

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

**INTERIM APPLICATION (L) NO. 30598 OF 2022  
WITH  
INTERIM APPLICATION (L) NO. 29262 OF 2023  
IN  
ARBITRATION PETITION (L) NO. 30595 OF 2022**

- |                                          |   |                                              |
|------------------------------------------|---|----------------------------------------------|
| 1) K. Samad                              | ] |                                              |
| Age : 55 years, Occupation : Taxi Driver | ] |                                              |
| 61/B 182, Mudichur Road                  | ] |                                              |
| West Tambaram, Chennai 600045            | ] |                                              |
| 2) Mekarunisa Samad S                    | ] |                                              |
| Age : 55 years, Occupation : Housewife   | ] |                                              |
| 61/B 182, Mudichur Road                  | ] |                                              |
| West Tambaram, Chennai 600045            | ] |                                              |
|                                          | ] | <b><u>...Applicants/<br/>Petitioners</u></b> |

**Versus**

- |                                                |   |                              |
|------------------------------------------------|---|------------------------------|
| 1) Suraksha Asset Reconstruction Ltd.          | ] |                              |
| (formerly known as Suraksha Asset              | ] |                              |
| Reconstruction Private Limited, a Company      | ] |                              |
| incorporated under the Provisions of           | ] |                              |
| Companies Act, 2013                            | ] |                              |
| And registered as Securitization and           | ] |                              |
| Asset Reconstruction Company                   | ] |                              |
| Pursuant to Sec. 3 of the SARFAESI Act, 2002   | ] |                              |
| and having its registered office at ITI House, | ] |                              |
| 36, Dr. R.K.Shirodhkar Road, Parel Mumbai –    | ] |                              |
| 400013.                                        | ] |                              |
| 2) Authum Investment & Infrastructure          | ] |                              |
| Limited                                        | ] |                              |
| A company incorporated under Companies         | ] |                              |
| Act, 2013 and Registered as a Non-Banking      | ] |                              |
| Financial Services Company                     | ] |                              |
| Having registered office at 707, Raheja        | ] |                              |
| Centre, Free Press Journal Road Nariman        | ] |                              |
| Point, Mumbai - 400021                         | ] |                              |
|                                                | ] | <b><u>...Respondents</u></b> |

**WITH  
INTERIM APPLICATION (L) NO. 16861 OF 2023**

**IN  
ARBITRATION PETITION (L) NO. 30595 OF 2022**

- 1) Suraksha Asset Reconstruction Ltd. ]  
 (formerly known as Suraksha Asset ]  
 Reconstruction Private Limited, a ]  
 Company incorporated under the ]  
 Provisions of Companies Act, 2013 ]  
 And registered as Securitization and ]  
 Asset Reconstruction Company ]  
 Pursuant to Sec. 3 of the SARFAESI Act, ]  
 2002 and having its registered office at ]  
 ITI House, 36, Dr. R.K.Shirodhkar Road, ]  
 Parel Mumbai – 400013. ] **...Applicant**

**IN THE MATTER BETWEEN**

- 1) K. Samad ]  
 Age : 55 years, Occupation : Taxi Driver ]  
 61/B 182, Mudichur Road ]  
 West Tambaram, Chennai 600045 ]  
 2) Mekarunisa Samad S ]  
 Age : 55 years, Occupation : Housewife ]  
 61/B 182, Mudichur Road ]  
 West Tambaram, Chennai 600045 ] **...Petitioners**

**Versus**

- 1) Reliance Capital Limited ]  
 A Company incorporated under the ]  
 provisions of the Companies Act, 1956 ]  
 and having its registered office at Trade ]  
 World, B – Wing, 7<sup>th</sup> Floor, Kamala Mills ]  
 Compound, Senapati, Bapat Marg, Lower ]  
 Parel, Mumbai 400 013. ] **...Respondent**

*Mr. Malhar Zatakia a/w Mr. Shantanu Shetty i/b Mr. Sangram Chinnappa,  
for the Petitioners.*

*Mr. Omar Khaiyam Shaikh a/w Mr. Sahil Salvi i/b Vikas Salvi & Associates,  
for the Respondent No. 2.*

**CORAM : SHARMILA U. DESHMUKH**  
**RESERVED ON : JULY 3, 2026**  
**PRONOUNCED ON : JULY 28, 2026**  
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**ORDER:**

1. The captioned Interim Application(L) No 30598 was filed initially seeking condonation of delay of 150 days in filing the Arbitration Petition. Subsequently, the application came to be amended seeking the following reliefs:

(a) That this Hon'ble Court be pleased to exclude the period of 161 days from 03.03.2022 to 10.08.2022 being the time spent in prosecuting in good faith Arbitration O.P (Com.Div) No 338 of 2022 filed under Section 34 of the Act before the Madras High Court.

