

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 6578 OF 2025
IN
ARBITRATION PETITION NO.166 of 2025

1. Veeramaneni Venugopalrao
2. Veeramaneni Umadevi,
Partners of M/s. Akshar Enterprises,
Both Indian Inhabitants, residing at
C/o. Veeramaneni Chokka Rao,
2-12-122/6, Sai Ganesh Colony,
Hanmakonda, Bheemaram,
Hanmakonda, Vidyaranyapuri,
Warangal Telangana – 506009

...Applicants

IN THE MATTER BETWEEN :

1. Veeramaneni Venugopalrao
2. Veeramaneni Umadevi,

Partners of M/s. Akshar Enterprises,
Both Indian Inhabitants, residing at
C/o. Veeramaneni Chokka Rao,
2-12-122/6, Sai Ganesh Colony,
Hanmakonda, Bheemaram,
Hanmakonda, Vidyaranyapuri,
Warangal Telangana – 506009

... Petitioners

Versus

Mahindra & Mahindra Ltd.
A company incorporated under the
Indian Companies Act, 2013,
having address at Gateway Building,
Apollo Bunder, Mumbai-400 001.

...Respondent

WITH
ARBITRATION PETITION NO.166 of 2025

1. Veeramaneni Venugopalrao

2. Veeramaneni Umadevi,
Partners of M/s. Akshar Enterprises,
Both Indian Inhabitants, residing at
C/o. Veeramaneni Chokka Rao,
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...Respondent

*Mr. Rajshekhar V. Govilkar, Senior Advocate a/w Ms. Shaba Khan,
Mr. Mihir Govilkar i/b Mr. Iqbal Ahmed Siddiqui for the
Applicants/Petitioners*

*Mr. Zubin Behramkamdin a/w Mr. Aditya Khandeparkar, Ms. Janhavi
Patadia, and Mr. Gaurav Patole i/b Mr. Khandeparkar for the Respondent*

CORAM : SHARMILA U. DESHMUKH, J.

RESERVED ON : MARCH 26, 2026

PRONOUNCED ON : APRIL 22, 2026

ORDER :

1. The Interim Application seeks an order that the captioned Arbitration Petition is not barred by limitation and to condone the delay, if any, in filing of the Arbitration Petition.

2. The Arbitration Petition has been preferred by the partners of M/s. Akshar Enterprises under Section 34 of the Arbitration and Conciliation Act, (for short, '**the Arbitration Act**'), challenging the final Award dated 20/12/2021, passed by the Learned Sole Arbitrator in MCIA/ARB/14/2020.
3. The Application is filed pursuant to the order of this Court dated 03/09/2025, granting liberty to file a formal application seeking condonation of delay.
4. The Application pleads that the Applicants have neither been delivered nor have received the signed copy of the Arbitral Award till date and that the Applicants have self-obtained copy of the impugned Arbitral Award from Mumbai Centre for International Arbitration ('**MCIA**') and hence, the limitation to challenge the impugned Arbitral Award did not commence. The Application further sets out the facts of the case as regards the dealership agreement entered into between the Applicants and the Respondent, the termination of the dealership agreement and the appointment of a new dealer who opened a showroom opposite the office/showroom of the Applicants, the closing down of the Applicant's office and releasing of all staff, followed by surrender of the tenanted premises to the landlord.
5. It is averred that on 22/10/2020, a legal notice was issued by the Respondent demanding certain dues with invocation of arbitration

clause in the dealership agreement. Due to termination of the dealership agreement and ongoing COVID-19, the Applicant accessed the email notice late and replied to it by email dated 11/01/2021 *inter alia* denying the liability and objecting to the invocation of arbitration. There was no Request for Arbitration (RFA) served upon the Applicants, nor any communication letters from MCIA or the Respondent or the Arbitral Tribunal. It is contended that there being four parties to the arbitration proceedings, i.e. the Respondent, M/s. Akshar Enterprises, Applicants No. 1 and Applicants No. 2 as partners of M/s. Akshar Enterprises, whereas the Arbitral Award dated 20/12/2021 shows that the sole Arbitrator has signed only one copy of the Arbitral Award and hence the question of Applicants having been delivered the signed copy of the impugned Arbitral Award does not arise.

