
(2012) 12 MP CK 0039
In the Madhya Pradesh High Court
Case No : Arbitration Appeal No. 16 of 2011

Union of India

APPELLANT

Vs

Naveen Kumar Contractors and Suppliers

RESPONDENT

Date of Decision : 21-12-2012

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 2, 2(h), 31, 31, 32, 32
Limitation Act, 1963 — Section 10, 11, 12, 12, 13

Citation : (2013) ILR (MP) 672 : (2013) 2 MPHT 448 : (2013) 1 MPLJ 487

Hon'ble Judges : J.K. Maheshwari, J

Bench : Single Bench

Advocate : S.K. Menon, for the Appellant; Akhilesh Jain, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Maheshwari, J.—Being dissatisfied by the order dated 6-7-2010 passed by the 11th Additional District Judge, Bhopal dismissing the application filed by the appellant u/s 34 of the Arbitration and Conciliation Act, 1996 (for brevity, it be referred to as "the 1996 Act"), this appeal has been preferred u/s 37 of the Act. The respondent was entrusted with the work of construction of 30 bedded hospital at Sagar, Madhya Pradesh vide letter dated 22-9-2003 for an amount of Rs. 2,58,95,958/- which was 5.59% below the estimated cost of Rs. 2,75,35,703/-. An agreement was executed on behalf of the Central Government by the Executive Engineer, CPWD, Division-II, Bhopal and the contractor. The date of completion of the work was specified as 1-4-2005. On account of non-completion of the work within the time the dispute arose. By the application raising various claims a dispute was raised by the contractor before the Chief Engineer as per Clause 25 of the agreement. The Chief Engineer has referred the dispute appointing the Arbitrator for 8 claims. The Arbitrator after receiving the reply and the counter reply passed the award on 15-10-2009. On perusal of the contents of the application filed u/s 34 of the Act before the Additional District Judge, Bhopal para 12 in the grounds, it is clear that certified copy of the award

was received by the Executive Engineer on 20-10-2009. The objection was filed on 22nd day of February, 2010 i.e. on 125th day. The application u/s 5 of the Limitation Act was also filed, but the trial Court rejected the said objection as barred by limitation in view of the proviso to sub-section (3) of section 34 of the Act. It has been observed that the power of "condonation of the delay on having sufficient cause is available after 90 days upto the extended period of thirty days "but not thereafter" and the application has been filed after 120 days, accordingly dismissed the objection as time barred by the order impugned.

2. Learned counsel appearing on behalf of the appellant contends that as per section 2(h) of the Act party to an arbitration agreement may prefer objection for setting aside the award passed by the Arbitrator within a period of 90 days. Referring CPWD Manual Clause 35 it is contended that the Chief Engineer is the authority to take a decision about the acceptance of the award or its challenge, however party to the agreement is the Chief Engineer and the Executive Engineer who must have received the award because the power to take decision of filing objection is with the Chief Engineer. The Chief Engineer received the arbitral award on 12-11-2009 vide letter of the Superintending Engineer dated 11-11-2009, therefore, the date of receipt ought to be accepted as 12-11-2009 and from the said date the objection filed by the appellant is within the extended period of limitation to which sufficient ground to condone the delay is available in the facts of the present case, therefore, delay in filing of the objection u/s 34 of the Act may be condoned and it may be decided on merit. To buttress the aforesaid contention reliance has been placed on a judgment of Hon'ble the Apex Court in the case of Union of India (UOI) Vs. Tecco Trichy Engineers and Contractors, In view of the foregoing it is urged that on condoning the delay in filing objection the order impugned passed by the trial Court may be set aside and the matter may be remitted back to decide the objection on merit.

