2026:DHC:8912-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 07.10.2026**

\# **CNR No. DLHC010623792024**

\+ FAO (COMM) 186/2024, CM APPL. 54505/2024 & CM APPL. 54507/2024

FOOD CORPORATION OF INDIA & ANR. .....Appellants

Through: Mr. Om Prakash, Sr. Adv. with Mrs. Samridhi Prakash, Mr. Rajeev Ranjan Pathak, Mrs. Rasmi Prakash, Advs.

versus

VIKAS CHAWLA AND ORS. .....Respondents

Through: Mr. Mrityunjai Singh, Adv. for R1 to 4.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE DINESH BHATT

AVNEESH JHINGAN, J. (ORAL)

1. This appeal is filed assailing the judgment dated 28.03.2024 passed by the learned District Judge, Patiala House District Court (hereinafter 'Commercial Court') accepting the objection petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act').

2. The facts in brief are that the Food Corporation of India (FCI)/appellant floated a tender on 27.01.1999 for appointment of an ad-hoc Road Transport Contractor for transportation of food grains from Gharsana to Bikaner, for a period of three months extendable upto three months. Shri Chimanlal (hereinafter 'the deceased'), was

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the successful bidder and was appointed the ad-hoc Road Transport Contractor with effect from 15.03.1999. The terms of the tender were accepted by the deceased *vide* letter dated 08.03.1999. On failure of the deceased to commence the work from 15.03.1999, FCI cancelled the contract on 19.04.1999 and awarded the work to the next lowest bidder.

2.1 Dispute arose between parties to the *lis*, FCI invoked arbitration and the Indian Council of Arbitration (ICA) appointed the sole arbitrator. The FCI raised a claim of Rs.3,09,602/- towards additional cost and storage charges besides interest and costs. The deceased was proceeded against *ex-parte*. The proceeding culminated in the award dated 09.03.2004, awarding Rs.4,82,795/- to FCI. The awarded amount comprised of Rs.1,11,437/- towards additional cost, Rs.1,98,165/- for storage charges, interest of Rs.1,10,693/- and cost of Rs.62,500/-.

2.2 A copy of the award was sent by ICA to the deceased by registered post on 02.04.2004. The deceased on 05.03.2005 filed objections under Section 34 of the Act (hereinafter 'the objections') before the District Court, Bikaner ('Bikaner Court'). During the pendency of the objections, the deceased passed away and the legal representatives (LRs) were brought on record. The Bikaner Court returned the objection on 26.11.2018 for want of territorial jurisdiction, with liberty to approach the competent court.

2.3 The LRs filed the objections bearing OMP (COMM.) No.14/2019 in the Commercial Court on 15.01.2019. The application seeking condonation of delay was filed on 05.03.2024.

2.4 The Commercial Court *vide* judgment dated 28.03.2024, allowed the objections and set aside the award being violative of principles of natural justice. Aggrieved by the impugned judgment, FCI is in appeal.

3. Learned counsel for the appellants contends that the award was sent by the Registrar, ICA on 02.04.2004 and it is presumed to be served upon the deceased. The objections before the Bikaner Court were filed beyond 120 days and the delay beyond the thirty days cannot be condoned. It is argued that the objections returned by the Bikaner Court on 26.11.2018 were not re-filed but fresh objections raising additional grounds were filed. The application for condonation of delay was filed subsequently and not alongwith the objections.

3.1 Reliance is on Section 3 of the Act to contend that service of the notices and the award is to be presumed. The *ex-parte* proceedings are defended by relying upon Section 25 of the Act, contending that the deceased failed to appear despite notice.

3.2 It is submitted that the Commercial Court, having set aside the award on the ground for violation of principles of natural justice, ought not to have examined the merits of the award.

3.3 Reliance is on the decision of ***MMTC Limited v. Vedanta Limited***, (2019) 4 SCC 163, ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)***, (2019) 15 SCC 131 to contend that a plausible view taken by the arbitrator does not call for interference under Section 34 of the Act.

3.4 The decisions of the Supreme Court in ***Union of India v. Popular Constructions***, (2001) 8 SCC 470 and ***Simplex Infrastructure Limited v. Union of India***, (2019) 2 SCC 455 is relied upon to contend that, in view of the language of Section 34 of the Act, the applicability of Section 5 of the Indian Limitation Act, 1963 (for short 'the Limitation Act') is ousted.

3.5 To buttress the argument that limitation commences from receipt of the award ***State of Maharashtra and Ors. v. ARK Builders Private Limited***, (2011) 4 SCC 616 is cited. Reliance is on the decision of the Supreme Court in ***Basawaraj v. Special Land Acquisition Officer***, (2013) 14 SCC 81 to contend that there must be a reasonable explanation for condoning the delay. The decision of ***CC Alavi Haji v. Palapetty Muhammed and Anr***., (2007) 6 SCC 555 is pressed into service to fortify the contention that refusal of notice is considered as service.