(aa) That this Hon'ble Court be pleased to condone the delay in the filing of the accompanying Arbitration Petition for the period from 10.10.2013 to 26.01.022 and/or to exclude the period from computation of period of limitation, the impugned Award dated 10.10.2013 never having been served upon the Applicants as mandated by Section 31(5) of the Arbitration and Conciliation Act, 1996, the Applicants having first learnt of the existence of the said Award on 11.01.2022 in the course of hearing before the Hon'ble High Court of Madras

and having received a copy thereof only on 26.01.2022.

2. The amended paragraph 7A of the Interim Application pleads that the period from 26<sup>th</sup> January, 2022( the date on which a copy of the Award was served upon the Petitioner) to 3<sup>rd</sup> March, 2022, (the date of filing of Arbitration Petition O.P(com.Div) No 338 of 2022 before the Hon'ble Madras High Court) being 36 days and the period from 10<sup>th</sup> August, 2022 (the date of dismissal of the Arbitration Petition before the Madras High Court) to 22<sup>nd</sup> September, 2022 (the date of filing of present Arbitration Petition), being 43 days together aggregating to 79 days is within the period of three months prescribed under Section 34(3) of the Arbitration and Conciliation Act, 1996 (for short '**Arbitration Act**'), and therefore, the Arbitration Petition is well within the period of limitation.

3. The Interim Application proceeds on the basis that although the Arbitration Petition is filed within time, by way of abundant precaution, the application has been filed seeking condonation of delay, if any, in filing the Arbitration Petition.

4. In order to understand the context in which such confusing prayers have been sought, it would be appropriate to list out the relevant dates. The Arbitration Award was passed on 10<sup>th</sup> October, 2013. The Applicants claim that they became aware about the impugned Award on 11<sup>th</sup> January, 2022 when this fact was revealed in Civil

Revision Petition No. 45 of 2019 filed before the Madras High Court against the order passed by the Civil Court in I.A No 13412 of 2018 in O.S No 4307 of 2015. The Applicants had filed O.S No 4307 of 2015 before the City Civil Court, Chennai for mandatory injunction against the Respondent and for declaration that the loan account has Nil balance. The Respondent herein filed Section 8 application in I.A No 13412 of 2018 to refer the parties to arbitration, which was allowed as against which the C.R.P No 45 of 2019 was filed. During the hearing before the Madras High, the contention of the Respondent was that award has been passed by the Arbitrator in relation to the dispute and hence the CRP has been rendered infructuous. The Madras High Court vide order dated 11<sup>th</sup> January, 2022 noted that opportunity should be given to the Applicants to challenge the award and the period spent in prosecuting the CRP to be excluded. The CRP came to be dismissed with liberty to the Applicants to challenge the award under Section 34 of Arbitration and Conciliation Act.

5. The Applicants filed Section 34 Petition before the Madras High Court and vide order dated 10<sup>th</sup> August, 2022 the Madras High Court noted that the venue of arbitration is Mumbai and returned the Arbitration Petition to approach the curial Court, if so desired, with liberty to seek exclusion of time spent in the Madras High Court.

6. The Arbitration Petition came to be filed on 22<sup>nd</sup> September, 2022

before this Court. It is claimed that the Petition is filed within prescribed period of limitation of three months by excluding the period of 161 days spent in prosecuting the Arbitration Petition in Madras High Court. The impugned Award has been passed on 10<sup>th</sup> October, 2013 and the Applicants claim to have acquired knowledge on 26<sup>th</sup> January, 2022. As per the Applicants, the delay in filing the present Petition from the date of the Award is 3031 days which does not bar the Petition by limitation as there was no service of the Award as mandated by Section 31(5) of the Arbitration Act. It is therefore by way of abundant precaution, the present Application has been filed seeking condonation of delay.