3. Per contra, Shri Akhilesh Jain, learned counsel appearing on behalf of the respondent has strenuously urged that the argument so advanced by the appellant is unsustainable in law. Drawing my attention to the pleadings raised in the application filed u/s 34 of the Act it is contended that copy of the arbitration award dated 15-10-2009 was admittedly received on 20-10-2009 by the Executive Engineer, who was a party to the proceeding, but later on to take advantage of the judgment of Hon'ble the Apex Court in the case of Tecco Trichy Engineers and Contractors (supra) before this Court by way of amendment the appellant wants to raise factual aspect that the date of receipt of the award by the Chief Engineer would be relevant and from the date of receipt of certified copy of the award by him, the period of limitation ought to be counted. This apparently indicates that the contention as advanced before this Court was not raised before the trial Court and it is based on afterthought. It is contended by him that from the date of receipt of the award by the Executive Engineer the objection has been filed on 125th day. As per sub-section (3) of section 34 of the Act, the period of limitation to file objection is of three months and on expiry of such period if the party is in a position to show that it was prevented by

sufficient cause from making such application within the period of thirty days, it may be entertained, but after the said period, the delay if any, cannot be condoned in view of the specific stipulation "but not thereafter" under the provisions of the Act. In the present case the application u/s 34 of the Act has been filed after 124 days and including the extended period the power to condone delay is vested with the Court is upto 120 days i.e. four months, therefore, the trial Court not committed any error to reject the application filed by the appellant. In support of his contention reliance has been placed on a judgment of Hon"ble the Apex Court in the case of Union of India Vs. M/s Popular Construction Co., . Reliance has further been placed on a judgment of Hon"ble the Apex Court in the case of State of Maharashtra Vs. Hindustan Construction Company Ltd., and also in the case of Assam Urban Water Supply and Sew. Board Vs. Subash Projects and Marketing Ltd., . In view of the foregoing submissions it is urged that the appeal filed by the appellant may be dismissed.

4. After hearing learned counsel appearing on behalf of the parties and to appreciate the rival contentions advanced before this Court, first of all provisions contained u/s 2(h) as well as section 34(1) and (3) of the Act are required to be noticed which are reproduced as under:--

2. (h) "party" means a party to an agreement.

34. Application for setting aside arbitral award. - (1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and subsection (3).

(2) xxxxxxxx xxxxxxxx

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made u/s 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

As per the aforesaid definition it is clear that a party to an arbitration agreement would be a party to the proceeding. As per section 34 of the Act for setting aside of the arbitral award the recourse before the Court may be taken in accordance with sub-sections (2) and (3) of section 34. Sub-section (3) makes it clear that for setting aside of arbitral award the application on the grounds envisaged under sub-section (2) may not be considered after three months from the date on which the party making that application had received the arbitral award. The proviso makes it clear that on having satisfaction to the Court on an application filed by the applicant indicating sufficient cause by which he was prevented to make such application within three months and within extended period of thirty

days the Court may entertain it, but not thereafter. However, it is clear that the power of condonation of delay can be exercised upto the stipulated extended period of thirty days but on elapse of specified prescribed period, the Court cannot exercise the power of condonation even on having sufficient cause as specified in section 5 of the Limitation Act.

5. As per the Arbitration and Conciliation Bill, 1995 thereupon the Act of 1996 was enacted it is apparent that the Act has been brought to minimize the supervisory power of the Court in arbitral proceedings. The reflection thereof may be found in section 5 of the Act whereby it is clear that notwithstanding anything contained in any other law for the time being force, if matters governed by this Part, consists with section 2 to section 43 no judicial authority shall intervene except where so provided. Thus it is clear that for the matters governed by first Part judicial intervention has been minimized in the proceedings. It is not in dispute that in the present case proceedings are related to first Part of the Act. In the said context Hon'ble the Apex Court in the case of M/s. Popular Construction Co. (supra) has held as under:--

12. As far as the language of section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion," this phrase would amount to an express exclusion within the meaning of section 29(2) of the Limitation Act, and would therefore bar the application of section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase but not thereafter wholly otiose. No principle of interpretation would justify such a result.

13. Apart from the language, "express exclusion" may follow from the scheme and object of the special or local law. "Even in a case where the special law does not exclude the provisions of sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the Court to examine whether and to what extent the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation".

