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Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 4052 OF 2026
IN
COMM. ARBITRATION PETITION (L) NO. 39456 OF 2025

Vikramsinh Vittal Sawant-Bhosale ...Applicant
(Org.Petitioner No.2

In the matter between

Siddhi Developers and ors. ...Petitioners

Versus

Asmita India Limited ...Respondent

Mr. Aloukik Pai, a/w Neha Jasuja, Akhil Sarathy, i/b Thodur Law Associates, for the Applicant in IA/4052/2026 and for the Petitioner in CARBP(L)/39456/2025.
Mr. Sahil Mahajan, a/w Smriti Shahani, for the Respondent

SANTOSH SUBHASH KULKARNI
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Date: 2026.11.27 21:50:16 +0530

CORAM: N. J. JAMADAR, J.
RESERVED ON: 28th OCTOBER, 2026
PRONOUNCED ON: 27th NOVEMBER, 2026

ORDER:-

1. By this application, the applicant-petitioner No.2 seeks condonation of delay, if any, in preferring the petition to set aside an arbitral award dated 24th August, 2019, passed by the sole arbitrator in arbitration proceedings between the respondent-claimant and Siddhi Developers, and its partners, including the applicant (P2).

2. The application proceeds on the premise that there was no delay in preferring the petition under Section 34 of the

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Arbitration and Conciliation Act, 1996 ("the Act, 1996"), as the period of limitation to take recourse against the award dated 24th August, 20219 did not commence at all for failure to deliver a signed copy of the award. Since the Registry has raised objection on the ground of bar of limitation, the applicant was constrained to file this application.

3. The applicant (P2) avers that a signed copy of the impugned award dated 24th August, 2019 was never received by any of the petitioners in the manner contemplated by Section 31 read with Section 34 of the Act, 1996. The applicant first became aware of the impugned award through a representative of the respondent-claimant. Thereafter, a copy of the award was extracted from Execution Application No. 13 of 2022 in the month of August 2022. The applicant further asserts, as a signed copy of the award was not delivered to the respondents to the arbitration proceedings, they instituted a petition, being Writ Petition No. 3089 of 2022, before this Court on 29th April, 2022, assailing the executability of the impugned award. Subsequently, on 25th August, 2025, the said petition was withdrawn with liberty to adopt the remedies as available in law. Thus, the applicant is entitled to the exclusion of the entire period under Section 14 of the Limitation Act, 1963.

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4. The applicant thus avers that, the commercial arbitration petition is filed within the stipulated period of limitation as for want of delivery of a signed copy of the award to the petitioners, in strict sense, the period of limitation has not commenced. However, if the Court comes to the conclusion that there is delay in filing the petition, the same may be condoned.

5. An affidavit in reply has been filed on behalf of the respondent-claimant opposing the prayer for condonation of delay. The claimant contends that, the learned arbitrator had duly sent a signed copy of the arbitral award at the last known address of the respondent. However, the envelopes containing a signed copy of the award were returned unserved. In view of the provisions contained in Section 3(2) of the Act, 1996, a signed copy of the award is deemed to have been received by the respondents on the date of attempted delivery.

6. The claimant has further contended that, there is material variance in the claim of the applicant/petitioners in regard to the circumstances on account of which the petitioners allegedly could not receive a signed copy of the impugned award. Despite becoming aware of the passing of the award, the petitioners deliberately instituted Writ Petition No. 3089/2022 as a part of litigative stratagem and with an oblique motive to exploit the

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situation by canvassing a contention that the signed copy of the arbitral award was not delivered. In these circumstances, the petitioners, who cannot be said to have prosecuted the said petition *bona fide* and with diligence, are not entitled to the benefit of the provisions contained in Section 14 of the Limitation Act.

7. It was further contented that, even after the withdrawal of the said petition on 25th August, 2025, there was an inordinate delay in filing the instant petition i.e. on 5th December, 2025. Moreover, there was a time lag of 11 months between the knowledge of the passing of the impugned award and filing of Writ Petition No. 3089/2022. As the application for condonation of delay is not *bona fide,* it deserves to be rejected.

8. The applicant has filed an affidavit-in-rejoinder, controverting the contentions in the affidavit in reply. It was, *inter alia,* contended that, after the petitioners became aware of the passing of the impugned award, they had addressed a communication to the learned sole arbitrator on 15th October, 2020, seeking the service of a signed copy of the arbitral award at the correct address of the petitioners mentioned therein. Yet, the signed copy of the impugned award was not delivered to the petitioners.