7. The affidavit-in-reply of the Respondent states that under a covering letter dated 11<sup>th</sup> October, 2013, the Award was posted by the learned Arbitrator at the last known address of the Petitioners, and that the Petitioners were served. The copies of the postal slip and AD card showing dispatch by post and delivery of the Award is appended to the reply affidavit. It is stated that the Petitioner No. 1 is the husband of Petitioner No. 2 and are residing at the same address. The address mentioned in the cause title of the present Petition and the address mentioned in the covering letter dated 11<sup>th</sup> October, 2013 and the AD Card is one and the same, and there is presumption of due service, once the letter is sent by post at the correct address of the addressee. It is

stated that the Petitioners are trying to take advantage of the omission on part of the officers of the Respondent when they did not disclose the passing of the Award in the previous litigation.

8. In the affidavit-in-rejoinder it is stated that the signatures on the postal acknowledgment do not match and the Petitioners are not aware as to who has signed the postal acknowledgment cards. It is contended that notice under Section 21 of the Arbitration Act was never served upon the Petitioners. The disclosure under Section 12 of the Arbitration Act was not served and the learned arbitrator never shared the minutes of the hearing vide post or e-mail with the Petitioners, and the Petitioners were not aware of any formal proceedings being conducted. It is contended that the copy of the Award was never served upon the Petitioners in the year 2013, and they were not aware of any arbitration proceedings at that time. It is stated that the Respondent in their Section 8 Petition filed before City Civil Court, Chennai had suppressed the fact that an Award has been passed, at the time of hearing which led to the dismissal of the suit filed by the Petitioners, and it is only on 11<sup>th</sup> January, 2022 during the hearing before the Madras High Court that the submission was made as regards the Award already being passed.

9. During the hearing, the Respondents produced a compilation of documents in order to substantiate the contention that the Applicants were aware of the arbitration proceedings and the service by the

learned arbitrator. This Court was inclined to grant an opportunity to the Applicants to respond to the said documents, which opportunity was declined by the learned counsel for the Applicants stating that the Applicants do not desire to file any response, and the documents can be considered by the Court.

10. Learned counsel for the Applicants would submit that as per the postal acknowledgment card, the impugned Award is alleged to have been served upon the Applicants on 23<sup>rd</sup> October, 2013. He submits that the signatures on the acknowledgment card insofar as the Applicant No. 1 is concerned, does not match with the signatures on the loan agreement. He would further submit that the Applicants had already paid a sum agreement into Rs. 47,24,223/- as against the principle amount of Rs. 31,40,000/- and despite having cleared the entire dues, the Applicants were being harassed by the recovery agents of the erstwhile Reliance Capital, which compelled the Applicants to file Civil Suit No. 4307 of 2015 before the City Civil and Sessions Court seeking declaration that the loan account stood at nil balance, and an ex-parte decree came to be passed in favour of the Applicants on 30<sup>th</sup> September, 2015. He submits that on 14<sup>th</sup> June, 2016, an application under Section 8 of the Arbitration Act was filed by the erstwhile Reliance Capital in Suit No. 4307 of 2015 which led to recalling of the ex-parte decree. He submits that as against the same, the Applicants filed C.R.P No. 45 of

2019 before the Madras High Court and on 11<sup>th</sup> January, 2022, Reliance Capital Private Limited informed the Madras High Court about the arbitral proceedings and the Award and the Award served upon the Applicants on 26<sup>th</sup> January, 2022. He submits that, inadvertently, the Arbitration Petition was filed before the Madras High Court on 3<sup>rd</sup> March, 2022 which returned the Arbitration Petition to be filed before the supervisory court. He submits that the time which was spent in prosecuting the Petition before the Madras High Court should be excluded for the purpose of limitation under Section 14 of the Limitation Act, 1963. He submits that after the return of the Arbitration Petition, the present Petition came to be filed on 22<sup>nd</sup> September, 2022.

