

(2019) 12 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : First Appeal Order No. 1954 Of 2019 (O&M)

Dakshin Haryana Bijli Vitran Nigam Ltd. (DHBVN)

APPELLANT

Vs

M/s Navigant Technologies Pvt. Ltd.

RESPONDENT

Date of Decision : 11-12-2019

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 29, 31, 31(1), 31(2), 34, 34(3), 37

Citation : (2020) 197 PLR 468

Hon'ble Judges : Jaishree Thakur, J

Bench : Single Bench

Advocate : B.R. Mahajan, S.K. Mahajan, Nishant Kumar Srivastava, Abhisehk Jain, Narender Pal Bhardwaj

Final Decision : Dismissed

Judgement

Jaishree Thakur, J

1. The instant appeal has been filed under Section 37 of the Arbitration and Conciliation Act, 1996 (in short the Act of 1996) seeking to challenge the order dated 14.02.2019 as passed by the Additional District Judge, Hisar whereby the objection petition filed under Section 34 of the Act of 1996 against the award of the Tribunal dated 27.04.2018 stands dismissed.

2. In brief, facts are that the appellant-Dakshin Haryana Bijli Vitran Nigam Ltd. (in short DHBVN) entered into agreement dated 02.05.2011 whereby the respondent-M/s Navigant Technologies Pvt. Ltd. (in short respondent) agreed to provide call centre services to the customers of DHBVN. On account of a dispute that arose between the parties, the matter was referred to arbitration in terms of the arbitration clause. An Arbitral Tribunal comprising of Mr. Vinod Jain, Dr. Shiva Sharma and Mr. D.S. Yadav was constituted, who entered into the reference. Thereafter, the majority award was pronounced by Mr. Vinod Jain, the Presiding Arbitrator and Dr. Shiva Sharma, Arbitrator on 27.04.2018 and dissenting award was pronounced by Mr. D.S. Yadav on 12.05.2018.

3. The objections were filed against the award on 10.09.2018, which was contested on various grounds, apart from raising the issue of limitation. The respondent raised the issue that objections filed under Section 34 were barred by limitation, as the majority award dated 27.04.2018 was received on the same day and therefore, the period of limitation would expire on 27. 07.2018 and even after condonation, the period of limitation would expire on 26.08.2018. the additional District Judge dismissed the objections being time barred . Aggrieved against the dismissal of the objections , instant appeal has been filed.

4. Mr. B.R. Mahajan, learned Senior Counsel assisted by Mr. S.K. Mahajan appearing for the appellant would argue that the Additional District Judge has erred in dismissing the objections purely on the question of limitation, as he has lost sight of the fact that the minority award as pronounced by Mr. D.S. Yadav was served upon the petitioner on 12.05.2018 and consequently, the period of limitation would commence as on the date the minority award had been received. It is submitted that only on receipt of the minority award, that a party would be made aware of the reasoning given in its favour. It is submitted that on receipt of the minority award, the matter was then referred to the Legal Department, Panchkula for seeking an opinion, which was received on 28.06.2018 and thereafter, counsel was engaged on 6. 08.2018 to prepare the objections, therefore, the objection petition was filed along with the application for condonation of delay within a period of 30 days as prescribed under Section 34(3) of the Act of 1996. He further challenges the award on the ground that there is a clear-cut misconduct on the part of the Arbitrator, apart from arguing that in the memo of costs, the Presiding Arbitrator has fixed the lawyer's fee appearing for the claimants at Rs. 10 lakhs.

5. Per contra, Mr. Nishant Kumar Srivastava, Mr. Abhisehk Jain, Advocate and Mr. Narender Pal Bhardwaj, learned counsel appearing on behalf of the respondent urges that there is no infirmity in the order of the Additional District Judge dismissing the objections being barred by the period of limitation. It is contended that the period of limitation would commence from the date of receipt of the majority award and not that of the minority, as sought to be pleaded and relies upon the judgment rendered by the High Court of Delhi in Government of India, Bharat Sanchar Nigam Ltd. Vs. Acome and others 2007(42) RCR (Civil) 371 wherein it has been held that period of limitation for filing of objections would begin from the date parties are put to notice of the majority award.

6. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and case law as relied upon. Admittedly, the facts, as stated above, are not in dispute. The dispute was put to an arbitral Tribunal comprised of three Arbitrators, two of whom gave their majority award on 27.04.2018 and the said award was received on the same date by the parties. The minority award was pronounced on 12. 05.2018. The objections were filed by the appellant on 10.09.2018 by computing period of limitation to commence from the date of receipt of minority award i.e 12.5.2018. Therefore, the question

that requires to be addressed is as to what is the starting point of limitation for the purpose of filing objections to an award. Whether it would commence from the date of receipt of the majority award or that the limitation would commence from the date when an award has been received from minority member of the Tribunal?