6. The Applicants came to know about Execution Petition No. 61 of 2023 initiated by the Respondent from the District Court at Hanmakonda, however, the Applicants did not receive the Arbitral Award with notice of the execution petition which is pending. Upon becoming aware of the execution petition, the Applicants contacted their advocates in Mumbai for getting details of the arbitration proceedings at Mumbai and Arbitral Award passed therein. The Applicants addressed correspondence to MCIA requesting specifically

to give copy of the entire records and proceedings. On 06/01/2024, MCIA sent copy of few email correspondences, procedural orders, and Arbitral Award with a stamp/seal of MCIA, however, the entire record was not received. It is contended that though a specific request was made to MCIA as to when the Arbitral Award was sent to or received by the Applicants, there was no response by MCIA nor any proof furnished regarding delivery of the signed copy of the impugned Arbitral Award to the Applicants. The Applicants have self acquired the Arbitral Award dated 20/12/2021.

7. The affidavit in reply on behalf of the Respondent contends that the Applicants' place of business was mentioned in the dealership agreement and the email address was the same address at which the the emails were exchanged between the parties. The Respondent invoked arbitration against the Applicants vide notice dated 22/10/2020, which was sent via email to the Applicants at the email id which was used in the earlier correspondence. Subsequently, a request for arbitration was filed with MCIA via email dated 25/11/2020, with a copy marked to the email id of the Applicants. MCIA took cognizance of the RFA and by letter dated 26/11/2020 confirmed the receipt of RFA and requested the Applicants to submit a response to RFA, which was sent via email dated 26/11/2020. By communication dated 28/12/2020, MCIA appointed the sole Arbitrator, which communication was also

sent to the Applicants' email id. On 02/01/2021, the sole Arbitrator sent an email to both parties about the preliminary meeting to be held on 07/01/2020. On 04/01/2021, the Respondent's advocate sent an email to the Arbitrator with a copy to the Applicants informing the Arbitrator that during the time that RFA was filed with MCIA, the advocate was recovering from COVID and that the RFA was sent to MCIA via email with cc marked to the Applicants as and by way of service upon the Applicants. The Respondent's advocate sent a hard copy of RFA and a hard copy of the email dated 05/01/2021 addressed by the Arbitrator to the parties via speed post to the Applicants' last known place of business, which was returned with the remarks "addressee closed."

8. On 11/01/2021, the Respondent's advocate received an email along with the attachment of reply letter dated 11/01/2021 to the Respondent's Advocate's letter dated 22/10/2020 invoking arbitration, from the same email id of the Applicants on which the earlier correspondence had taken place. A copy of the letter dated 11/01/2021 was marked to the Registrar of MCIA as well as the sole Arbitrator on his email id.

9. It is submitted that the Zoom links for the arbitration meetings were circulated by MCIA via email to all parties including the Applicants as also the procedural orders. The copy of the email dated 13/01/2021

of the first procedural hearing was sent by speed post by the Respondent's advocate to the Applicants address was returned with the remark "addressee closed." The Respondent's advocate came across another address of the Applicants listed on Indiamart website and attempted to serve the Applicants on the said address which was also returned with the remark "Addressee left without Intimation." The copy of the email dated 13/01/2021 along with the procedural order was once again attempted to be served upon the Applicants at the address stated in the Applicants' advocate's letter dated 11/01/2021, which was returned with the remark "No such person in this house."

10. As the envelopes sent by the post were being returned to the Respondent' advocate unserved, the Respondent's advocate addressed a letter to the Applicants' advocate on 22/01/2021, forwarding the procedural order No.1 with a request to forward the same to the Applicants. The said communication was duly delivered to the Applicant's Advocate. On 12/02/2021, the Respondent replied to the Applicants' advocate's letter dated 11/01/2021, denying all contentions and recording that the Applicants were aware that the disputes were the subject matter of an ongoing arbitration, and that though attempted to be served, the Applicants were not found at the address mentioned in the Applicants' advocate's letter.

11. The affidavit in reply further sets out the meetings held with the learned sole Arbitrator, the service of the hard copy of the statement of claim upon the Applicants' advocate, which was received without any protest. It is further contended that vide email dated 17/03/2021, the sole Arbitrator, *inter alia*, urged the Applicants to make timely submissions. The VC links for the subsequent hearings before the Arbitrator were circulated via email, and insofar as the email dated 13/05/2021 sent by the Respondent's advocate circulating the VC link, has been delivered, opened, and read by the Applicants. The subsequent orders passed and the meetings scheduled were circulated via email addressed to the Applicants. However, the Applicants failed to participate in the proceedings, and ultimately on 30/09/2021, the learned Arbitrator formally closed the Applicants' right to file a statement of defence and passed further orders fixing the timelines for the Respondent to file its evidence, which was duly done.