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9. In the wake of the aforesaid pleadings, I have heard Mr. Pai, the learned Counsel for the applicant, and Mr. Sahil Mahajan, the learned Counsel for the respondent-claimant at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record, including the copies of the documents made available by the learned arbitrator to the claimant.

10. Mr. Pai, the learned Counsel for the applicant, strenuously urged that, in the instant case, the period of limitation to file a petition under Section 34 of the Act, 1996 cannot be said to have commenced at all. The provisions contained in Section 31(5) of the Act, 1996 cast an obligation on the arbitral tribunal to deliver a signed copy of the award to each party. As the period of limitation prescribed under Section 34(3) of the Act, 1996, for challenging the arbitral award starts running only from the date a signed copy of the award is delivered to/received by the party making the application to set it aside, the period of limitation can commence only from the date on which the award is received by the party. In the case at hand, it is not the case of the claimant that, a signed copy of the arbitral award was duly served on the petitioners. At best, the case of the claimant is that the learned arbitrator has dispatched a signed copy of the

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arbitral award on 24th August, 2019. Mr. Pai submitted that, the documents placed on record, including the track report, may, at best, indicate that the items were dispatched by the learned arbitrator on 13th September, 2019. Those documents nowhere indicate that, the consignments were duly delivered to/received by the petitioners.

11. Mr. Pai would urge, mere dispatch of a signed copy of the award cannot be equated with the delivery to, and receipt by, the party of such award. The law warrants scrupulous compliance of the statutory obligation to deliver a signed copy of the award to the party to the arbitral proceedings. Any other view, according to Mr. Pai, would render the provisions contained in Section 34(3) read with Section 31(5) of the Act, 1996, prescribing a definite period for filing an application to set aside the arbitral award, with no power to condone the delay beyond a grace period of 30, illusory. Therefore, Mr. Pai urged, a strict compliance of the mandate contained in Section 31(5) of the Act, 1996 is warranted.

12. In order to lend support to the aforesaid submissions, Mr. Pai placed reliance on the judgments of the Supreme Court in the cases of ***State of Maharashtra and Others vs. ARK Builders***

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Private Limited[1], *Union of India vs. M/s. Tecco Trichy Engineers & Contractors*[2], and *M/s. Motilal Agarwal vs. State of West Bengal and Another*[3].

13. It was further submitted that, the petitioners have offered a credible explanation as to why they were not available at the given address at the time of the purported delivery of the said consignment. In such circumstances, according to Mr. Pai, the cause of justice would be better subserved if the petition under Section 34 of the Act, 1996, is entertained by this Court by condoning the delay, if the Court were to hold that there was indeed delay in filing the petition.

14. Per contra, Mr. Mahajan, the learned Counsel for the respondent-claimant, submitted that the present application is a link in the chain of devices resorted to by the petitioners to delay and defeat the impugned award. On first principles, Mr. Mahajan would urge, the application does not deserve to be entertained as the applicant has not approached the Court with clean hands. Despite various lapses on the part of the petitioners, the instant application is filed with a bald assertion that there is no delay in filing the petition.

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1 (2011) 4 SCC 616.

2 (2005) 4 SCC 239.

3 2025 SCC OnLine SC 1876.

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15. Secondly, Mr. Mahajan would submit that the day on which the applicant first became aware of the impugned award, on the own-showing of the applicant was in the year 2020. Even after the said knowledge, the petitioners did not promptly file the petition under Section 34 of the Act, 1996 and instead invoked the writ jurisdiction of this Court as a part of a litigative strategy. Later on, by withdrawing the said untenable petition, the petitioners have professed to assail the impugned award, after six years. If such a litigative stratagem is allowed to succeed the strict timeline prescribed under Section 34(3) of the Act, 1996, especially the proviso thereto, for assailing the arbitral award, would be rendered otiose.

16. In any event, it was not the case of the applicant that he or the other petitioners had apprised the learned arbitrator about the change in their address. Till the passing of the impugned award, the applicant and the co-petitioners continued to represent that they were residing at the address at which the learned arbitrator had sent the signed copy of the arbitral award. In this view of the matter, in view of the provisions contained in Section 3(1)(a) of the Act, 1996, the award is deemed to have been received as it was delivered to the petitioners at their residence. To lend support to the submission

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that a party cannot be permitted to evade the service of the signed copy of the award and then claim that the limitation period did not commence at all, Mr. Mahajan placed reliance on a judgment of a learned Single Judge of this Court in the csae of ***Veeramaneni Venugopalrao and Another vs. Mahindra & Mahindra Ltd.***[4].

