

ORDER SHEET

AP No.953 of 2017

GA No.3641 of 2017

GA No.3385 of 2017

IN THE HIGH COURT AT CALCUTTA  
Ordinary Original Civil Jurisdiction  
ORIGINAL SIDE

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY PVT. LTD.  
Versus  
VIJAI SHREE PVT. LTD.

BEFORE:  
The Hon'ble JUSTICE ARINDAM SINHA  
Date:26th July,2018.

Mr. Farooque Ali, Advocate.  
..for Petitioner.  
Mr. Dhruva Ghosh, Sr. Adv.  
Ms. Vineeta Meheria, Adv.  
Mr. Pushan Kar, Adv.  
Mr. Sounak Sengupta, Adv.  
Mr. Sagnik Majumdar, Adv.  
Ms. R. Karnani, Adv.  
..for Respondent.

The Court:- Applicant seeks to satisfy Court it was prevented by sufficient cause from making its application under section 34 of Arbitration & Conciliation Act, 1996 within three months from date it received copy of award duly signed by arbitrators in terms of sub-section (5) in section 31.

Mr. Ali, learned advocate appearing on behalf of applicant submits, signed copy of award was received by his client on 3<sup>rd</sup> July, 2017. This has been asserted by his client in paragraphs 1 & 2 of GA 3385 of 2017, as extracted below:-

".....received by the Petitioner for the first time on July 3, 2017 ...."

"..... As appears from the above the Arbitral Award was received by the Petitioner on July 3, 2017 by one of the officer of the Petitioner and the same was communicated to the legal department of the Petitioner."

He relies on affidavit affirmed on 13<sup>th</sup> July, 2018 filed pursuant to direction made in order dated 26<sup>th</sup> June, 2018, to his client's assertion made in paragraph 4 therein reproduced below :

"4. I say that the award was never received by the Petitioner (Bajaj Allianz General Insurance Company Private Limited) before July 3, 2017. I say that the award was never received by the Petitioner which is supposed to be sent by the Arbitral Tribunal. I say that though the Award is dated May 16, 2017 but the same was never received by the Petitioner before July 3, 2017. The award dated May 18, 2017 was obtained by the officers of the Petitioner ( on the instructions of the Board of Directors) only on July 3, 2017 through his Learned Advocate on Record engaged before the Arbitral Tribunal."

On query from Court he submits, award thus received/obtained is the signed copy of award which was handed over by the Tribunal to his client's learned advocate who had attended arbitral proceedings concluded on 18<sup>th</sup> May, 2017 on making and publishing of the award.

He also relies on sub-section (5) in section 31 which requires a signed copy of award to be delivered to each party after arbitral Award is made. For authorities on interpretation of this provision he relies on several judgements of Supreme Court of India.

(i) **Benarsi Krishna Committee & Ors. Vs. Karmyogi Shelters Pvt. Ltd.** reported in (2012)9 SCC 496, paragraph 15. He submits, proper compliance with section 3(5) would mean delivery of a signed copy of arbitral award on party himself and not on his advocate, which gives party concerned right to proceed under section 34(3) of the Act.

(ii) **State of Maharashtra & Ors. Vs. ARK Builders Private Limited** reported in (2011)4 SCC 616, to paragraphs 15 & 18. He relies on passages as extracted below:-

*"15. If the law prescribes that a copy of the order/award is to be communicated, delivered, dispatched, forwarded, rendered or sent to the parties concerned in a particular way and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.*

*18. In the facts of the case the appellants would appear to be deriving undue advantage due to the omission of the arbitrator to give them a signed copy of the award coupled with*



*the supply of a copy of the award to them by the respondent claimant but that would not change the legal position and it would be wrong to tailor the law according to the facts of a particular case."*

(iii) **Union of India Vs. Tecco Trichy Engineers & Contractors** reported in (2005)4 SCC 239, to paragraph 8. He submits, delivery of arbitral award to party, to be effected, has to be received by party. This did not happen when the award was made and published, as given to his client's learned advocate.

He submits, facts and circumstances were such that his client was prevented by sufficient cause from having filed application under section 34 within 90 days from date of delivery to it of signed copy of award.

Mr. Ghosh, learned senior advocate appears on behalf of respondent award holder. He submits, endorsement was made, as would appear from copy of award disclosed in section 34 application at page 152, to the effect, original award was received by representative of applicant present in meeting when award was made and published. The endorsement as appears to Court is as follows:-

" Received the original Award (sd,) Amitava Mitra  
for respondent for Sinha & Co., advocates on  
18/05/2017 5:00 PM ".

Referring to minutes of 43<sup>rd</sup> sitting of the Tribunal held on that date, disclosed at page 16 of affidavit-in-opposition in GA 3385

of 2017, he demonstrates, for applicant three learned advocates had appeared, including learned advocate who had put his signature on receiving the award, and representative of applicant. It was a matter of propriety that members of the Tribunal delivered the signed copy of award to learned advocate instead of representative of the applicant. It appears from said minutes, after award had been made and published and copies served, learned advocate for applicant had made prayer for stay of a direction which prayer was allowed. The said learned advocate continued to have authority to represent applicant since prayer for stay was made by him on behalf of applicant after making and publication of award as obviously authorised by applicant's representative present there. He hands up copy of Power of Attorney dated 30<sup>th</sup> June, 2016 obtained from applicant. He submits, this document is authorisation in favour of said representative attended in the meeting. It would appear from the Power said representative was authorised to receive and give proper acknowledgement/receipt of summons, notices, warrants etc, inter alia, from Arbitration Tribunal; to take action to move, inter alia, arbitration proceedings. Such authorisation was effective from 1<sup>st</sup> May, 2016 and subsisting as on 18<sup>th</sup> May, 2017. In fact, both arbitration petition as well as general application are supported by affidavits affirmed by said representative in acting as authorised by the Power.