14. Here the history and scheme of the 1996 Act support the conclusion that the time limit prescribed u/s 34 to challenge an Award is absolute and unextendable by Court u/s 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of Courts in the arbitral process". This objective has found expression in section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:

5. Extent of judicial intervention.

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

15. The "Part" referred to in section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in section 5 of the 1996 Act.

6. In the case of Consolidated Engg. Enterprises Vs. Principal Secy. Irrigation Deptt. and Others, the three Judge Bench of Hon"ble the Apex Court has held that for the purpose of section 34(3) provision of section 5 of the Limitation Act is not applicable, but in view of section 43(1) of the 1996 Act, provision of section 14 of the Limitation Act applies to such proceedings. Hon"ble the Apex Court has observed thus:--

(Paras 20, 23, 42, 45 and 53)

20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any. suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of section 5 of the Limitation Act would not be applicable because the applicability of section 5 of the Limitation Act stands excluded because of the provisions of section 29(2) of the Limitation Act. However, merely because it is held that section 5 of the Limitation Act is not applicable to an application filed u/s 34 of the Act for setting aside an award, one need not conclude that provisions of section 14 of the Limitation Act would also not be applicable to an application submitted u/s 34 of the Act of 1996.

23. At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of section 14 of the Limitation Act to an application submitted u/s 34 of the said Act. On the contrary, this Court finds that section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings u/s 34 are for the purpose of challenging the award whereas the proceedings referred to u/s 43 are the original proceedings which can be equated with a suit in a Court. Hence, section 43 incorporating the Limitation Act will

apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the Court. Sub-section (4) of section 43, inter-alia provides that where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set, aside by the Court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of section 14 of the Limitation Act would be applicable to an application submitted u/s 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of section 14 of the Limitation Act, to an application made u/s 34 of the Act. It is to be noticed that the powers u/s 34 of the Act can be exercised by the Court only if the aggrieved party makes an application. The jurisdiction u/s 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of section 14 of the Limitation Act are not applicable to it, because cases are no doubt conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of section 14 of the Limitation Act is not manifest. It is well to remember that section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of section 14 of the Limitation Act, 1963 would be applicable to an application submitted u/s 34 of the Act of 1996 for setting aside an arbitral award.

42. The AC Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The AC Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings -- both in Court and in arbitration -- under the AC Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the AC Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to section 34(3) and sub-sections (2) to (4) of section 43 of the AC Act.

45. Learned counsel for the appellant contended that section 43 of the AC Act makes applicable the provisions of the Limitation Act only to arbitrations, thereby expressing an intent to exclude the application to any proceedings relating to

arbitration in a Court. The contention of the appellant ignores and overlooks section 29(2) of the Limitation Act and section 43(1) of the AC Act. Sub-section (1) of section 43 of the Act provides that the Limitation Act shall apply to arbitrations as it applies to proceedings in Court. The purpose of section 43 of the AC Act is not to make the Limitation Act inapplicable to proceedings before Court, but on the other hand, make the Limitation Act applicable to arbitrations. As already noticed, the Limitation Act applies only to proceedings in Court, and but for the express provision in section 43, the Limitation Act would not have applied to arbitration, as arbitrators are private tribunals and not Courts. Section 43 of the AC Act, apart from making the provisions of the Limitation Act, 1963 applicable to arbitrations, reiterates that the Limitation Act applies to proceedings in Court. Therefore, the provisions of the Limitation Act, 1963 apply to all proceedings under the AC Act, both in Court and in arbitration, except to the extent expressly excluded by the provisions of the AC Act.

53. Sub-section (3) of section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date of which the applicant has received the arbitral award. The proviso thereto vests in the Court discretion to extend the period of limitation by a further period; not exceeding thirty days if the Court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words "but not thereafter" in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to section 34(3) of the AC Act is similar to that of section 5 of the Limitation Act which also relates to extension of the period of limitation prescribed for any application or appeal. It vests a discretion in a Court to extend the prescribed period of limitation if the applicant satisfies the Court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-section (3) of section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to section 34(3) of the AC Act is also a provision relating to extension of period of limitation, but differs from section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding section 5 alone of the Limitation Act.

7. Thereafter recently Hon^{ble} the Apex Court in the judgment of M/s. Subash Projects and Marketing Ltd. (*supra*) reiterated the same proposition of law relying upon aforesaid two judgments and held as thus:

7. Section 34(3) of the 1996 Act provides that an application for setting aside an award may be made within three months of the receipt of the arbitral award. The proviso that follows sub-section (3) of section 34 provides that on sufficient cause being shown, the Court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days but not thereafter.

9. Recently, in the State of Maharashtra vs. Hindustan Construction Company Limited, a two Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) emphasised the mandatory nature of the limit to the extension of the period provided in proviso to section 34(3) and held that an application for setting aside arbitral award u/s 34 of the 1996 Act has to be made within the time prescribed under sub-section (3) of section 34, i.e., within three months and a further period of 30 days on sufficient cause being shown and not thereafter.

