Delivery of Arbitral Award to Parties – Is it a mere formality?

By Chakrapani Misra and Sukanya Bhaumik

The termination of arbitration proceedings is envisaged by Section 32 of the Arbitration and Conciliation Act, 1996 (“Act”). The Section provides that the arbitral proceedings will be terminated by the final arbitral tribunal or by an order of the arbitral tribunal as provided in Section 32(2) of the Act. Under Section 32(2) of the Act, the arbitral tribunal will issue an order for the termination of the arbitral proceedings where the claimant has withdrawn his claim unless objections have been raised by the respondents and the tribunal recognises that there is a legitimate interest in obtaining a final settlement of the dispute, or where the parties agree on the termination of the proceedings or where the tribunal finds that the continuation of the proceedings is wholly unnecessary and impossible. Thereafter, under Section 34 of the Act, an aggrieved party can take recourse to a Court against the arbitral award by making an application for setting aside such an award. Under the said Section of the Act, recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with Section 34(2) and 34(3) of the Act. Such an application 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 under Section 33, which deals with the correction and interpretation of the award and the additional award from the date on which that request had been disposed of by the arbitral tribunal. Section 33 of the Act puts a limitation of 30 days from the date of receipt of an award on the party seeking to make a request to the arbitral tribunal to correct any errors or as otherwise agreed by the parties to the agreement.

The question that arises while calculating the limitation period for challenge under Section 34 of the Act is that whether it is the date of signing of the arbitral award or the dispatch and delivery thereof to the parties that would be the date for the calculation of the limitation. This article examines the Act as well as the relevant provisions of the judicial pronouncements on the subject.

Delivery of an award vis-à-vis dispatch of the award

Under Section 31(5) of the Act, after an arbitral award is made a signed copy will have to be ‘delivered’ to each party. Delivery of the signed copy of the arbitral award is different from the dispatch of the award to the party
to the arbitration. The dictionary[1] meaning of the word ‘delivery’ refers to the bringing and handing over to the proper recipient. Hence, what is important is that the copy of the award should be handed over to the proper recipient or addressee. Hence, under the mandate of Section 31(5) of the Act, copy of the arbitral award has to be handed over to the concerned party and mere dispatch of the same is not sufficient for the purposes of conferring rights under Section 31(5) of the Act. This becomes significant in the context of Section 34(3) of the Act for the purposes of calculating the period of limitation from the date on which party making the application has received the arbitral award. Hence, under Section 31(5) of the Act read with Section 34(3) of the Act, the arbitral award has to be delivered and received by the party to the arbitration.

**Delivery is not a technical requirement**

Posed with a question of whether ‘delivery’ of the arbitral award to the party to the arbitration is a mere technical requirement or not, the Supreme Court observed that the delivery of the award is not a formality and is a substantial requirement under the Act.

In the case of *Union of India (UOI) v Tecco Trichy Engineers and Contractors*, the Chief Engineer, representing the Union of India, the appellant in the instant case, entered into an agreement with Tecco Trichy Engineers and Contractors, the respondents in the instant case. The issue that came up for consideration before the apex Court was which is the effective date on which the appellant was delivered with and received the arbitral award as that would be the date wherefrom the limitation within the meaning of Section 34(3) of the Act shall be calculated. Courts have held that the ‘delivery’ of arbitral award under Section 31(5) is not a mere formality and is a substantial point that is to be adhered to for the purposes of granting subsequent remedies to the party after the termination of the arbitration proceedings[2]. The Court further observed that in case of huge organizations such as the Railways, the copy of the award has to be received by person who has knowledge of the proceedings and has an understanding of the matter and is also in a position to appreciate the award that has been granted. In the present matter, it was the Chief Engineer who had signed the agreement on behalf of the Union of India and also the arbitral tribunal clearly mentions that the Union is being represented by the Chief Engineer and he has direct knowledge of the arbitral proceedings. Hence, the award has to be delivered to the Chief Engineer who is in full knowledge of the arbitral proceedings. The period of limitation would be calculated only from
the date when the copy of the award has been delivered to such person as provided above.

