

**IN THE COURT OF PULASTYA PRAMACHALA, DISTRICT
JUDGE (COMMERCIAL COURT-01), PATIALA HOUSE
COURTS, NEW DELHI**

OMP (I) (COMM.) 13/2024

In the matter of: -

Railway Administration

...Petitioner

Versus

M/s Hind Terminals Pvt. Ltd.

...Respondent

Date of pronouncement of the order : 26.08.2025

ORDER

1. Vide this order, I shall dispose off the application under Section 34 (3) of Arbitration and Conciliation Act filed by the petitioner.
2. Briefly, it is stated that the impugned award was passed by Id. Arbitral Tribunal on 28.08.2023. The award was sent by the Arbitrator to AGM, Baroda House, however, the appellant concerned office address is Senior Division Commercial Manager, North Western Railway, Jaipur. It is averred that till date no such award is received by the official of petitioner. It is also averred that the impugned arbitral award was received by the petitioner's office on 19.09.2023 through e-dak, which was sent by the AGM Baroda House, New Delhi. After receipt of the arbitral award dated 28.08.2023, legal opinion was sought from the counsel, who represented the department before Id. Sole Arbitrator. It was received on 20.09.2023. After receipt of the legal opinion, the complete record was sent to the Law Branch. The legal opinion was put before the higher authorities and after

receipt of the directions, the matter was assigned to the Government counsel for challenging the impugned award. Thereafter, on receipt of draft petition the same was sent to competent authorities for vetting and after receiving the same, the present petition was filed with the delay of 20 days.

3. In reply filed by the respondent, it is averred that the objection has been filed beyond a period of 120 days from the date of receipt of the impugned award and condonation of such delay is impermissible under law. It is averred that the impugned award 28.08.2023 was received by the petitioner on 30.08.2203 and the limitation for filing the petition started from 31.08.2023. Accordingly, 120 days ended on 31.11.2023, which is beyond the statutory period time given under Section 34 (3) of the Act.
4. It is further averred that the Concession Agreement dated 04.10.2007, was executed by General Manager, Northern Railways on behalf of the petitioner. Thus, it is prayed that the application be dismissed.
5. Ld. counsel for the petitioner argued that in the present case, the General Manager of Indian Railways acting on behalf of the President of India executed the agreement dated 04.01.2007 with the respondent i.e. M/s Hind Terminal. The entire work under the said agreement was required to be carried out under the supervision of the North Western Railway (NWR). The officials of North Western Railway possess the knowledge of the work and the Concession Agreement dated 04.01.2007.
6. It was submitted that in context of a large organization as Indian Railways, copy of arbitral award must have been sent to the North Western Railway (NWR) as the concerned officials

possessed complete knowledge of the Concession Agreement and failure to send the impugned arbitral award to North Western Railways constituted a procedural lapse in respect to guideline provided by the Supreme Court in catena of judgments in regard to Arbitration and Conciliation Act 1996. Ld. Counsel submitted that Hon'ble Supreme Court while dealing with date for the purposes of calculating limitation and the issue who exactly constitutes "a party" in the context of monolithic organization, such as the Government, has given guidelines. He referred to **UOI vs. Tecco Trichy Engineers and Constructors**, (2005) 4 Supreme Court Cases 239 and **Benarsi Krishna Committee and Ors. vs. Karmyogi Shelters Pvt. Ltd.** (2012) 9 SCC 496. In **UOI vs. Tecco Trichy Engineers and Constructors**, Hon'ble Supreme Court has held as under: -

"The Chief Engineer is directly concerned with the Arbitration, as the subject matter of Arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator. The General Manager of the Railways has only referred the matter for arbitration as required under the contract. He cannot be said to be aware of the question involved in the arbitration nor the factual aspect in detail, on the basis of which the arbitral tribunal had decided the issue before it unless they are all brought to his notice by the officer dealing with that arbitration and who is in-charge of those proceedings. Therefore, in our opinion, service of arbitral award on the General Manager by way of receipt in his inwards office cannot be taken to be sufficient notice so as to activate the Department to take appropriate steps in respect of and in regard to the award passed by the arbitrators to constitute starting point of limitation for the purposes of Section 34(3) of the Act. The service of notice on the Chief Engineer on 19.3.2001 would be the starting point of limitation to challenge the award in the Court".