10. Section 43(1) of the 1996 Act provides that the 1963 Act shall apply to arbitrations as it applies to proceedings in Court. The 1963 Act is thus applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of the express provision contained in section 34(3) of the 1996 Act.

8. In view of the legal position enunciated in the aforesaid judgment it is apparent that as per language of sub-section (3) of section 34 of the 1996 Act it is clear that the application for setting aside of the arbitral award may be filed on any of the grounds available in sub-section (2) within three months by a party making application had received arbitral award. It has further been specified that if the Court is satisfied that filing of the application was prevented by sufficient cause it may entertain application within a further period of 30 days, but "not thereafter". The provision of the Limitation Act, 1963 would be applicable until it is not expressly barred in the Arbitration and Conciliation Act. The exclusion of the period of limitation has been specified in sub-section (3) of section 34 of the 1996 Act by the special enactment, therefore, after the period so prescribed under special enactment provision of section 5 of the Limitation Act would not be applicable for that purpose; In the said context the judgment relied upon by the learned counsel for the appellant in the case of Tecco Trichy Engineers and Contractors (supra) is required to be considered. In the said judgment also the provisions contained under sub-section (3) of section 34 has been recognized, but interpreting words "party making application" and also the "receiving of the award" as contained under sub-section (5) of section 31 and sub-section (3) of section 34 and also taking note of the fact the arbitral award was communicated in the office of the General Manager of the Railways taking acknowledgment from inward office and not to the Chief Engineer who was directly concerned with the arbitration, it was found that the Chief Engineer was noticed on 19-3-2001, however, treating the said date to be starting period of limitation to challenge the award in the Court found that period of 90 + 30 days had not been elapsed however directed for restoration of the proceedings u/s 34(1) before the trial Court.

9. In the said judgment of Tecco Trichy Engineers and Contractors (supra) Hon"ble the Apex Court has observed in paragraphs 8, 10 and 12 as under:--

8. The delivery of an arbitral award under sub-section (5) of section 31 is not a matter of mere formality. It is a matter of substance, it is only after the stage u/s

31 has passed that the stage of termination of arbitral proceedings within the meaning of section 32 of the Act arises. The delivery of arbitral award to the party, to be effective, has to be "received" by the party. This delivery by the arbitral tribunal and receipt by the party of the award sets in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days u/s 33(1), an application for making an additional award u/s 33(4) and an application for setting aside an award u/s 34(3) and so on. As this delivery of the copy of award has the effect of conferring certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the Tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

10. In the present case, the Chief Engineer had signed the agreement on behalf of Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during the proceedings of the Arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the Arbitration, as the subject-matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of section 34(3) of the Act. The service of notice on the Chief Engineer on 19-3-2001 would be the starting point of limitation to challenge the award in the Court.

12. The learned single Judge of the High Court as also the Division Bench have erred in holding the application u/s 34 filed on behalf of the appellant as having been filed beyond a period of 3 months and 30 days within the meaning of subsection (3) of section 34. There was a delay of 27 days only and not of 34 days as held by the High Court. In the facts and circumstances of the case, the delay in filing the application deserves to be condoned and the application under subsection (1) of section 34 of the Act filed on behalf of the appellant deserves to be heard and decided on merits.

10. In the light of the aforesaid judgments of Hon'ble the Apex Court it is clear that explaining intention of the Legislature while enacting Arbitration and

Conciliation Act to minimize judicial supervision if the recourse u/s 34 has been taken for setting aside of arbitral award then why by virtue of subsection (3) the applicability of section 5 of the Limitation Act has been denied while the applicability of sections 12 and 14 has been permitted.

11. In the judgment of *Tecco Trichy Engineers and Contractors (supra)* the greater significance has been given to the words "party" and "receiving of the award" as enumerated in sub-section (3) of section 34 referring the provisions of sections 31 to 33 of the 1996 Act.