7. As per Section 31 of the Act of 1996, an arbitral award shall be made in writing and shall be signed by the members of the arbitral Tribunal whereas clause 2 of Section 31 provides that for the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated. For ready reference relevant clauses of Section 31 are extracted as under:-

"31. Form and contents of arbitral award.-(1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

(2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

xxxxx xxxxx xxxxx"

8. A reading of the Section clearly reflects that once an award is signed and communicated by the majority of the Arbitrators, the same would constitute an award. It is well settled that the minority ruling will not override the majority view nor can constitute the law. It is the majority award that would be challenged by party aggrieved and not reasoning given by the minority in its favour. Similar issue came up for hearing before the High Court of Delhi in Government of India, Bharat Sanchar Nigam Ltd. (supra) where a question again was raised as to when the period of limitation would commence; whether it would be from the date of receipt of the majority award or from the date of receipt of minority award. The High Court at Delhi relied upon paragraph 2.20.1 of the 176th Report of the Law Commission of India on the Arbitration and Conciliation Amendment Bill, 2001 and the notes of the Law Commission on Section 29 of the Act in arbitral proceedings with more than one arbitrator held that any decision of the arbitral Tribunal shall be made by majority of all its members. On a deliberation of the issue before it, the High Court held that the period of limitation would commence from the date when the party received the copy of the award signed by the majority of the Arbitrators. Paras 28 and 32 of the said judgment are reproduced herein below:-

"28. Section 31 (1) of the Act makes it clear, and this is the common case of both the parties, that the law contemplates the passing of only one arbitral award. Reading of Section 31(2) makes it clear that in an arbitral proceedings before a Tribunal consisting of more than one arbitrator, the award of the Tribunal would be sufficiently made, if it is signed by the majority of arbitrators, so long as the

reason for the omission to sign by other arbitrators who are in minority is so stated in the award itself. It therefore follows, that a document containing the opinion of a minority of arbitrators cannot be called an award within the meaning of Section 31 of the Act. Apart from the decisions cited by the respondent I find that a Division Bench of this Court in *Fertilizer Corporation of India Ltd. Vs. IDI Management (USA) and others* AIR 1984 Delhi 333 has held that opinion of a minority of arbitrators cannot be looked at for any purpose. The award with which the law is concerned is the award of the majority. Reasons given by the minority are not reasons of the majority and as such does not form part of the majority.

32. In a case where the minority of arbitrators choose not to give their opinion unless agreed to by the parties, in my view should not prevent the making of a majority award by the Tribunal. By preferring not to sign the majority award, or by failing or refusing to give its opinion altogether, the minority of arbitrators cannot defeat or frustrate an arbitral proceeding. This appears to be the reason why the law states that it "shall be sufficient" for the majority of the Arbitral Tribunal to sign the award, so long as they disclose the reasons for the omission of signatures of the minority of arbitrators."

9. Similarly in a judgment rendered in *Axios Navigation v Indian Oil Corporation Ltd*, 2012 (15) RCR (Civil) 851; (2012) 114 (1) BomLR 392, the High Court at Mumbai held that "The dissenting view, if any, cannot be treated as an award. Omission of the dissenter member's signature will not make the award invalid. But in a situation where the dissenter member is also permitted to give reasons and/or expressed his dissenting opinion separately, still the majority assenting opinion shall be treated as an award." Meaning thereby, it is the decision of the majority members of an arbitral Tribunal that will hold and the decision of a minority Arbitrator is not to be treated as a part of the Award.

10. The argument as raised by the learned Senior Counsel appearing on behalf of the appellant that objections could not be filed in time as the reasoning of the minority Arbitrator was awaited, is an argument, which does not have much substance. If a party is aggrieved against the award of the majority arbitrators' decision, that award will have to be challenged and the limitation would start from the date of receipt of its signed copy.

11. Coming to the question in hand whether the objections filed were within the period of limitation, it has to be seen that the signed copy of the majority Award, i.e signed by two of the three arbitrators, was received on 27.04.2018 and as per Section 34(3) of the Act of 1996, objections had to be filed within a period of three months, which would have expired on 27.07.2018. Even if the benefit of 30 days had been allowed, the objections ought to have been filed by 26.08.2018 whereas the objections had been filed on 10.09.2018. The law in this regard is well settled and reference can be made to the judgment rendered in *Union of India Vs. M/s Popular Constructions Co.* 2002 (1) RCR (Civil) 124. Further in the judgment rendered by the Hon'ble Supreme Court in *M/s Simplex Infrastructure*

Ltd. Vs. Union of India 2019 (1) RCR (Civil) 205 it has clearly been held that objections can be filed within a period of three months from the date of receipt of the award and if there is sufficient cause shown, can be filed within a further period of 30 days but 'not thereafter'.

12. Keeping in view the aforementioned settled position of law, I do not find any infirmity in the order passed by the Additional District Judge, Hisar. Consequently, the appeal stands dismissed.