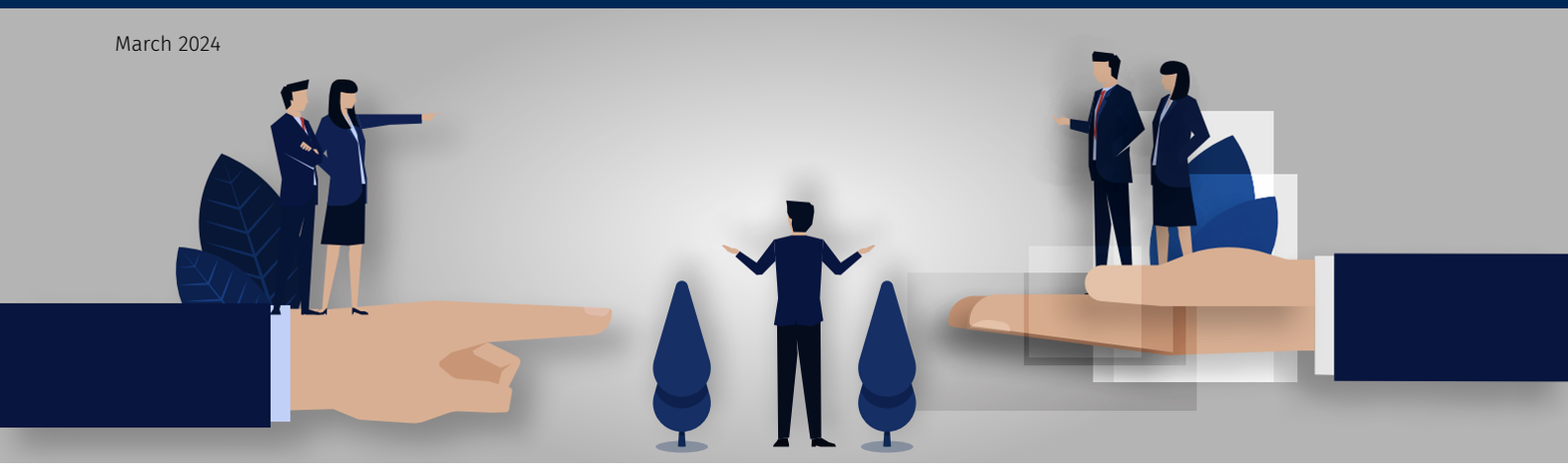

High Court of Delhi clarifies definition of "party" and what constitutes service of an award for purposes of calculating limitation under the Arbitration and Conciliation Act, 1996[1]

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Brief Facts

The Ministry of Health & Family Welfare ("**MoHFW**") entered into an agreement with M/s Hosmac Projects Division of Hosmac India Pvt. Ltd. ("**Respondent**"/"**Hosmac**") dated 7 May 2010 ("**Agreement**") for construction of emergency care services and renovation of VIP Rooms at Dr. Ram Manohar Lohia Hospital, New Delhi ("**RML**"), which is under control of the MoHFW.

Disputes arose between the MoHFW and Hosmac under the Agreement, pursuant to which Hosmac invoked arbitration under the Agreement. The sole arbitrator passed an award dated 20 November 2018 ("**Award**"), awarding an amount of INR 220,509,651/- in favour of Hosmac. This was later reduced to INR 151,166,498/- by way of an order dated 7 January 2019 ("**Corrigendum Order**"), after an application for correction of computation was filed by Hosmac under Section 33(1)(a) of the Arbitration and Conciliation Act, 1996 ("**Act**"). The MoHFW and RML jointly filed a petition under Section 34 of the Act on 10 May 2019 ("**Petition**") before the High Court of Delhi ("**Court**"). The Petition sought to set aside the Award and Corrigendum Order. The Petition was accompanied with an application under Section 34(3) of the Act seeking condonation of delay in filing the Petition ("**Application**").

The Petition was dismissed by a Ld. Single Judge of the Court on 12 September 2019 ("**Impugned Order**") on account of expiry of the limitation period ("**Impugned Order**") of three months and 30 days. The MoHFW filed an appeal under Section 37 of the Act ("**Appeal**") before a Division Bench of the Court against the Impugned Order.

