

An application under Section 39 ACA lies only when the award has been made, but not physically delivered (Delhi High Court)

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M/s Janapriya Engineers Syndicate Pvt. Ltd. v. Union of India

Court: Delhi High Court | **Case Number:** ARB.P 377 of 2019 | **Citation:** 270 (2020) DLT 419 |
Bench: V Kameswar Rao J | **Date:** 05 June 2020

A. Section 39 of ACA gives to the arbitral tribunal lien on the award for any unpaid costs

Section 39 ACA provides for “lien on arbitral award and deposits as to costs.” Under Section 39 (1), subject to any contrary provision in the arbitration agreement, the arbitral tribunal has a lien on the arbitral award for any unpaid costs. Section 39 (2) gives a remedy to a party in a case where an arbitral tribunal “refuses to deliver its award” unless the costs are paid. Under this sub-section, the court can order that the award be delivered once costs are deposited in the court. Then further, the court can inquire into the matter and assess what sum should the tribunal receive.

B. There was a dispute between the parties regarding payment of costs. The arbitrator had not yet made the award

The Union of India had awarded Janapriya a contract for construction of a residential project. Some disputes arose, and a sole arbitrator was appointed from a “standing panel of arbitrators.” The arbitrator was then a Chief Engineer working with the Union. No fees were payable to him apart from the usual salary he received from the Union.

Arbitration proceedings commenced in 2015. In October 2018, the arbitrator informed the parties that he was due for superannuation next month and sought the consent of the parties to continue as an arbitrator and make the award.

In one of the hearings, after the superannuation, the arbitrator asked the parties to deposit his fees (rupees twenty-seven lakhs). Janapriya agreed to pay its half share, but the Union objected. It said the arbitrator never indicated that he would be demanding fees. Janapriya also offered to pay the entire sum (in the meanwhile). The Union sought time to take a view on the matter.

C. An application was filed under Section 39 for direction that the arbitrator pass/deliver the award

After waiting for some time, Janapriya applied Section 39 (2) ACA seeking a direction to the arbitrator that the award is passed/delivered. The Union of India took a preliminary objection. It argued that Section 39 (2) presupposes that the award has been made but not delivered. In this case, the arbitration proceedings were still going on, and an award had not been made and pronounced.

D. Was the application premature? The court said yes because the award had not been made

Many submissions were advanced, but without going into them, the court rejected the petition on maintainability, concluding as follows:-

- (a) Section 39 (2) ACA contemplates an application when the award is made, but not delivered to the parties.
- (b) This situation has not arisen since it is clear on facts that the arbitrator is yet to make the award. It is not Janapriya's case that the awards (there were two matters) have been prepared/pronounced and are ready for delivery.
- (c) There is a purpose for delivery of the award. It entitles a party to either challenge the award or seek execution.
- (d) The Calcutta High Court in *Assam State Weaving & Manufacturing Co. Ltd. v. Vinny Engineering Enterprises (P) Ltd. and another*, 2010 (4) RAJ 609 (Cal) concluded that delivery under Section 39 "is the physical delivery of the document embodying the award and not merely the pronouncement of the award. For, it is the physical receipt of the document that would entitle a party to apply for setting aside the award or for implementing it."