11. He submits that the arbitration proceedings by the learned Arbitrator are sham and bogus as neither any notice invoking arbitration was served upon the Applicants nor were the Applicants informed of any hearings by the learned Arbitrator. He submits that the acknowledgment cards on which reliance is placed by the Respondent in order to demonstrate receipt of the arbitral Award is unacceptable as in respect of Applicant No. 1, the acknowledgment card bears the signature which is different from the Applicant No. 1's signature, and insofar as the acknowledgment card of Applicant No. 2 is concerned, the same does not bear any date and has not been signed by the Applicant No. 2. Drawing support from the decision of Hon'ble Division Bench of

this Court in the case of ***Health Care, Medical & General Stores And Others vs Amulya Investment and Others***<sup>1</sup>, he submits that the Division Bench of this Court in similar facts noted that the acknowledgment cards signed by the employee on behalf of partnership firm, Appellant No. 2 and Respondent No. 2 cannot constitute service under Section 31(5) of Arbitration Act on parties to arbitration agreement in view of the decision in the case of ***Benarsi Krishna Committee And Others vs Karmyogi Shelters Private Limited***<sup>2</sup> where it is held that the service of arbitral Award on an agent or a party, or on an Advocate appointed by such party would not amount to service for the purpose of Arbitration Act. He would further point out that the Hon'ble Division Bench has held that service on an employee of such party would lie on a lower pedestal and would not qualify as service of arbitral Award. He submits that in view of the position of law settled by the Hon'ble Division Bench, as the signatures on the acknowledgment card do not match with that of the Petitioners, there is no effective service, and therefore, no delay before the prescribed period of limitation.

12. *Per contra*, learned counsel for the Respondent would point out that the statement of claim was filed before the learned Arbitrator on 1<sup>st</sup> August, 2013 and the affidavit of service specifically records that the statement of claim along with the covering letter was served upon the

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1 2025 SCC Online Bom 81

2 AIR Online 2012 SC 727

Applicants. He points out the acknowledgment card which is at page 64 of the compilation of documents showing the receipt of the statement of claim by Applicant No. 1 at the same address. He would further point out that Applicant No. 1 being the husband of Applicant No. 2 has accepted the service on behalf of Applicant No. 2 and has signed the acknowledgment card. He would further point out that the acknowledgment card in respect of the service of the Arbitral Award annexed to the present Interim Application bears the signature of Applicant No 1, who has signed for Applicant No 2. He would further point out that the notice of hearing dispatched by the learned Arbitrator on 5<sup>th</sup> August, 2013 by registered post at the same addresses were received by the Applicants, and the Applicant No. 1 had signed on behalf of the Applicant No. 2. He submits that insofar as the second address of Applicant No. 1 i.e. Old No. 3, New No. 9, Kinatru Street, Ethirajapuram, Tambaram West Chennai 600 045 is concerned, the notice of hearing sent to that address was returned as "left".

13. He submits that it is clear that the notices of hearing as well as the statement of claim were duly served and received by the Applicants and it is not open for the Applicants to claim that they were not aware of the arbitration proceedings. He would further point out that the notice of further hearing sent on 6<sup>th</sup> September, 2013 listing the arbitration hearing on 4<sup>th</sup> October, 2013 was also sent by registered

post and was duly received. He would point out that the original copy of the Award passed on 10<sup>th</sup> October, 2013 was dispatched by the learned Arbitrator under a covering letter of 11<sup>th</sup> October, 2013 which was posted on 21<sup>st</sup> October, 2013 and received on 23<sup>rd</sup> October, 2013 as per the acknowledgment card. He submits that insofar as the Applicant No. 2 is concerned, the AD card is signed by Applicant No. 1. He submits that the covering letter of 11<sup>th</sup> October, 2013 is the same covering letter which is annexed to the Arbitration Petition along with the Award. He would further point out that in the Arbitration Petition in ground (k), the Applicants claimed that during the CRP proceedings, the Respondent served an incomplete photocopy of the Award dated 13<sup>th</sup> October, 2013 and till date a signed copy of the impugned arbitration Award has not been served upon the Applicants. He would submit that the covering letter which is annexed at Exhibit F is the same covering letter under which the Arbitration Awards was dispatched by the Arbitrator. He would further point out that in ground (g), it is claimed that the Applicants were informed about the impugned Award only in the year 2022, and till date a signed copy of the impugned Award has not been served, whereas in the present application, it is pleaded that the photocopy of the impugned Award was handed over to the Applicants only on 26<sup>th</sup> January, 2022, which is a national holiday, and is an incorrect pleading on oath. He would rely on the decision of this

Court in the case of ***Veeramaneni Venugopalrao And Another vs Mahindra & Mahindra Limited***<sup>3</sup> and would point out that this Court has distinguished the decision which is being relied upon by the Applicants.