7. Written submissions were filed on behalf of respondent on the

lines of reply so filed by the respondent. It was argued that the Concession Agreement dated 04.01.2007 by virtue of which the Arbitration was commenced, was executed between the respondent and the General Manager, Northern Railways. It was submitted that the agreement specifically provided the definition of Railway Administration for the purpose of Dispute Resolution in the Agreement as “Railway Administration” means the “General Manager of the Zonal Railway having jurisdiction under the Railway Act 1989, except that for the purpose of Dispute Resolution, Railway Administrations shall mean the relevant Railway Administration which has executed the Concession Agreement”. It was submitted that Concession Agreement was signed by H.C. Punia CCM(S&R)/Northern Railway for and on behalf of President of India through Railway Administration. In support of his submissions, ld. Counsel for the respondent relied upon ***Simplex Infrastructure Ltd. vs. Union of India*** (2019)2 SCC 455 and ***National Highways Authority of India vs. Bhageeratha Engineering Ltd.***, 2011 DHC 5398. In National Highways Authority, in para 13 it was held as under: -

“The memo of parties in the arbitral proceedings, as is evident from the first page of the main Award as well as the amended Award, indicates the address of the NHAI to be its corporate office at New Delhi. As rightly pointed out by learned counsel for the Respondent the memo of parties in the present petition as well as the affidavit in support of the petition clearly indicates the address of the NHAI to be its corporate office at New Delhi. In the absence of the NHAI informing the Tribunal that the proper address for dispatch of all communications and in particular certified copies of the Award was its project office at Salem, the Tribunal would have had no means to know that the copies of the Award ought not to have been sent to NHAI’s corporate office at New Delhi. There is an obligation on the

parties to a dispute to inform the forum in which such proceedings are pending of the correct address to which copies of the Award or proceedings should be sent. The Arbitral Tribunal is not required to make enquiries as to the proper address of the party for the purposes of communication. It has to go by the address that appears in the memo of parties or cause title of the case before it. In the present case, therefore, the Arbitral Tribunal fully complied with the requirement of Section 31 (5) of the Act when it sent the Award as well as the amended Award to the corporate office of NHAI at New Delhi.”

8. In para 18 of this case, while taking into consideration the judgment of **Tecco Trichy Engineers** (Supra), it was held that: -

“The facts of the decision in Tecco Trichy Engineers and Contractors were that the Award in that case was sent to the General Manager, Southern Railway on 12th March 2001. It was received by the Chief Engineer who was also the Chief Project Manager on 19th March 2001. It was opined by the Supreme Court that for the purposes of Section 34(3) the limitation began to run only from the date on which the Chief Engineer received a copy of the Award passed by the Tribunal. Since the Railways was a large organization containing divisional heads, it was only the departmental head, which in that case was the Chief Engineer, who was likely to know whether the arbitral Award was adverse to the departmental interests. He was the person directly connected with and involved in the proceedings. However, as will be noticed, the facts in the present case are different.”

Appreciation of Arguments, Law & Fact

9. A plain reading of sub-section (3) along with the proviso to Section 34 of the 1996 Act, refers that application for setting aside the award on the grounds mentioned in sub-section (2) of Section 34 could be made by a party within three months of passing the award and the said period can only be extended for a further period of 30 days on showing sufficient cause and not thereafter. The use of the words “but not thereafter” in the

proviso makes it clear that the extension cannot be beyond thirty days.

10. In the judgment passed in the case of **Union of India v. Popular Construction Co. (2001) 8 SCC 470**, it was held that: -

“12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are 'but not thereafter' used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the Court could entertain an application to set aside the Award beyond the extended period under the proviso, would render the phrase 'but not thereafter' wholly otiose. No principle of interpretation would justify such a result.”

11. Admittedly, in the present case, the copy of award was sent to AGM, Baroda House and it was sent to Senior Divisional Commercial Manager, North Western Railway, Jaipur, which was received by it on 19.09.2023 through e-Dak. Perusal of record shows that in the statement of claim so filed by the petitioner respondent was described as: Railway Administration through Northern Railway through its General Manager, Baroda House, New Delhi as per Concession Agreement dated 04.01.2007. As per Concession Agreement “Railway Administration” means the General Manager of the Zonal Railway having jurisdiction under the Railway Act 1989, except that for the purpose of Dispute Resolution, Railway Administrations shall mean the relevant Railway Administration which has executed the Concession Agreement. The same was signed by H.C. Punia CCM(S&R)/Northern Railway for and on behalf of President of India through Railway Administration.

12. In the written submissions of respondent (para3.3), it is wrongly

mentioned that petitioner on 18.11.2021, during the proceedings before Hon'ble Delhi High Court in Arb. No.48/2020 counsel for petitioner accepted before the Court that GM, Northern Railway was the executing authority of the Concession Agreement. Perusal of order dt. 18.11.2021 as passed by Hon'ble High Court in aforesaid proceedings, would show that Id. Counsel appearing for the petitioner herein, submitted before the court that the subject contract had been transferred to North Western Railways. Though, it is true that there is no document on the record to show if the petitioner had filed any document in this regard with prayer to take on record the address of North Western Railways in substitution of GM, Northern Railways.