12. The evidence of CW1 along with the notes of evidence was circulated by the stenographer to all parties, including the Arbitrator and Applicants vide email dated 30/09/2021, and also the VC Zoom link of the hearing/re-scheduled hearing, was circulated by MCIA. On 21/10/2021, the final written submissions along with the judgments and the schedule of costs were filed by the Respondent's advocate via email dated 21/10/2021 to all parties, including the Applicants.

13. The final Award was passed on 20/12/2021, and the Award in original was sent by the MCIA to both the parties vide letter dated 04/01/2022. The original Award was received by the Respondent's advocate on or about 05/01/2022, and MCIA sent the final Award to the Applicants via RPAD on 04/01/2022, which was received back by MCIA with the postal authorities with the remarks "Closed. Hence returned to Sender".

14. In the counter affidavit of the Applicants, there is general denial to the averments in the reply affidavit. It was further contended that the Applicants did not receive intimation about the proceedings/dates fixed before the Learned Arbitrator and were not served with signed final Arbitral Award. It is contended that the Applicants sent their reply dated 11/01/2021 to the notice dated 22/10/2020 by post and not by email. The Respondents were aware of the closure of the Applicants' office in May 2020. It was contended that the Applicants had no address at H. No.12/119-1, Warangal Road, Huzurabad, Karimnagar, which was stated to be the alternate address of the Applicants.

15. Mr. Govilkar, learned Senior Advocate appearing for the Applicants, submits that Section 31(5) of the Arbitration Act provides for signed copy of the Arbitral Award to be delivered to each party, which has not been done and hence the period of limitation for filing Section 34 Petition did not commence. He submits that the Applicants

acquired knowledge about the passing of the final Award only when the execution proceedings were filed. He submits that the Applicants, through their advocate, applied to the Registrar of MCIA for certified copies of the entire record and proceedings, including the Award. He points out the communications addressed by the Applicants through their Advocate to MCIA requesting for certified copy of the proceedings. He submits that only on 06/01/2024, the certified copies were received from the Registrar, MCIA, and the Petition has been filed on 16/02/2024.

16. He submits that there were four parties to the arbitration proceedings, whereas the Arbitral Award dated 20/12/2021 would show that the sole Arbitrator has signed only one copy of the Arbitral Award, and hence there is no question of the signed copy of the impugned Arbitral Award having been delivered to the Applicants. He would further submit that the requirement under Section 31(5) of the Arbitration Act is mandatory requirement for commencement of period of limitation.

17. He submits that there is no Section 65B Certificate produced by the Respondent before the Arbitral Tribunal as regards the service of notices by emails upon the Applicants, which aspect has not been considered by the learned Arbitrator. He would further submit that though specific contentions have been raised in the present

Application, that the Applicants after knowing about the execution petition requested their advocates in Mumbai for getting details of the arbitration proceedings and the Arbitral Award, in the affidavit in reply there is a bare denial. He further submits that the case of the Respondent is of deemed service, which is non-compliance of Section 31(5) of Arbitration Act. In support, he relies upon the following decisions:

(i) State of Maharashtra & Ors. vs. ARK Builders Pvt. Ltd.¹

(ii) Health Care, Medical & General Stores & Ors. vs. Amulya Investment & Ors.²

(iii) Era International vs. Aditya Birla Global Trading India Pvt. Ltd. Previously known as Swiss Singapore India Pvt. Ltd.³

(iv) Amulya Investment vs. Health Care, Medical & General Stores & Ors.⁴

18. Mr. Behramkamdin, learned Senior Advocate appearing for the Respondent would submit that the case of the Applicants is of closure of their registered office which casts a duty on the Applicants to furnish the changed address. He points out Clause 28 of the dealership agreement dealing with the service of notice, which provides that any notice sent by fax or email or any other comparable means of

1 (2011) 4 SCC 616 : (2011) 2 SCC (Civil) 413 : 2011 CC OnLine SC 413

2 2025 SCC OnLine Bom 81

3 Order dated 29.02.2024 passed in CARBP(L)/27638/2023 with CARBP(L)/27643/2023

4 Order dated 24.02.2025 passed by Petition for Special Leave to Appeal (C)/4289/2025

communication shall be deemed to have been duly given on the next business date, after transmission. He points out the email sent by the Applicants' Advocate on 11/01/2021 to the Respondent from the email id attaching the letter dated 11/01/2021 addressed in response to the Respondent's letter with copy to MCIA and learned Arbitrator. He submits that in the reply notice, it is specifically pleaded that the Applicants had shut down the business and therefore the Applicants had not seen the emails, and recently when he opened the email account, found the email sent and responded to the notice. He further points out that the advocate's notice in paragraph 12 specifically mentions the appointment of the sole Arbitrator, which evidences that the Applicants were aware of the appointment of the Arbitrator and also the name of the Arbitrator. He submits that the notice dated 11/01/2021 was also sent to the Arbitrator on his email id.