17. I have given anxious consideration to the aforesaid rival submissions canvassed across the bar.

18. To begin with, few provisions contained in the Act, 1996, deserve to be extracted.

19. Under Section 2(h), a party is defined as under:

> " **2(h)** party means a party to an arbitration agreement;"

20. Relevant part of Section 31 reads as under:

> "**31**. Form and contents of arbitral award -
>
> **(1)** An arbitral award shall be made in writing and shall be signed by the members of the Arbitral Tribunal.
>
> .....
>
> **(5)** After the arbitral award is made, a signed copy shall be delivered to each party."

21. Section 34, which is subsumed under Chapter VII, providing for a recourse against an arbitral award, reads as under:

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4 2026 SCC OnLine Bom 2689.

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> "**34.** Application for setting aside arbitral award -
>
> **(1)** Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).
>
> ....
>
> **(3)** An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the Arbitral Tribunal.
>
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

22. Under Section 34(3) of the Act, 1996, an application for setting aside an arbitral award may not be made after three months have elapsed from the date on which the party making that application has received the arbitral award. Under the proviso to sub-section (3), the Court may entertain the application within a further period of 30 days, but not thereafter, if it is satisfied that the applicant was prevented by a sufficient cause from making the application within the prescribed period of three months.

23. As is evident from the text of Section 31(5) of the Act, 1996 (extracted above), after the arbitral award is made, the arbitral tribunal is enjoined to deliver a signed copy of the arbitral award to each party. A conjoint reading of sub-section (5) of Section 31 with Section 34(3) of the Act, 1996, would thus make it clear

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that the limitation prescribed for filing a petition to set aside the award under Section 34(3) of the Act, 1996, would commence from the date a signed copy of the arbitral award is delivered to the party that makes an application for setting aside the same.

24. To put it in other words, the receipt of the arbitral award by the party is inextricably intermingled with the commencement of the prescribed period of limitation under Section 34(3) of the Act, 1996. The obligation on the arbitral tribunal to deliver a signed copy of the arbitral award to each party is required to be read in juxtaposition with the expression, "three months from the date on which the party making that application had received the arbitral award".

25. Delivery of a signed copy of the arbitral award is not only imperative from the point of view of conveying to the parties as to how the Arbitral Tribunal has resolved the dispute and why the Arbitral Tribunal has decided in favour of or against the party, but also from the point of view of the commencement of the period of limitation, especially in the context of the fact that beyond the prescribed period of three months and the extendable period of thirty days, even the Court has no jurisdiction to permit a party to assail the award by filing a petition. The service of a signed copy of the arbitral award on

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each party is, therefore, not an empty formality. The delivery of a signed copy of the arbitral award on a particular day has serious legal implications. Therefore, the question whether a signed copy of the arbitral award has, in fact, been served upon a party, who has assailed the said award, and, if so, when, is of critical salience.

26. A three-Judge Bench of the Supreme Court in the case of ***Union of India vs. Tecco Trichy Engineers and Contractors***[5]**,** enunciated that the delivery of an arbitral award under sub-section (5) of Section 31 is not a matter of mere formality. It is a matter of substance. It is only after the stage under Section 31 has passed that the stage of termination of arbitral proceedings within the meaning of Section 32 of the Act arises. The delivery of arbitral award to the party, to be effective has to be "received" by the party. This delivery by the Arbitral Tribunal and receipt by the party of the award set in motion several periods of limitation such as an application for correction and interpretation of an award within 30 days under Section 33(1), an application for making an additional award, and an application for setting aside an award under Section 34(3). As this delivery of the copy of award has the effect of conferring

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5 (2005) 4 SCC 239.

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certain rights on the party as also bringing to an end the right to exercise those rights on expiry of the prescribed period of limitation which would be calculated from that date, the delivery of the copy of award by the tribunal and the receipt thereof by each party constitutes an important stage in the arbitral proceedings.

27. In the case of ***State of Maharashtra and Others vs. ARK Builders Private Limited***[6], on which a very strong reliance was placed by Mr. Pai, the Supreme Court was confronted with the following question.

> "2. Whether the period of limitation for making an application under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter `the Act') for setting aside an arbitral award 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?

28. After an analysis of the provisions contained in the Act, 1996, including Sections 31 and 34, the Supreme Court enunciated that the expression "party making the application had received the arbitral award" cannot be read in isolation, and it must be understood in the light of what is said earlier in Section 31(5), that requires a signed copy of the award to be delivered to each party. Reading the two provisions together, it

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6 (2011) 4 SCC 616.