3.6 The decision of this Court in ***Lovely Benefit Chit Fund and Finance Pvt. Ltd. v. Puran Dutt Sood & Ors.***, 1983 SCC OnLine Del 22 relied upon while deciding the objections, is stated to have been distinguished by this Court in latter decisions.

4. *Per contra*, the scope of interference under Section 37 of the Act is narrow and circumscribed. The appellate court cannot sit in appeal over the factual findings recorded by the Court and cannot undertake re-appreciation of the evidence. The contention is that the appellate court has to restrict consideration to whether the objections were decided within the parameters of Section 34 of the Act.

4.1 The submission is that there was no proof of notice having been

served upon the deceased. The contention regarding filing of the objections before the Bikaner Court beyond 120 days is refuted contending that this issue was not raised before the Commercial Court.

5. Heard learned counsel for the parties at length. Though written submissions have been filed by the learned counsel for the parties but only the issues noted above were pressed during the course of arguments.

6. Before proceeding further, it would be apposite to note that it is an undisputed position that the records of arbitration and of ICA were not available.

7. The case set-up by the deceased was that on gaining knowledge of the award on 03.02.2005, a certified copy was applied and objections were filed before the Bikaner Court. The deceased expired on 21.04.2012. The objections were returned on 26.11.2018 by Bikaner Court for want of territorial jurisdiction and fresh objections were filed before the Commercial Court on 15.01.2019 i.e. within forty six days of return of objections by the Bikaner Court. The Commercial Court considered the period spent before the Bikaner Court for exclusion under Section 14 of the Limitation Act. The objection that the application for condonation of delay was not filed alongwith the objections and that an application under Section 5 of the Limitation Act was filed instead of Section 14 of the Limitation Act was rejected. Rightly the view taken was that where substantial justice and technical considerations come into conflict, substantial justice should prevail.

8. The contention that the initial objections filed before the Bikaner Court were beyond 120 days from the receipt of the award was not an issue pressed while arguing the objections, as is evident from the impugned order. It is not the case of the appellant in appeal that such a plea was raised but was not dealt by the Court while deciding the objections under Section 34 of the Act.

9. For invoking the presumption of service under Section 27 of the General Clauses Act, 1897 (for brevity 'GC Act') the reliance is placed by the appellant on the letter dated 02.04.2004 of the Registrar, ICA stating that the award was sent to the parties. The pre-requisites for deemed service under Section 27 of the GC Act are that the document must be properly addressed, postage prepaid and sent by registered post in a letter containing the document. In the present case, the postal receipt is not produced meaning thereby the proof of sending award by registered post is missing and the presumption of deemed service cannot be invoked. Reference in this regard is made to the decision of the Supreme Court in ***V. Raja Kumari v. P. Subbarama Naidu,*** (2004) 8 SCC 774 held as under:

> "13…….In this connection a reference to Section 27 of the General Clauses Act, 1897 will be useful. The section reads thus:
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> > "27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used, then, unless a different intention appears, the

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> service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."
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> 14. No doubt Section 138 of the Act does not require that the notice should be given only by 'post'. Nonetheless the principle incorporated in Section 27 (quoted above) can profitably be imported in a case where the sender has despatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice."
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> (emphasis supplied)

10. Reliance placed by the appellant on Section 3 of the Act for deemed service would not apply for the reasons already recorded, as the requirement under Section 3(1)(b) of the Act would be mailing the award by registered letter or other means.

11. The law is settled that limitation runs from the receipt of the award, as held in ***ARK Builders Private Limited*** (supra). In the case in hand, there is no evidence of service of the award.

12. The fact that fresh objections were filed instead of re-filing the objections returned by the Bikaner Court was also not raised in the objections. Moreover, the applicability of Section 14 of the Limitation Act does not depend upon re-filing the returned objections. The time spent in bona fide pursuing a remedy before a Court not having

jurisdiction is to be excluded and has been rightly done by the Commercial Court.

13. There is no quarrel with the proposition laid down in ***Popular Constructions*** (supra) and ***Simplex Infrastructure Limited*** (supra) that in view of the language used in Section 34 of the Act, the applicability of the Section 5 of the Limitation Act is ousted but exclusion of time under Section 14 of the Limitation Act still applies.

14. The decision of ***Basawaraj*** (supra), to the effect that there should be reasonable explanation for condoning the delay, is not applicable to the facts of the case. The present case concerns exclusion of limitation under Section 14 of the Limitation Act and not condonation of delay under Section 5 of the Limitation Act or the proviso to Section 34(3) of the Act.