19. He would further point out that on 28/12/2020, MCIA had informed the parties upon the appointment of the Arbitrator, and the Arbitrator had sent emails on the same address from which the email was sent on 11/01/2021 about holding of the preliminary meeting. He submits that even if the office of the Applicants was shut down due to COVID-19, the email was accessible. He submits that there are varying dates given by the Applicants as regards Closure of its office premises as in paragraph 6 of the affidavit in rejoinder, the date is given as

25/10/2019, in paragraph 12 of Petition, the date is given as June 2020, and in the synopsis, the date is given as May 2020.

20. He submits that the Applicants were well aware of the commencement and conduct of the arbitration proceedings, which is evident from the emails sent to the parties scheduling the hearings of arbitration as well as the service of documents. He would further point out that the email circulating the link of the hearing scheduled on 17/05/2021 was opened and read by the Applicants and points out to page 345 of the reply affidavit.

21. He further submits that the impugned final Award was passed by the Tribunal on 20/12/2021, and on 04/01/2022, the RPAD letter was sent by MCIA to the Applicants enclosing the original signed Award. He submits that the envelope was returned with the remark "closed." He submits that the Applicants were aware of the pendency of the arbitration proceedings and in event, the Applicants had stopped its business operations from the address noted in the dealership agreement, it was for the Applicants to furnish the changed address. He submits that under Section 27 of the General Clauses Act, as the Arbitral Award was sent at last known address of the Applicants, there is effective service. He submits that as the signed copy of the Arbitral Award was sent at the last known address of the Applicants by RPAD, the Arbitral Award was deemed to have been received on the date it

was so delivered and there is compliance with Section 31(5) of the Arbitration Act and the period of limitation would commence from that date. In support, he relies upon the following decision:

(i) Logic Eastern India Pvt. Ltd. vs. KFC International Ltd.⁵

(ii) M/s. Madan & Co. vs. Wazir Jaivir Chand⁶

(iii) Vishwabandhu vs. Sri Krishna & Anr.⁷

(iv) Zapp India Ltd., Jaipur vs. Maheshwar Textiles, Mumbai⁸

(v) Pankaj Kumar Singh vs. Tata Motors Finance Ltd.⁹

(vi) Vaibhav Bhatia & Anr. vs. M/s. L & T Finance & Anr.¹⁰

22. In rejoinder, Mr. Govilkar would submit that even assuming, without accepting, that the signed copy of the Award was served, the addressee to whom the impugned Award was forwarded was not the Respondent in the Arbitration Petition, as the party to the arbitration proceedings was M/s. Akshar Enterprises and the impugned Award was forwarded to the partners of M/s. Akshar Enterprises.

REASONS AND ANALYSIS :

23. The Application makes a claim that by virtue of non compliance of Section 31(5) of the Arbitration Act, the period of limitation did not

5 2016 SCC Online Bom 5206 : (2016) 6 Bom CR 382 : (2016) 6 Arb LR 134

6 (1989) 1 SCC 264

7 (2021) 19 SCC 549

8 (2013) 2 Mh.L.J. 103

9 Order dated 11.02.2014 passed in Arb. Petition No.909/2013

10 2014 SCC OnLine Del 2613

commence and hence the Arbitration Petition is not barred by limitation. Section 31(5) of Arbitration Act provides that after the Arbitral Award is made, a signed copy shall be delivered to each party. Section 34(3) of Arbitration Act sets the law of limitation in motion after the party has received the Arbitral Award.

24. The dispute between the parties arose out of the dealership agreement dated 29th December 2015 executed between the Respondent and the Applicants named as M/s. Askhar Enterprises or Veeramaneni Venugopal Rao, Veeramaneni Umadevi. Clause 35.2 of the agreement provided for arbitration as under:

“35.2 However, in case any dispute cannot be settled amicably within a period of thirty (30) days of a written notice being served by either Party on the other, then such dispute shall be finally settled by mutually appointed sole arbitrator, in accordance with the Rules of Mumbai Centre for International Arbitration (MICA Rules). Arbitration proceedings shall take place in Mumbai. The award passed by the Arbitrator shall be a reasoned award and be final and binding on the Parties. The arbitration proceedings shall be conducted and the award shall be stated in English language.”

25. Clause 28 of the dealership agreement provided that any notice or other information sent by facsimile transmission or e-mail or any other comparable means of communication, with confirmation of transmission shall be deemed to have been duly given on the next

business day after transmission. The parties agreed that service and any legal proceedings concerning or arising out of the agreement shall be effected by causing the same to be delivered to the Party to be served, at its registered office, or to such other address as may from time to time be notified in writing by the Party concerned.