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is quite clear that the limitation prescribed in Section 34(3) would commence only from the date a signed copy of the award is delivered to the party making the application for setting the award aside.

29. In the aforesaid case of ***ARK Builders*** (supra), after making a reference to the decision in the case of ***Tecco Trichy Engineers and Others*** (supra), the Supreme Court reiterated the legal position as under:

> "15. The highlighted portion of the judgment extracted above, leaves no room for doubt that the period of limitation prescribed under section 34(3) of the Act would start running only from the date a 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. The legal position on the issue may be stated thus. If the law prescribes 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 and in case the law also sets a period of limitation for challenging the order/award in question by the aggrieved party, then the period of limitation can only commence from the date on which the order/award was received by the party concerned in the manner prescribed by the law.
>
> .....
>
> 17. In light of the discussions made above we find the impugned order of the Bombay High Court unsustainable. The High Court was clearly in error not correctly following the decision of this Court in Tecco Trichy Engineers & Contractors and in taking a contrary view. The High Court overlooked that what section 31(5) contemplates is not merely the delivery of any kind of a copy of the award but a copy of the award that is duly signed by the members of the arbitral tribunal."

30. On the other side of the spectrum are the cases where, despite the arbitral tribunal having discharged its obligation to

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"deliver" the signed copy of the arbitral award to the party at the address which forms part of the record, the party filing the application to set aside the award contends that a signed copy of the arbitral award has not been served on, or received by, it. Whether the word "delivery" is to be construed to mean only the actual and physical delivery of the signed copy of the award to the party concerned, whatever be the circumstances, and only upon proof of such actual delivery to, or receipt by, the party concerned, the period of limitation under Section 34(3) of the Act, 1996, would commence, are the questions that crop up for consideration.

31. On first principles, such a broad and open ended interpretation of the word "deliver" would lead to uncertainty and absurdity. A party could, by resorting to various devious designs and stratagems, avoid actual service of the copy of the award, and then urge that it had not received the arbitral award. Such an interpretation would defeat the very object of prescribing a strict timeline under Section 34(3) of the Act, 1996, whereby even the Court has been precluded from condoning the delay beyond the grace period of 30 days.

32. The Parliament, in the context of arbitration being a dispute resolution mechanism of parties choice, has made

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provisions for regulating the service of written communications. Section 3(1)(a) of the Act, 1996, thus, provides that unless otherwise agreed by the parties, 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. Sub-section (2) of Section 3 further provides that, the communication is deemed to have been received on the day it is so delivered. If the conditions prescribed by sub-section (1) of Section 3 of the Act, 1996, are made out, then the deeming provision of receipt of the communication upon delivery comes into play.

33. The aforesaid provision, thus, operates as to bulwark against the human disingenuity of avoiding receipt of the written communication; especially the arbitral award, by providing that if it was delivered at the place of business, habitual residence or mailing address of such party, then it shall be deemed to have been received.

34. In the case of ***Veeramaneni Venugopalrao*** (supra), a learned Single Judge of this Court found that, the applicants though aware of the arbitration proceedings, chose not to participate therein. Yet, it was asserted by the applicants therein that they had not received the arbitral award on account

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of permanent closure of the operations and the change in address.

35. In that context, the learned Single Judge, after adverting to the provisions contained in Section 3 of the Act, 1996 and the presumption under Section 114(f) of the Evidence Act, observed that, a party, who despite being aware of the arbitration proceedings, choses 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 the arbitral award under Section 31(5) of the Act, 1996, without bothering to inform the arbitrator or the other party about the permanent closure of the operations and the changed address for the purpose of service. The law cannot permit dilatory tactics to be adopted to evade receiving a signed copy of the award by deliberately avoiding intimation of changed address and then claiming non-compliance of Section 31(5) of the Act, 1996.

36. The learned Single Judge, offer an analysis the provisions of Section 3 of the Act, 1996, observed 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 the Arbitration Act dealing with general provisions which would apply to Section 31(5). If

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> 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 IA-6578-2025 (J).doc 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."