14. I have considered the submissions and perused the record.

15. The Interim Application proceeds on the basis that firstly, there is no delay in filing of the Arbitration Petition challenging the impugned Award dated 10<sup>th</sup> October, 2013 in the year 2022 on the ground of non-compliance of Section 31(5) of the Arbitration Act, and secondly, the delay, if any, which is to be computed from the date of knowledge has been properly explained in as much as upon receiving a photocopy of the Award on 26<sup>th</sup> January, 2022, the Applicants filed the Arbitration Petition before the Madras High Court on 3<sup>rd</sup> March, 2022 with a delay of 36 days and upon return of the Petition for presentation to the proper Court on 10<sup>th</sup> August, 2022 till the filing of the Petition on 22<sup>nd</sup> September, 2022 being 43 days which is within the period of three months prescribed under Section 34(3) of Arbitration Act. In so far as the period spent in prosecuting the proceedings before Madras High Court, the said period is required to be excluded while computing the period of limitation.

16. The core issue which arises for consideration is whether there was non-compliance of Section 31(5) of the Arbitration Act, failing which, the Petition would be clearly barred by limitation having been filed

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3 2026 SCC Online Bom 2689

beyond the period of limitation prescribed even excluding the period spent before Madras High Court. Section 34(3) of the Arbitration Act triggers the limitation period of three months from the date on which the party making the application has received the arbitral Award. Section 31(5) of the Arbitration Act provides that after the arbitral Award is made, a signed copy shall be delivered to each party.

17. The pleading of the Applicants is of complete ignorance about the arbitration proceedings itself having been conducted by claiming that no notices of hearing and no proceedings were served upon the Applicants. To counter the said submissions, learned counsel for the Respondents have tendered a compilation of documents, and though, a opportunity was given to the learned counsel for the Applicants to counter the said documents, he has declined to do so stating that the documents can be considered which implies admission of the documents. The documents tendered are the notices/communications addressed to the Applicants during the conduct of arbitration proceedings.

18. By communication dated 1<sup>st</sup> August, 2013, the Advocate for Respondent invoked arbitration and submitted statement of claim before the Arbitration with copy of notice alongwith statement of claim marked to Applicants by RPAD. The postal slips are produced showing dispatch on 14<sup>th</sup> August, 2013 by RPAD and the acknowledgment cards

show signature of Applicant No. 1 and the acknowledgment card of Applicant No. 2 is also signed by Applicant No. 1. The affidavit of service has been filed by Respondent in arbitration proceedings.

19. The notice of hearing on 6<sup>th</sup> September, 2013 was sent under the covering letter dated 5<sup>th</sup> August, 2013 addressed by the Arbitrator to the parties. The postal slips shows dispatch of the notice by post on 5<sup>th</sup> August, 2013 and the acknowledgment card shows receipt on 7<sup>th</sup> August, 2013 by the Applicant No. 1 for himself and for Applicant No. 2, who is his wife.

20. The notice of next date of hearing on 4<sup>th</sup> October, 2013 was sent to the parties under the covering letter of the Arbitrator dated 6<sup>th</sup> September, 2013. The postal slips shows dispatch of the letter on 16<sup>th</sup> September, 2013 and the acknowledgment card bears the signature of Applicant No. 1.

21. Under covering letter dated 11<sup>th</sup> October, 2013 addressed by the Arbitrator to the Respondent, the Applicant No. 1 at two addresses and to the Applicant No. 2, the Award passed on 10<sup>th</sup> October, 2013 was dispatched at the same addresses at which the earlier notices were dispatched. The postal slips shows dispatch on 21<sup>st</sup> October, 2013 and the acknowledgment card shows a signature on 23<sup>rd</sup> October, 2013 on behalf of Applicant No. 1, and the signature of Applicant No. 1 on the acknowledgment card of Applicant No. 2.