Termination of arbitration proceedings under Section 31 of the Act is effective where the arbitral award is delivered to the party and the same has been received by the party. It is this delivery of the arbitral award and its subsequent delivery of the same to the party to the arbitration that sets off the period of limitation for various subsequent remedies such as application for correction and the interpretation of an award within 30 days under Section 33(1) of the Act, application for making an additional award with respect to the claims presented in the arbitral proceedings under Section 33(4), an application for setting aside an award under Section 34(3) and so on. It is therefore imperative to note that the factum of delivery of the copy of the arbitral award is of crucial importance as the delivery of the same to the party to the arbitration confers the aforementioned rights on the party and also enables the extinguishment of several rights if those rights are sought to be exercised beyond the period of limitation that is calculated from the delivery of the award to the party to the arbitration. Hence, passing of the award by the arbitral tribunal and its subsequent delivery to the parties to the arbitration marks an importance stage in the scheme of continuance of the arbitral proceedings.

**When does the limitation begin to run?**

In the case of *State of Maharashtra v Ark Builders*[3], the issue for consideration before the Supreme Court was whether the period of limitation for the purposes of making an application under Section 34 of the Act for setting aside the award delivered in the arbitral proceedings be calculated from the date of signing of the award by the arbitrator or the delivery of the award after the signing. In the instant case, arbitrator gave a copy of the award to the claimant in whose favour the award was made. No copy was provided to the appellants, the other party to the proceedings, apparently because the Appellant had failed to pay the costs of the arbitration proceedings. Later, the appellant requested for a copy of the award for the purposes of making an application for setting aside of the award. The respondents objected to the same by vehemently claiming that the petition was not maintainable and hence it was barred by limitation.

The court held that under Section 34(3) of the Act, limitation is to be calculated from the date the signed copy of the award is delivered to/received by the party making the application for setting it aside under Section 34(1) of the Act[4]. Hence, if the law under the Act makes the
prescription 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, then the period of limitation is calculated from the date on which the order/award was received by the party concerned in the manner prescribed by the law.

**Delivery to the agent of the party**

In the event, the party to the arbitration is a large government organization or a corporation, in that event the copy of the award has to be received by the person who has the knowledge of the proceedings and would be the best person to understand and appreciate the arbitral award and can take a decision with respect to further proceedings and remedies after the passing of the arbitral award[5].

The issue was considered by the Supreme Court in 2012, in the case of *[Benarasi Krishna Committee and Ors v Karmayogi Shelters Private Limited][6]*, wherein the issue to be resolved was whether the service of an arbitral award on the agent of a person amounted to service on the party itself in accordance with the scheme of arbitration. In the instant matter, the petitioner was a committee of managing landlords who were also the co-owners of Benrasi Krishna Estate at Modi Cinema. The petitioner entered into a Collaboration Agreement with the respondent, an estate developer, to convert the Modi Cinema compound into a commercial complex. Disputes arose subsequently and the respondent filed an application under Section 11 of the Act for the appointment of an arbitrator. The arbitrator held that the respondent committed breach of the terms of the Collaboration Agreement and the petitioner was asked to refund the sum received by it from the respondent. The records showed that copies of the signed award of the arbitrator were received by the counsel for the respective parties and the counsel of the respondent received it on behalf of the respondent. Furthermore, no application for setting aside the award was filed by the respondent within the mandated period of three months from the date of receipt of the award as provided under Section 34 of the Act.

The Court was prolific in its explanation that the term “party”, as defined in the Act was a person who was a party to the arbitration proceedings and this definition contemplated by the agreement does not envisage the agent of the party to the arbitration agreement. Hence, service to the agent of advocate of the party will not constitute proper service within the scheme of affairs even though they have been empowered by a duly executed vakalatnama. Moreover, since it has already been held that compliance with the scheme of
Section 34 is not a mere technical requirement, hence, proper compliance with the scheme of Section 34 of the Act would mean that a signed copy of the arbitral award would have to be delivered on the party himself and not to his advocate.

To conclude one may safely infer that the receipt and the delivery of the arbitral award to the parties to arbitration is an essential component of the arbitration proceedings. Further, in case of large corporations, the award has to be delivered to the person who has knowledge of the proceedings and is in a position to understand the arbitral award and take decisions with respect of the arbitral award. However, service upon the agent of the party, including the counsel who was appointed by a party by signing a vakalatnama does not constitute proper service and the same has to be delivered to and received by the party to the arbitration.

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[5] Paragraph 13, supra note 1