26. The Applicants were served with notice of invocation of arbitration dated 22/10/2020, seeking dues of about Rs.6,46,30,931/-. Perusal of the notice shows that the email address of the Applicants has been mentioned in the notice. There is no dispute about the notice dated 22/10/2020 sent by email which was duly received by the Applicants and the contention is that the email was opened late and thereafter the communication was responded by the Applicants through their Advocate on 11/01/2021. The contention of the Respondent that the reply letter of 11/01/2021 was sent by email from the Applicants' email address is sought to be denied in the counter affidavit claiming that the reply letter was sent by post and not by email. The Applicants in their Interim Application in paragraph 7(xi), (xii) and (xiii) have reiterated that the reply notice dated 11/01/2021 was sent by email. There is judicial admission by the Applicants that the reply notice dated 11/01/2021 was sent by email and cannot be retracted in the counter affidavit. That apart, there is no scope for any denial by the Applicants for the reason that the Respondent has

annexed at Exhibit "T" the email of 11/01/2021 addressed from the Applicants' email address attaching the reply notice of 11/01/2021. The record will therefore indicate that the Applicants' email was active and accessible by the Applicants and was used for exchanging correspondence with the Respondent.

27. The Arbitration Petition pleads that the Applicants completely shut down the office/show room of M/s. Akshar Enterprises and discontinued the internet services with effect from 14/06/2020 and surrendered the premises to the landlord. Interestingly, the reply notice dated 11/01/2021 mentions the same registered address of the Applicants. It cannot be disputed that due to COVID 19 pandemic, the operations must have been severely affected and even if the premises were available, the same could not have been completely operational. That, however, does not mean that the emails could not have been accessed. The shutting of the office and discontinuing the internet is immaterial as the emails could be accessed from anywhere and was in fact accessed by the Applicants while sending the reply notice of 11/01/2021.

28. In the interregnum, the Respondent has filed the RFA on 25/11/2020 with MCIA for appointing an Arbitrator by email with copy marked to the Applicants' email address. The response of MCIA was by email with copy marked to all parties including the Applicants. By

letter dated 28/12/2020, MCIA informed the parties about the appointment of Mr. Madhvendra Singh as Sole Arbitrator which letter was sent by email to the parties. On 02/01/2021, the Sole Arbitrator by email addressed to all parties informed the parties about the preliminary meeting to be held on 07/01/2020.

29. The reply notice of the Applicants dated 11/01/2021 makes specific mention of the appointment of the Sole Arbitrator and the copy of the reply notice was marked to the Sole Arbitrator at his email address, which constitutes an admission of receipt of the email of 02/01/2021 addressed by the Sole Arbitrator from his email address. In paragraph 12 of the said notice, a reference is made to the communication dated 26/11/2020 addressed by MCIA to the Applicants as well as the Respondent, acknowledging the RFA and drawing attention to the various rules of MCIA, as well as the communication dated 28/12/2020 addressed by the Registrar MCIA regarding the appointment of the Sole Arbitrator. The reply notice gives the reason of COVID 19 pandemic for shutting down the business and there is no mention that the operations from the registered address have been shut down permanently or that there is any change of address. The reply notice makes it evident that the Applicants were aware of the appointment of the Arbitrator and commencement of the arbitration proceedings.

30. The record indicates that the preliminary meeting was scheduled on 13/01/2021 which was communicated via email to the Applicants and hard copy along with procedural order No.1 was sent by registered post to the office of the Applicants, which was returned with the remark "Addressee closed." The communication was also sent to another address found by the Respondent being H No 12-119/1 Warangal Road, Huzurabad, Karimnagar which was also returned with the remark "Left without intimation." Though it is contended that there was no such alternate address of the Applicants, the same shows the consistent effort taken by the Respondent to find out the address and effect service upon the Applicants. The copy of the procedural order was also forwarded by the advocate for the Respondent to the advocate who had addressed the communication of 11/01/2021 on behalf of the Applicants. The response dated 12/02/2021 to the Applicants' Advocate's notice dated 11/01/2021 was sent by the Respondent to the Applicants' Advocate which was duly served. There is no response to the said notice.

31. The record indicates that all subsequent Zoom links of the meetings were forwarded to all the parties by email, including the Applicants. The statement of claim as well as the compilation of documents was emailed by the advocate for the Respondent to the Arbitrator as well as the Applicants by email, and the hard copy was

also sent to the Respondent and the Advocate who had addressed the reply notice of 11/01/2021. The hard copy sent to the advocate was duly served upon the advocate. The Zoom links for the further meetings were sent by email, and the arbitration proceeded further.