22. There is no submission canvassed by the learned counsel for the Applicants disputing the signatures appearing on the acknowledgment card serving the statement of claim and the notices of hearing upon the Applicants. The Applicants, therefore, cannot feign ignorance about the arbitration proceedings and have deliberately made a false statement on oath claiming to be unaware of the arbitration proceedings itself.

23. The cause title of the present Petition shows that the residence of the Applicants is the same address, which is mentioned in the covering letter and notices of hearing which were sent to the Applicants and were duly received by the Applicants. The signature on the acknowledgment cards of the service of statement of claim, notices of hearing when juxtaposed with the signature of the Applicant No. 1, acknowledging the receipt of the arbitration Award dispatched on 11<sup>th</sup> October, 2013, on behalf of Applicant No. 2, would show similarity.

24. The acknowledgment card of Applicant No. 2 has been signed by Applicant No. 1, who were residing at the same address being a married couple. It is not disputed that the address at which Awards were dispatched is the correct address and the Applicant No. 1 claims to be unaware of signature appearing on the acknowledgment card of Applicant No 1.

25. Assuming for the moment, that the Applicant No 1's acknowledgment card was not signed by him, the signature of Applicant

No. 1 appearing on the acknowledgment card of Applicant No. 2 is not disputed. The Applicants had therefore acquired knowledge of the arbitration award in the year 2013 itself upon receipt of the arbitration Award.

26. The factual scenario presents two fold issue for consideration i.e. whether by reason of dispatch of the Award at the correct address, the Award is deemed to have been served upon the Applicants and secondly, whether the service acknowledged by Applicant No. 1 on behalf of Applicant. No 2 constitutes service upon Applicant Nos. 1 and 2, both residing at the same address.

27. Section 2(h) of the Arbitration Act defines 'party' to means a party to an arbitration agreement and Section 31(5) provides that after the arbitral Award is made, a signed copy shall be delivered to each party. Section 3 of the Arbitration Act governing the receipt of written communication provides that 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 the communication is deemed to have been received on the day it was so delivered.

28. There is no dispute that the addresses at which the Award was dispatched on 11<sup>th</sup> October, 2013 is the address of the Applicants. In ***Veeramaneni Vengopalrao and Another vs Mahindra & Mahindra Ltd***

(supra), this Court has considered whether deemed service of Award constitutes compliance of Section 31(5) of Arbitration Act. Noting the provisions of Section 3 of Arbitration Act, this Court held in paragraph 38 , 40 and 45 as under:

"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 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 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.

40. ....Once the signed copy of the Award is shown to have been despatched at 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....

45.....What is required to be considered is whether the copy of the Arbitral Award has been despatched at the correct address or at 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....."

29. The decision further noted the ratio of ***Jasvinder Kaur vs L & T Finance Limited And Another<sup>4</sup>*** construing Section 3(1)(d) of the Arbitration Act and Section 27 of the General Clauses Act to hold that a written communication is deemed to have been received, if it is sent to

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4 ARBP No. 1053 of 2012 decided on 12<sup>th</sup> March, 2015 by Bombay High Court.

the addressee's last known business, habitual residence or mailing address.

30. In ***Logic Eastern India Pvt Ltd vs Kec International Ltd (Cables Sbu)***<sup>5</sup>, the Hon'ble Division Bench of this Court held that Section 3(1)(b) of Arbitration Act is applicable to written communication of arbitrator forwarding the Award by registered post at the last known address. The Hon'ble Division Bench also referred to Section 27 of General Clauses Act, 1879 and applied the same while considering the issue of delivery of Award under Section 31(5) read with Section 3 of the Arbitration Act.