12. In Part I of the 1995 Act section 31 specifies "Form and contents of arbitral award" and section 32 specifies "Termination of proceedings" by issuing an order on the grounds so specified in sub-section (2) thereof. As per subsection (3) it is clear that aforesaid termination of proceedings shall be subject to section 33 and sub-section (4) of section 34. Section 33 deals with "Correction and interpretation of award, additional award". The party may apply "within thirty days from the receipt of the arbitral award", unless another period of time has been agreed upon by the parties. Sub-section (2) makes it clear that on receiving such application the Tribunal shall consider it and decide within thirty days from the receipt of articles and if any correction or interpretation shall form part of the arbitral award. Sub-section (3) confers the power to the Tribunal for correction of the clerical error as specified u/s 33(1)(a) within thirty days from the date of the arbitral award. Thereafter as per sub-section (4) the Tribunal is required to make an additional arbitral award if found justifiable on the request as per sub-section (5) within sixty days and as per sub-section (6) the tribunal may extend the period of time which it shall make a correction, giving an interpretation or make an additional award under sub-section (2) or sub-section (5). Sub-section (7) makes it clear that section 31 shall be applicable to form a content of the arbitral award. Thus, it is apparent that the aforesaid provision applies if the recourse u/s 33 is taken. On consideration of the language of sub-section (3) of section 34 it is clear that party making the application under sub-section (1) of section 34 had received the arbitral award may not be directed to make such application for setting aside after three months from the date it was received or if the recourse u/s 33 has been taken, then from the date on which request had been disposed of by the arbitration tribunal. In the said context if the definition of the "party" as reproduced hereinabove has been taken note of then it indicates party to an agreement. However, the party to the agreement if received the award, it may recognize the date of receiving. In the said judgment of *Tecco Trichy Engineers and Contractors (supra)* the Apex Court has laid down the law in the context of the application u/s 34 itself. Thus the interpretation made in the said judgment squarely applies to the facts of the present case. Thus facts of the present case are required to be examined in the said context and in the light of the other judgments referred hereinabove.

13. Now in the facts of the case in hand and consideration of the arguments of learned counsel for the appellant as per section 2(h) of the 1996 Act, "party"

means a party to an agreement. In the present case the notice inviting tender was issued by the Executive Engineer. The agreement was signed by the Executive Engineer and the present appeal has also been preferred by the Executive Engineer, CPWD, Division-II, Bhopal on behalf of the Union of India. The copy of the arbitral award passed on 15-10-2009 has admittedly been received by him on 20-10-2009 and he vide its letter dated 7-11-2009 applied to the Superintending Engineer and the Superintending Engineer vide its letter dated 11-11-2009 communicated it to the Chief Engineer which was received to him on 12-11-2009 thereafter the Chief Engineer vide letter dated 14-1-2010 granted permission to file application u/s 34 after the concurrence with the opinion of the Executive Engineer. The said communication was made by the Superintending Engineer to the Executive Engineer on 4-2-2010 whereupon the application was filed on 22nd February, 2010. It is to be observed here that the agreement was signed by the Executive Engineer, however, as per the meaning of section 2(h) he is a party to the agreement who received the award on 20-10-2009 and filed the application on 22nd February, 2010. On the said date the period of limitation 90 days and the extended period of limitation 30 days was already exceeded by 5 days, however, the trial Court has rightly rejected the application for setting aside of the award and also the application seeking condonation filed after extended period of limitation. Thus, as per the factual matrix of the present case the judgment of Tecco Tricky Engineers and Contractors (supra) is not applicable and the argument raised by the appellant relying upon the said judgment is fallacious.

14. Here it is also required to be observed that while filing appeal before this Court it has not been reiterated that the Chief Engineer would be treated as a party because he is the authority to challenge the proceedings. The aforesaid plea has been taken after 11 months applying by way of amendment. It is to be observed here that said contention has not been advanced before the trial Court also who rejected the application as barred by limitation u/s 34(3) of the 1996 Act. In such circumstances it can safely be held that the contention advanced by the appellant by way of amendment is based on afterthought and to derive benefit of judgment of Tecco Tricky Engineers and Contractors (supra) which is not applicable on facts and also not supports to the appellant on law. Thus, the contention of the appellant to treat objection u/s 34(1) filed by them within the extended period of limitation is hereby repelled. In view of the foregoing discussion the appeal filed by the appellant is found to be devoid of any substance, hence it is dismissed. In the facts of the case cost of the respondent shall be borne by the appellant.