32. The Respondent has also annexed at Exhibit 'TT' the status of the email which was forwarded to circulate the link of the VC hearing to be held on 17/05/2021, which status showed that the email was read by the Applicants. All the orders passed in the arbitration proceedings were duly forwarded, as well as the documents which were tendered, including copies of the affidavit of evidence and the minutes of the meeting. The final written submissions were tendered by email dated 21/10/2021.

33. Vide communication dated 04/01/2022, addressed to the Applicants as partners of M/s. Akshar Enterprises at the same address, the final Award was dispatched by the MCIA, which was returned by the postal authorities with the remark "closed".

34. The first arbitration meeting was held on 13/01/2021 and the final Award was passed on 04/01/2022. The Applicants though being aware of the commencement of arbitration, chose not to participate in the arbitration proceedings. The Interim Application pleads that the Applicants did not receive the RFA or any communication from MCIA nor the Respondent nor the Arbitral Tribunal. The only document

claimed to have been received is the notice invoking arbitration dated 22/10/2020. The said pleading is contrary to the Applicants' own notice dated 11/01/2021 which speaks of the notices dated 24/11/2020, 26/11/2020 and 28/12/2020 as well as the appointment of the Sole Arbitrator.

35. There is not a single averment in the Interim Application that all the emails, which were sent regarding the orders which were passed in the arbitration proceedings, were not received by the Applicants or were sent to the wrong email id. It is also pertinent to note that, in the execution petition, which the Applicants claim, is the basis for knowledge of passing of the impugned order, the address of the Applicants is the same address at which the hard copy of the Arbitral Award was sent.

36. The entire case of the Applicants to overcome the bar of limitation hinges on the submission that the signed copy of the Arbitral Award was not served upon the Applicants for the reason that the Applicants had shut their operations at the registered address. The Respondent has placed on record the covering letter dated 04/01/2022 addressed by MCIA dispatching the final Award and the returned envelope with the remark "Closed. Hence returned to the sender."

37. The issue therefore is whether deemed service of the notice constitutes compliance of Section 31(5) of Arbitration Act. Section 3 of

the Arbitration Act dealing with the receipt of written communication reads as under:

“3. Receipt of written communications.-(1) Unless otherwise agreed by the parties,-

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and

(b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.”

38. Section 3 of the Arbitration Act raises a presumption of receipt of written communication and specifies the conditions to be fulfilled for the deeming fiction to arise. Section 3 finds place in Part I of the Arbitration Act dealing with general provisions which would apply to Section 31(5). If deemed delivery of Award is not applied to Section 31(5), it would lead to a situation where the parties through devious method would avoid service of the Award and not let the limitation period to commence. It cannot be disputed that the delivery of Arbitral Award is substantive right of the parties and mandates strict compliance. The compliance of Section 31(5) can be accepted in case of deemed service upon satisfaction of specified conditions for raising

deeming fiction under Section 3 of the Arbitration Act. A party claiming deemed service under Section 31(5) read with Section 3(1)(b) must establish beyond doubt that the Award was delivered to the addressee at the last known address.

39. In the present case, the Respondent has placed on record the emails sent during the arbitration proceedings and the attempt to effect service of the procedural order upon the last known address as well as alternate address of the Applicants found on Indiamart listing, which attempts have been unsuccessful. The Applicants though being aware of the commencement and conduct of the arbitration proceedings has not bothered to find out the fate of the arbitration proceedings and have not addressed a single communication to the Sole Arbitrator or the Respondent informing them about the changed address. By placing on record, the proof of dispatch of the Arbitral Award at the last known address, the presumption under Section 114(f) of Evidence Act gets attracted which reads as under:

"114. Court may presume existence of certain facts.- The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. The Court may presume-

(f) That the common course of business has been followed in particular cases."

40. A party who despite being aware of the arbitration proceedings

chooses to remain passive and permits the arbitration to proceed and conclude, cannot be permitted after a period of three years, to raise a specious plea of non receipt of Arbitral Award under Section 31(5) of Arbitration Act without bothering to inform the Arbitrator or the other party about the permanent closure of the operations and the changed address for purpose of service. The Sole Arbitrator has duly dispatched the signed copy of the Arbitral Award at the last known address of the Applicants in accordance with the provisions of Section 31(5) which in terms of Section 3(2) is deemed to have been received by the Applicants on the day of attempted delivery. Once the signed copy of the Award is shown to have been dispatched to the last known address of the Applicants, the same is sufficient to raise the deeming fiction under Section 3(2) and to draw an inference under Section 114 of Evidence Act. The fact that, in the execution proceedings, the same address has been mentioned in the cause title would indicate that the Respondent was not aware of any changed address of the firm. In the Application, the Applicants have made a vague statement that they came to know about the execution proceedings for execution of the impugned Arbitral Award, without setting out the source from which they acquired the knowledge of the execution proceedings. What assumes significance is not the efforts which were taken by the Applicants about acquiring knowledge of the execution proceedings,

but whether there was compliance of Section 31(5), which would set the law of limitation in motion.