Referring to authorities cited, Mr. Ghosh submits, facts in this case are that authorised representative of applicant was present at the time when Award was made and published and delivered to applicant's learned advocate. This delivery cannot be said to be otherwise than delivery to party on applying **Benarsi Krishna Committee** (supra). He submits, facts in **ARK Builders** (supra) are against applicant. He refers to paragraph 2,4 and a line in paragraph 17 therein. Facts were that two copies of signed Award were delivered by Arbitrator to claimant. Respondent-appellant had later obtained its true copy, duly certified, upon sending messenger to Arbitrator. In this context he relies on a sentence in paragraph 17 of the judgment reproduce below:-

*"The High Court overlooked that what Section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the member of the Arbitral Tribunal"*

On **Tecco Trichy Engineers** (supra), he submits by relying on paragraph 7 therein, in that judgment Supreme Court had taken note of effective service when made on person who directly connected with and involved and in control of the proceedings. Same is applicable to applicant's case. Dealing representative of applicant was present when award was made and published. Plea of notice of higher authority taken thereafter should not be accepted since said representative was the person who knew exactly where



the shoe pinches, whether arbitral award is adverse to applicant's interest. This is demonstrated by said representative having affirmed the two affidavits in support of arbitration petition and general application made therein. Higher authorities' alleged later knowledge is of no relevance or consequence whatsoever.

He relies on judgment dated 27<sup>th</sup> March, 2018 of Supreme Court in Civil Appeal 3313 of 2018 (Anilkumar Jinabhai Patel Vs. Pravinchandra Jinabhai Patel and Ors.), paragraph 28 which is reproduced below:-

"28. Award dated 07.07.1996 was received by Anilkumar Patel for himself and on behalf of his family members. In interim MOU dated 29.06.1996, Anilkumar Patel signed for self and as a power of attorney holder for his wife and his all sons and daughter-in-law. Challenging the award dated 07.07.1996, Anilkumar Patel and his family members have filed a single petition under Section 34 of the Act. Likewise they have also filed a single petition for amending the arbitration petition No.202 of 2005. Anilkumar Patel, being the head of his family, was a person directly connected with and involved in the proceeding and was also in control of the proceeding. Being head of the family, Anilkumar Patel would have been the best person to understand and appreciate the arbitral award and take a decision as to whether an

*application under Section 34 of the Act was required to be filed or not. In such facts and circumstances, in our considered view, service of arbitral award on Anilkumar Patel amounts to service on the other appellant Nos.1(a) to 1(d) and respondent No.10 and they cannot plead non-compliance of Section 31(5) of the Act."*

Lastly Mr.Ghosh submits, assuming though not admitting delivery of Award to applicant was made as alleged, even then there is no explanation to render satisfaction regarding why applicant was prevented from filing the application within ninety days therefrom.

Considering facts of this case and law declared by Supreme Court regarding party, interpretation of sub-section (5) in section 31 and thereby accrual of statutory right of party to, inter alia, challenge award, adjudication must turn on fact of delivery of signed copy of award to applicant by the Tribunal. Fact, as ascertained, is that applicant is in possession of a copy of award duly signed by members of the Tribunal. Delivery, it claims as received by it, was on 3<sup>rd</sup> July, 2017. This delivery and receipt on 3<sup>rd</sup> July, 2017 happened through its advocates. Admitted position is, therefore, later delivery or receipt of award claimed by applicant was not at all from the Tribunal. Applicant, therefore, has not been able to assert and establish by affidavit evidence it got late delivery of signed copy of award from the



Tribunal for purpose of rendering satisfaction regarding delay. That being the position this Court is not required to express any view regarding whether provisions of section 31(5) was complied with on 18<sup>th</sup> May, 2017 so far as applicant is concerned.

It, however, cannot be lost sight of that representative of applicant who was present in the sitting when award was made, published and delivered to learned advocates of parties, is the person who, as Supreme Court has said, knows exactly where the shoe pinches. That person having had affirmed affidavit in support of arbitration petition for setting aside the award has said statements contained in paragraphs 18 and 19 made therein are true to his knowledge, those made in other paragraphs to be knowledge derived from record which he verily believed to be true and yet other paragraphs which contains his submissions. This person having had been there when award was made, published and delivered, requirement of service upon a person who has direct knowledge of arbitral proceedings and the questions involved before the Tribunal stands satisfied. In **Anilkumar Jinabhai Patel** (supra) Supreme Court considered its earlier judgments as have been mentioned above. Said Court interpreted a statement given by a party on receiving award, that he was receiving on behalf of others as well, to be compliance of sub-section (5) in section 31. Fact in this case is representative of applicant was present and this Court has no hesitation in inferring, authorised applicant's learned advocate to receive the Award as well as thereafter make

submissions on it. As such applicant cannot be said to have received delivery of award in terms of section 31(5) on date it claims to have. Consequently delay caused is beyond 120 days from making of award as applicant seeks to challenge the same on the basis of signed copy of it produced from its custody received by its learned advocate in the presence of its representative on the date of making and publishing of it.

For reasons aforesaid, G.A 3385 of 2017 is dismissed. As a consequence AP 953 of 2017 cannot be admitted. GA 3641 of 2017 being for stay of award, same is dismissed by reason of AP not having been admitted.

(ARINDAM SINHA, J.)

nm/sb