37. Readverting to the facts of the case, the question that crops up for consideration is, whether in the facts of the case, the arbitral award can be deemed to have been delivered to the petitioners on 14th September, 2019. The factum of dispatch of the award on 13th September, 2019 is evidenced by the receipts issued by the courier and the tracking report which indicate that the consignment could not be delivered to the petitioners, including the applicant herein, for the reason, "party shifted". It would be contextually relevant to note that, it was not the case of the applicant that the address on which the copy of the impugned award was sent, was not the correct address furnished by the petitioners during the pendency of arbitral proceedings. Nor was it the case of the applicant that the learned arbitrator was apprised, at any point in time before the passing and dispatch of the impugned award, that the petitioners had changed their residence and the

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communications be addressed on the changed residence. Thus, the learned arbitrator was fully justified in dispatching a signed copy of the arbitral award at the address which formed part of the record of the arbitral proceedings. It is imperative to note that, the learned arbitrator has no means to know the correct address of the parties. Nor is it a duty of the learned arbitrator to find out the correct address of a party when the arbitral award sent on the correct address of such party is returned unserved.

38. At this juncture, the veracity of the explanation sought to be offered on behalf of the applicant/petitioners for non-receipt of the arbitral award deserves appreciation. In paragraph 14 of the petition, it is asserted that the registered office of petitioner No. 1 firm was located in the tenanted premises of the wife of petitioner No. 3 and that the entire family had since moved to a temporary alternate accommodation in the month of February 2018 in view of the redevelopment of the said premises. Thus, a letter dated 15th October, 2020 was addressed to the learned arbitrator.

39. Evidently, the change in residence, on the own showing of the petitioners, had occurred in February 2018. And, yet, the learned sole arbitrator was not apprised of the same till the

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passing of the impugned award. Secondly, it is interesting to note, in the letter dated 15th October, 2020, addressed to the learned arbitrator on behalf of the petitioners, it was mentioned that a copy of the impugned award be furnished to the petitioners at the within mentioned address as the petitioners had shifted to the said address due to the COVID-19 pandemic.

40. The aforesaid assertion in the petition and the document dated 15th October, 2020, which is sought to be pressed into service in support of the said assertion, appear to be materially inconsistent. In the petition it was asserted that, the petitioners had shifted to another address in the month of February 2018 itself, on account of the redevelopment of the premises wherein the office of petitioner No. 1 was located. Whereas, in the year 2020, the petitioners claimed to have shifted to a temporary residence on account of COVID-19 pandemic. Mr. Mahajan was thus justified in canvassing a submission that the explanation offered on behalf of the petitioners was unworthy of credence.

41. In any event, the further timeline and conduct of the petitioners disentitles the applicant from the exercise of discretion. In the application, it is averred that the applicant first became aware of the award through a representative of the respondent. And, thereafter, a copy of the award was extracted

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from Execution Application No. 13 of 2022. No steps seem to have been taken by the petitioners since the discovery of the fact that the impugned award was passed in the month of August 2019. As noted above, on 15th October, 2020, the petitioners addressed a communication to the learned arbitrator seeking service of a copy of the award at the changed address. It implies that, at any rate, by October 2020, the petitioners were aware of the passing of the impugned award. Yet, Writ Petition No. 3089/2022 was instituted on 29th April, 2022. Eventually, the said writ petition was withdrawn on 25th August, 2025. The instant arbitration petition came to be filed on 5th December, 2025. There is delay and inaction on the part of the applicant/petitioners at multiple stages.

42. In the backdrop of aforesaid circumstances, if the submission on behalf of the petitioners is countenanced and the petition under Section 34 of the Act, 1996 is entertained, despite a delay of more than six years, the very object of prescribing a strict time frame for filing a petition under Section 34 would be completely defeated. A party would then resort to unscrupulous means to avoid the service of the arbitral award and urge that since a copy of the arbitral award had not been actually received, the period of limitation did not at all

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commence. The provisions of the Act, 1996, would be required to be construed in such a manner as to advance the object of the Act, 1996 to promote swift, speedy and effective resolution of the disputes by the parties forum of choice, and not stultify the same by adopting an interpretation which renders the time frame for making recourse to the Court under Section 34 of the Act, 1996 nugatory.

43. In the totality of the circumstances, this Court finds it rather difficult to accede to the submissions on behalf of the applicant that there was no delay in filing the petition under Section 34 of the Act, 1996. The prayer for condonation of delay also does not deserve countenance as, on the one hand, power to condone the delay is controlled by the proviso to Section 34(3) of the Act, 1996 and, on the other hand, there is no explanation, much less satisfactory one, to account for such a huge delay. The application, therefore, deserves to be dismissed.

44. Hence, the following order:

: O R D E R :

The application stands dismissed with costs of Rs.25,000/- to be paid by the applicant to the respondent within a period of three weeks from today.

[N. J. JAMADAR, J.]

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