41. The law cannot permit dilatory tactics to be adopted to evade receiving signed copy of the Award by deliberately avoiding intimation of the changed address and then claiming non compliance of Section 31(5). In the case of **Logic Eastern India Pvt. Ltd.** (supra), the learned Single Judge of this Court was considering an identical issue of limitation. In the facts of that case, the signed copy of the Arbitral Award sent by the Arbitrator at the registered office address of the Applicants, was returned with postal remark “No such firm at this address”, and the copy of the signed Award sent by the learned Arbitrator at another office address of the Applicants, was returned with the remark “Left without any Intimation’. The learned Single Judge considered the submissions of the Applicants in that case that since the signed copy of the Award was not delivered by the Arbitrator in terms of Section 31(5) of the Arbitration Act, the limitation did not commence. The learned Single Judge held in paragraphs 32, 33, and 36 as under:

“32. It is not in dispute that the learned Arbitrator had forwarded a copy of the signed Award by the registered post A.D. upon the two addresses of the Applicants including the address at B-2, Sector-31, Noida, U.P. but the same was returned. It is not the case of the Applicants that the Applicants had informed the alleged new address of the Applicants to the respondent and the learned Arbitrator. It is also not the case of the Applicants that the

Applicants had left necessary instructions with the postal authorities to forward them to the address where the Applicants had alleged to have shifted its work, Research and Development Centre or its registered office or to deliver it to some other person authorized by it."

33. Supreme Court in the case of M/s. Madan and Co. (supra) has interpreted the provisions of Section 27 of the General Clauses Act, 1897 and has held that an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it and he can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is held by the Supreme Court that if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it could not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. It is held that in such a situation, the Court has to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the word "served" as "sent by post" correctly and properly addressed to a tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. In my view, the said judgment squarely apply to the facts of this case."

"36. This Court in the case of Jasvinder Kaur Vs. L & T Finance Ltd. delivered on 12th March 2015 in Arbitration Petition No.1053 of 2012 has construed Section 3(1)(b) of the Arbitration and Conciliation Act, 1996 and also Section 27 of the General Clauses Act, 1897 and has held that Section 3(1)(b) of the Arbitration Act makes it clear that even if a place of business, habitual residence or mailing address of a party cannot be found after making a reasonable inquiry, a written communication is deemed to have been received if it sent to the addressee's last know place of business, habitual residence or mailing address by registered letter or by any other means which provides record of the attempt to deliver it. In that case, there was no dispute that the address mentioned by the learned Arbitrator on the Award as well as in the notices and also on the acknowledgment card was the correct address of the Applicants. It is held by this Court that the copy of the Award was deemed to have been received by the Applicants and the limitation would commence from the date of such deemed delivery for the purpose

of computation of the limitation under Section 34(3) of the Arbitration Act.”

42. The learned Single Judge has found that since the signed copy of the Arbitral Award was sent at the last known address, the communication was deemed to have been received on the day it was so delivered by the postman, and the period of limitation would commence from the date of such deemed delivery. The learned Single Judge also negated the submission of the Applicants that the Respondent or the Arbitrator ought to have made a reasonable inquiry before dispatching the copy of the Award about the latest address of the Applicants, by holding that the Applicants had not informed the alleged new address of the Applicants for the purpose of effecting service of notices, pleadings, and copy of the impugned Award and therefore, the learned Arbitrator was justified in dispatching the copy of the signed Award upon the Applicants at the last known address.

43. The said decision clearly applies to the facts of the present case and is rendered in identical facts where the impugned Award was sent at the last known address, and it is not shown that the Applicants had informed about the change in address in order to demonstrate non-compliance with Section 31(5). The Applicants were well aware of the arbitration proceedings, and it was expected that the Applicants would furnish the changed address upon the closure of the last known office

address. Having failed in their duty to inform the correct address to the learned Arbitrator, the Applicants cannot be heard to complain about non-service of the impugned Award.