13. Delhi High Court in the case of **National Highways Authority** (supra) distinguished the judgment passed in the case of **Tecco Trichy** (supra) on the grounds of different set of facts. In **Tecco Trichy** case, Supreme Court observed that in that particular case, *“the Chief Engineer had signed the agreement on behalf of the Union of India entered into with the respondent. In the arbitral proceedings the Chief Engineer represented the Union of India and the notices, during proceedings of the arbitration, were served on the Chief Engineer. Even the arbitral award clearly mentions that the Union of India is represented by the Deputy Chief Engineer/Gauge Conversion, Chennai. The Chief Engineer is directly concerned with the arbitration, as the subject matter of arbitration relates to the department of the Chief Engineer and he has direct knowledge of the arbitral proceedings and the question involved before the arbitrator.”*
14. In the present case, though award in question does not show the

description of person representing the Railway Administration, but on the first page of the award referring to statement of claim, it is mentioned that “*in the statement of claim it was claimed that General Manager of Northern Railway and General Manager of North-Western Railway were notified vide letter dated 10.09.2019 about existence of disputes and differences under the Concession Agreement.*” This narration in the award goes on to show that General Manager North-Western Railways was shown to be involved in the matter even by the claimant (respondent herein). The other documents which were filed along with claim before Id. Arbitrator include the communications between the parties. The notice dated 10.06.2019 was sent by respondent to GM, Northern Railway as well as GM, North-Western Railway, Jaipur. Apart from that, other communications of the past from the respondent to the petitioner, show that the respondent herein had been communicating with Sr. DCM, Jaipur Division, North-Western Railway, Jaipur. Thus, it is not the case that officials of North-Western Railway took over this matter after passing of the award. Rather, the communications sent by respondent before Arbitral proceedings establish that he had been communicating with officials of North-Western Railway, Jaipur. In the arbitration proceedings, the reply to the claim of the respondent was also filed by DCM, North-Western Railway, Jaipur.

15. If I analyse these facts on the parameters of above-mentioned observations made by Hon'ble Supreme Court in the case of **Tecco Trichy** (supra), then it is beyond any doubt that for all practical purposes it was the office of North-Western Railway, Jaipur which had been contesting the claim during the arbitration

proceedings. Just because respondent in his statement of claim described the petitioner as Railway Administration, GM, Northern Railway, it would not mean that it was office of GM, Northern Railways, which was participating to defend Railways in the arbitration proceedings. Concession Agreement was signed on behalf of GM, Northern Railway, still the fact remains that Railways was actually being represented by the office of GM, North-Western Railway, Jaipur, during the arbitration proceedings. In that situation, if judgment passed by Hon'ble Supreme Court in the case of **Tecco Trichy** (supra) is followed in true sprite, then it is to be held that it would be date of receipt of award in the office of GM, North-Western Railway, Jaipur, which would be the relevant date to count the limitation. Said date is stated to be 19.09.2023 without any dispute from the side of respondent. The document placed on the record also shows same date of e-dak, which is the date on forwarding letter from NRHQ, Baroda House to CCM, North-Western Railway, Jaipur. Vide this letter, the award received from Id. Arbitrator was forwarded to CCM, North-Western Railway for taking further necessary action. The period of 90 days if counted from 19.09.2023, lapsed on 19.12.2023. Section 34(3) of the Act provides scope for extension of another 30 days, which would have lapsed on 18.01.2024. Present petition was filed online on 09.01.2024 and physically on 11.01.2024. Thus, it was filed within maximum period of 120 days.

16. The given reason for such delay is time taken to obtain legal advise and to prepare draft of the petition. Since the petition was finally filed within maximum period of 120 days, I deem it fit to

condone this delay. The judgment passed by Hon'ble High Court of Delhi in the case of **Union of India v. Sanoj Kumar, MANU/DE/2443/2024** as relied upon by ld. counsel for respondent, dealt with a different fact situation, wherein it was pleaded that limitation would start from date when the concerned officer received the legal advise and derived the authority to file the application. That plea was negated by the court. In the present case, fact is totally different. Hence, aforesaid judgment has no application. In view of my foregoing discussions and observations, application filed by petitioner thereby seeking condonation of delay, is allowed.

17. Respondent is given opportunity to file reply to the main objection before next date of hearing after supplying advance copy of the same to the opposite counsel.

Pronounced in the	(PULASTYA PRAMACHALA)
Open Court on this	District Judge (Commercial Court)-01,
26th day of August, 2025	Patiala House Court, New Delhi