31. Applying the law to the facts of present case, the material on record would indicate service of the statement of claim as well as the hearings of the arbitration proceedings upon the Applicants, who had not bothered to inquire about the fate of the arbitration proceedings. The Applicants have suppressed the receipt of the statement of claim and notices of hearing and have made false statement on oath. A party is expected to come with clean hands before the Court and place all relevant material on record. Neither before this Court nor before the Madras High Court, the fact of being served in the arbitration proceedings was disclosed. The Applicants took advantage of the negligence of officers of erstwhile Reliance Capital to contend that the officers did not reveal the factum of Award being passed. Having suppressed the relevant material, the Applicants now cannot place the

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5 AIR Online 2018 Bom 154

blame on the Respondent for having failed to inform about the arbitral Award being passed in the Section 8 application filed in the suit of the Applicants. The arbitration Award was dispatched by the Arbitrator at the correct addresses of the Applicants which has not been disputed. The Applicant No. 1 is party to the arbitration proceedings and the acknowledgment card would show that Applicant No. 1 had received the arbitration Award on behalf of Applicant No. 2, who is his wife. The Applicants were therefore in receipt of the arbitration Award and it would do violence to the provisions of Section 31(5) read with Section 3 of Arbitration Act, if it is held that though Applicant No. 1 had received the Award on behalf of Applicant No. 2, as his own acknowledgment card is signed by some one else, there is non compliance of Section 31(5) of Arbitration Act.

32. The postal receipt shows arbitral Award was dispatched on 21<sup>st</sup> October, 2013 and the acknowledgment card insofar as the Applicant No. 1 is concerned, is dated 23<sup>rd</sup> October, 2013, and as far as Applicant No. 2 is concerned, though is not dated, considering the same date of postal receipts and the same address is deemed to have been received on 23<sup>rd</sup> October, 2013. Emphasis is laid on the signature of the acknowledgment card of Applicant No. 1 claiming that the same is not his signature. It is for the Applicants who are residing at the said address to explain as to how the acknowledgment card came to be signed and

whose signature appears on the said acknowledgment card, particularly when Applicant No. 1 has signed on the acknowledgment card of Applicant No. 2 at the same address.

33. Learned counsel for the Respondent has also rightly pointed out that in the Arbitration Petition, the impugned Award along with the covering letter of the arbitrator dated 11<sup>th</sup> October, 2013 is annexed and without receiving the covering letter, the same would not find place in the arbitration proceedings. He has also rightly pointed out that in the Arbitration Petition, it is stated that the impugned order was received in the year 2022 and in the present application it is stated that the copy was served on 26<sup>th</sup> January, 2022, which is a national holiday. The pleading of the Applicants is replete with false statements being made with obvious intent to override the period of limitation which had since long expired.

34. The Respondent having demonstrated the service of statement of claim as well as the notices of hearing upon the Applicants and the dispatch of the Arbitral Award at the correct address of the Applicants, the signature on the AD card of the Applicant No. 1 being different, will not lead to a conclusion of non-compliance of Section 31(5) of Arbitration Act in the absence of denial to the fact of the acknowledgment card of Applicant No. 2 being signed by Applicant No. 1 at the same address, but would lead to a conclusion that the arbitral

Award was duly received upon dispatch, and therefore, the period of limitation would commence from the year 2013.

35. The decision of the Hon'ble Division Bench in the case of ***Health Care, Medical & General Stores And Others vs Amulya Investment and Others*** (supra) dealt with the scenario where the first Appellant was the partnership firm comprising of three partners being second and third Appellant as well as the second Respondent. In that case, the claim was made that the copy of the arbitration Award was served on 10<sup>th</sup> August, 2023, whereas the Award was passed on 1<sup>st</sup> July, 2017, and therefore, the arbitration was filed within time. The submission in that case was that there were five parties before the learned arbitrator i.e. the claimant, the partnership firm and three partners and the acknowledgments placed on record was pertaining to the partnership firm and two partners, which had been signed by the clerk employed with the partnership firm, who was not authorised to receive the envelopes and was not in a position to take decision on behalf of the partnership firm or his partners, and therefore, there was no effective service.

36. The Hon'ble Division Bench noted the definition of party under Section 2(h) which does not include the agent of the party to such agreement as noted by the Hon'ble Apex Court in the case of ***Benarsi Krishna Committee And Others vs Karmyogi Shelters Private Limited***

(supra) would mean only the party himself and not his or her agent or Advocate empowered to act on the basis of vakalatnama. It noted that there were only two copies of the Award signed in original which does not meet the requirement of Section 31(5) of the Arbitration Act. It noted that the claimant seeks to rely on the acknowledgments signed by Mr. Shivaji Botekar on the envelopes addressed to the partnership firm, Appellant No. 2 and Respondent No. 2 and Mr. Botekar being an employee of the partnership firm would not amount to service of the arbitral Award on the parties to the arbitration proceedings as required under the Arbitration Act.