44. The other issue which has been raised is about non service of the Award upon the partnership firm, as the firm was party to the arbitration proceedings and the Arbitral Award was sent to the partners of the firm. Section 2(1)(h) of the Arbitration Act defines a “party” to mean a party to the arbitration agreement. The parties to the arbitration agreement were the Claimant described as Mahindra & Mahindra Ltd. and the Respondent described as M/s. Akshar Enterprises. Order XXX Rule 3 of the Civil Procedure Code (**‘CPC’**) provides that where persons are sued as partners in the name of their firm, the summons shall be served either upon any one or more of the partners, or at the principal place at which the partnership business is carried on within India, and such service shall be deemed good service upon the firm so sued. A conjoint reading of Section 2(1)(h) read with Order XXX Rule 3 of the CPC indicates that where it is the partnership firm which is the party to the arbitration proceedings, the service upon the partners of the firm shall be deemed good service. I am, therefore, not inclined to accept the submission that merely because the envelope was addressed in the name of the partners, there is no service upon the firm, particularly when the envelope describes the

Applicants as partners of M/s. Akshar Enterprises. It needs to be noted that in the present case, it is the partners who have filed the Arbitration Petition and not the firm claiming non service upon the firm.

45. Coming to the decisions relied upon by Mr. Govilkar, in the case of **ARK Builders Pvt. Ltd.** (supra), the Hon'ble Apex Court considered the issue whether the period of limitation for the purpose of Section 34 of the Arbitration Act is to be reckoned from the date a copy of the Award is received by the objector by any means and from any source, or it would start running from the date a signed copy of the Award is delivered to him by the Arbitrator. The Hon'ble Apex Court considered the provisions of Section 34(3) which provided that the period of limitation would start running only from the date a signed copy of the Award has been delivered to/received by the party making the application. There is no quarrel with the proposition laid down by the Hon'ble Apex Court considering the decision in the case of **Union of India v. Tecco Trichy Engineers & Contractors**¹¹, that the delivery of the Arbitral Award and receipt by the party of the Award sets in motion several periods of limitation under the Arbitration Act and that the delivery of the copy of Award by the Tribunal and receipt thereof by each party constitutes an important stage in the arbitral proceedings.

¹¹ (2005) 4 SCC 239

The said decision does not deal with a factual scenario where the party has left the premises without any forwarding address or intimating the learned Arbitral Tribunal or the Claimants about the changed address. What is required to be considered is whether the copy of the Arbitral Award has been dispatched at the correct address or the last known address of the party, in which case, it will be deemed to have been delivered. A literal meaning of the word “delivery” would lead to an incongruous situation where a party who is not to be found at the given address and does not physically receive the copy of the Award would then be entitled to maintain the arbitration challenge without any bar of limitation though being aware of the arbitration proceedings and have chosen not to forward the changed address. In **ARK Builders Pvt. Ltd.** (supra), the Hon’ble Apex Court did not consider the issue which arises for consideration in the present case and was dealing with an issue that the signed copy of the Award was not delivered for the reason of non-payment of cost of arbitration.

46. In the decision in the case of **Amulya Investment vs. Health Care, Medical & General Stores** (supra), the partnership firm as well as the three partners of the firm were parties to the arbitration proceedings. The Hon’ble Division Bench considered the expression “party” under Section 2(1)(h) of the Arbitration Act in the context of Section 31(5) of the Arbitration Act which requires for a signed copy of

the Award to be delivered to each party. In that case, the Arbitrator signed two copies of the Award, one for each party and it was an admitted position that only two copies of the Award were signed in original and thus the requirement of Section 31(5) of the Act of delivering a signed copy of the Award to each party could not have been satisfied as there were five parties. The Arbitral Award in that case itself recorded that the Arbitrator had signed two copies of the award. In present case, it is specifically pleaded in reply affidavit that Award in original was sent by MCIA to both the parties. In the present case, the firm was the party and not the individual partners and therefore there was no requirement of each partner being served with the arbitration award.

47. In the case of **Era International** (supra), the learned Single Judge was considering the finality and binding nature of the decision of MCIA and in that context, considered the MCIA Rules holding that if any of the MCIA Rules are in conflict with the mandatory provisions of law, the mandatory provision shall prevail. There is no quarrel with the said decision, however, the same has no relevance to the facts of the present case.

48. In light of the above discussion, as there is compliance of Section 31(5) of Arbitration Act, the limitation would commence from the date of attempted delivery of the Arbitral Award which was dispatched on

04/01/2022 and the Arbitration Petition filed on 16/02/2024 is clearly barred by limitation. The Interim Application is rejected and resultantly, the Arbitration Petition stands dismissed.

[SHARMILA U. DESHMUKH, J.]