The MoHFW challenged the Impugned Order on *inter alia* the following grounds: (i) the MoHFW became aware of the Award and Corrigendum Order upon receipt of a letter dated 14 March 2019 from RML and the MoHFW was not sent a signed copy of the Award or Corrigendum Order by the arbitrator; and (ii) delivery of an award on an agent/counsel of a party does not amount to proper service on the party under Section 31(5) r/w Section 2(1)(h) of the Act. Therefore, the limitation period would commence from 14 March 2019 such that the Petition would fall within the limitation period. The Respondent argued that the limitation period would start running from the date on which the Corrigendum Order was passed, i.e., 7 January 2019. The Petition was filed on 10 May 2019, which is beyond even the 30 additional days provided for in Section 34(3) of the Act. Further, RML prosecuted the arbitral proceedings on behalf of the MoHFW.

Issue

Whether the delivery of a true copy of the Award and a copy of the Corrigendum Order to an authorised representative of RML would constitute "proper service" upon the MoHFW under Section 31(5) of the Act for the purpose of calculating limitation?

Judgment

The Court held that the limitation period to file a petition under Section 34 of the Act is three months from date of receipt of an award or the date from when a request for correction under Section 33 of the Act is disposed. Section 31(5) of the Act provides that a signed copy of an award shall be delivered to each "*party*". "*Party*" is defined as a party to an arbitration agreement under Section 2(1)(h) of the Act.

The Court referred to the Supreme Court's decisions in ***UOI v. Tecco Trichy Engineers & Contractors***[2] and ***Benarsi Krishna Committee & Ors. v. Karmyogi Shelters Pvt. Ltd.***[3] In ***Tecco Trichy*** (*supra*), the Supreme Court held that in order to constitute effective service on the Ministry of Railways, a copy of the award is to be delivered to a person who has knowledge of the arbitration proceedings and is the best person to understand and appreciate the award and to decide whether or not to challenge it. Further, for calculating the date of service for purposes of Section 34(3), the date of receipt by the Chief Engineer, and not the date of receipt by the inward clerk at the office, was relevant for computing the limitation period.

This decision was relied on in Benarsi Krishna (supra), where the Supreme Court held that "party" is defined as a party to an arbitration agreement under Section 2(1)(h) of the Act. It further clarified that "party" as defined under Section 31(5) r/w Section 2(1)(h) of the Act can only mean the party themselves and not their agent or their advocate. For proper service, only service on the party itself is required.

Accordingly, the Court concluded that a copy of the Award was sent only to the counsel for the parties and the authorised representatives of RML, and not the MoHFW. Since the Agreement was between the MoHFW and Hosmac, the Award ought to have been served on the MoHFW directly and not on RML as RML was not a party to the Agreement. The Court did not agree that service on RML would constitute service on the MoHFW and held that only the MoHFW could challenge the Award.

After analysing the judicial precedents, the Court settled the law on this issue as follows:

- The signed copy of an arbitral award is to be delivered to each party.
- Delivery should be to a party who is competent to take a decision regarding challenging an award.
- "Party" does not include an agent/lawyer of such party.
- Limitation under Section 34(3) of the Act commences when the party "*has received the award*".
- If there is an application under Section 33 of the Act, limitation is to be calculated from the date on which such application is disposed of.

Thus, the Court allowed the Appeal, set aside the Impugned Order and directed the matter to be listed before the Ld. Single Judge for a decision on merits.

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Analysis

This decision is pivotal for clarifying the position of law with respect to the computation of the limitation period for filing a petition under Section 34 of the Act, especially when there are multiple parties in an arbitration proceeding or one of the parties is a monolithic organisation, such as the government/ministry. In this case, RML was arrayed as Respondent No. 2 since the Agreement was for construction to be carried out in RML. However, RML was not a party to the arbitration agreement, which was solely between the MoHFW and Hosmac. Even if RML was acting on behalf of the MoHFW, it could not be said that service upon RML would constitute effective service upon the MoHFW.

Moreover, the decision also clarifies the law laid down in ***Tecco Trichy*** (*supra*), wherein it was held that the relevant person to whom an award is to be delivered is a person who has the knowledge of the arbitration proceedings and is the best person to understand and appreciate an award and to take a decision regarding its challenge. This decision is therefore crucial, not only in the context of government entities or ministries, but also in the context of arbitration proceedings involving multiple parties.

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Endnote

1 Authored by Smarika Singh and Saifur Rahman Faridi, Partners, Yashna Mehta, Senior Associate and Arjun Singh Rana, Associate; *Ministry of Health & Family Welfare & Anr. v. M/s Hosmac Projects Division of Hosmac India Pvt. Ltd.*, FAO(OS)(Comm) No. 326/2019 and CM No. 49717/2019, High Court of Delhi, 2023 SCC OnLine Del 8296, judgment dated 20 December 2023.

Coram: Rajiv Shakdher and Tara Vitasta Ganju, JJ.

2 (2005) 4 SCC 239.

3 (2012) 9 SCC 496.

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