15. The deceased was proceeded *ex-parte* by the arbitrator. The Commercial Court considered the facts and the material available on record. On 21.11.2003, at the first hearing before the arbitrator, none appeared on behalf of the deceased despite registered notices having been sent and the matter was adjourned to 08.01.2004. On next date of hearing the claimant amended the claim petition. The amendment was allowed and a fresh notice was issued for amended claim. The next date of hearing fixed was 03.02.2004, on this date the arbitrator recorded that the notice sent by registered A.D. was returned back by the postal authorities with the remark 'refused' and proceeded *ex-parte* against the deceased. While allowing the objections, it was held that the arbitrator had not recorded the status of notices sent in compliance to order dated 08.01.2004. The refusal remark on the

registered envelope was having a stamp dated 09.11.2003, which is prior to the first hearing dated 21.11.2003. The copy of the fresh notice issued after the amendment of the claim petition was neither on record nor were the postal receipts available. The inference drawn by the arbitrator on 03.02.2004, relying upon the refusal mark was erroneous and that as per law there was no service of notice on deceased. Further reliance on ***CC Alavi Haji*** (supra) to contend that refusal by addressee is service, does not enhance the case of the appellant, it was not considered by the arbitrator that refusal was by whom. Moreover, the finding that the arbitrator erred in proceeding *ex-parte* falls within the ambit of Section 34 of the Act and calls for no interference under Section 37 of the Act merely for another possible view.

16. The scope of interference under Section 37 of the Act is limited and circumscribed. Reference in this regard be made to the following decisions of the Supreme Court.

16.1 In ***Bombay Slum Redevelopment Corpn. (P) Ltd. v. Samir Narain Bhojwani***, (2024) 7 SCC 218 it was held:

> "23. We need not dwell on the limited scope of interference in the petition under Section 34 of the Arbitration Act. That position is very well settled. However, as far as the appeal under Section 37(1)(c) of the Arbitration Act is concerned, in MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , in para 14, this Court held thus : (SCC p. 167)
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> > "14. As far as interference with an order made under

> Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings."

24. In another decision of this Court in UHL Power Co. Ltd. v. State of H.P. [UHL Power Co. Ltd. v. State of H.P., (2022) 4 SCC 116 : (2022) 2 SCC (Civ) 401] , in para 16, it was held thus : (SCC pp. 124-25)

> "16. As it is, the jurisdiction conferred on courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of an appellate court in examining an order, setting aside or refusing to set aside an award, is all the more circumscribed. In MMTC Ltd. v. Vedanta Ltd. [MMTC Ltd. v. Vedanta Ltd., (2019) 4 SCC 163 : (2019) 2 SCC (Civ) 293] , the reasons for vesting such a limited jurisdiction on the High Court in exercise of powers under Section 34 of the Arbitration Act have been explained in the following words : (SCC pp. 166-67, para 11)
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26. The jurisdiction of the appellate court dealing with an appeal under Section 37 against the judgment in a petition under Section 34 is more constrained than the jurisdiction of the Court dealing with a petition under Section 34. It is the duty of the appellate court to consider whether Section 34 Court has remained confined to the grounds of challenge that are available in a petition under Section 34. The ultimate function of the appellate court under Section 37 is to decide whether the

jurisdiction under Section 34 has been exercised rightly or wrongly. While doing so, the appellate court can exercise the same power and jurisdiction that Section 34 Court possesses with the same constraints."

(emphasis supplied)

17. The reliance of learned counsel for the appellant on Section 25 of the Act to defend *ex-parte* proceedings lacks merit. Under Section 25 of the Act there has to be failure of the party to appear for hearing. In the present case, the non-appearance was clouded by the non-service of the notice. The fresh notice issued pursuant to the amendment of the claim petition was not shown to have been served and the arbitrator had failed to take cognizance of status of service of the notice.

18. The Supreme Court in ***Dyna Technologies Pvt. Ltd. v. Crompton Greaves Ltd.*** (2019) 20 SCC 1, is pressed into service to canvas that Commercial Court erred in holding that award was non-speaking and that the reasons emanating from a reading of the award as a whole is sufficient compliance of Section 31(3) of the Act. In the impugned order, specific finding is recorded that for allowing the claims no reason is recorded in the award and this conclusion calls for no inference under Section 37 of the Act.

19. The contention that after having held that the award was in violation of the principles of natural justice, the merits ought not to have been considered is noted to be rejected. There cannot be an absolute bar that after setting aside award for violation of the principles of natural justice, the Court must refrain from dealing with the merits. The reasons for not dealing with the merits in such





circumstances is that the matter is generally remanded and any observation on the merits may affect the proceedings pursuant thereto. Whereas under Section 34 of the Act there is no power of remand and the objections raised by the appellant that there was no service of notice and award is non speaking were dealt in accordance with law while passing the impugned order.

20. The decisions of the Supreme Court ***MMTC Limited*** (supra) and ***Ssangyong Engineering and Construction Company Limited*** (supra) does not enhance the case of the appellant. The issues of violation of natural justice and service of notice were neither considered nor decided by the arbitrator. The question of a plausible view being taken by the arbitrator warranting restraint under Section 34 of the Act, therefore does not arise.

21. The impugned order does not suffer from factual or legal error, much less perversity. The appeal has not merit and is dismissed.

AVNEESH JHINGAN, J

DINESH BHATT, J

OCTOBER 7, 2026
'JK'

Reportable: **Yes**

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