37. In the facts of that case, the service upon the partnership firm as well as to the Appellant No. 2 and Respondent No. 2 who were the partners of the firm was effected upon the said Mr. Shivaji Govind Botekar, who was an employee of the partnership firm, and in that facts, it was held that there was no service as contemplated under Section 31(5) for the Arbitration Act.

38. The Hon'ble Division Bench noted the reliance placed by the learned Single Judge on the decision of **Francisco A. D'souza And Another vs L & T Finance Ltd<sup>6</sup>** and distinguished the said decision by observing that in the facts of that case, various notices were sent to the parties concerned at their last known addresses and by relying upon the provisions of Section 27 of the General Clauses Act, it was held that

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6 2015 SCC Online Bom 6864

there was deemed service of the notice whereas, in the facts before the Hon'ble Division Bench the arbitral Award was not shown to have been served upon the Appellant but on Mr Shivaji Govind Botekar.

39. The Hon'ble Division Bench did not disapprove the view taken that notices sent at the last known address constitute deemed service and in facts before the Hon'ble Division Bench, as there was no service upon the firm and the partners, but upon clerk of the firm, held the same to be not in compliance with Section 31(5) of Arbitration Act. The decision holds that if copy of the Award is not delivered to the party itself, it would not amount to compliance with Section 31(5) of Arbitration Act.

40. The distinguishing feature in the decision of ***Health Care, Medical & General Stores And Others vs Amulya Investment and Others*** (supra) can be found in the conclusion of paragraph 16 which reads as under :

"16. For aforesaid reasons, we are of the view that, firstly, the arbitrator prepared only two sets of his award in original that were signed by him. Though there were five parties to the arbitration proceedings, he prepared only two signed copies of the award by treating the claimant and the partnership firm as the only parties. As a result, there has been non-compliance of the requirements of Section 31(5) of the Act of 1996 on account of failure on the part of the arbitrator in not preparing such number of signed copies of the award as there were parties as defined by Section 2(1)(h) of the Act of 1996. Since a copy of the signed award has not been shown to be prepared or served on the partners of the partnership firm who were parties to the arbitral proceedings, the arbitration petition filed by them under Section 34 of the Act of 1996 will have to be held as filed within limitation by treating the period of limitation to commence from 10-8-2023 when there was a denial by the learned arbitrator to issue them a copy of the award...."

41. The facts are completely distinguishable as the service in the case before the Hon'ble Division Bench was upon a clerk of the firm and not upon the parties. The Hon'ble Division Bench was not concerned with the issue as to whether dispatch of the Award at the correct address of the parties would amount to compliance with Section 31(5) of Arbitration Act. In the present facts, the Applicant No. 1 had duly received the Award and merely because his acknowledgment card is stated to be signed by some unknown person, it cannot be said that there is no service upon the Applicant No. 1. It is not the case of the Applicants that the Arbitration Award has been served upon their employee or agent but disowning of the signatures as not that of the Applicant No. 1, which also loses force in view of Applicant No. 2's acknowledgment card being signed by Applicant No. 1. The Applicants have come with a case of non service of Arbitral Award till the year 2022 and not about the service in the year 2013 not constituting effective service for purpose of Section 31(5) of Arbitration Act. If such a contention is accepted, it is possible for the party to the proceedings to distort its own signature or sign differently in order to claim that the arbitral Award was never served upon the Applicants though dispatched at the correct address and delay the process of execution of the arbitral Award.

42. In light of the above discussion, the Arbitral Award was duly

served upon the Applicants in compliance of Section 31(5) of the Arbitration Act. The Interim Application seeking condonation of delay beyond prescribed period of limitation cannot be allowed and stands dismissed. Resultantly, the Arbitration Petition is barred by limitation and stands dismissed.

43. The other Interim Applications do not survive for consideration and stand disposed of.

**(SHARMILA U. DESHMUKH, J.)**