



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

ARBITRATION APPEAL NO. 55 OF 2024

NTPC BHEL Power Projects Pvt. Ltd.

... Appellant

Versus

Shree Electricals & Engineers (India) Pvt. Ltd.

...Respondent

Mr. Akash Menon a/w. Mr. Kalash Bakliwal for the appellant.

Mr. Mandar Limaye a/w. Mr. S.C. Wakankar, Mr. Vedant Bende for the respondent.

CORAM:	G. S. KULKARNI & ADVAIT M. SETHNA, JJ.
RESERVED ON :	15 January, 2025
PRONOUNCED ON:	17 March, 2025

Judgment (Per G. S. Kulkarni, J.)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 (for short "**ACA**") is directed against the judgment and order dated 21 July, 2023 passed by the learned District Judge No. 2 at Pune, whereby Civil Miscellaneous Application No. 343 of 2023 filed by the appellant under Section 34 of the ACA challenging an arbitral award dated 5 February 2020 passed by the Micro and Small Enterprises Facilitation Council, Pune (for short "**Facilitation Council**") constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (for short "**the MSME Act**") has been dismissed on the ground that the same is filed beyond the limitation as

prescribed under sub-section (3) of Section 34 of the ACA.

2. The relevant facts are: Disputes and differences had arisen between the parties under the purchase order dated 9 March, 2013. The respondent accordingly approached the Facilitation Council making a claim of an amount of Rs. 4,50,92,587/-. There were attempts to bring about a settlement. In fact, a Settlement Agreement dated 16 May, 2016 was entered between the parties, however, certain dues were claimed by the respondent. The dispute hence was taken up in arbitration. The Facilitation Council adjudicated the disputes leading to an arbitral award dated 5 February, 2020 being rendered by the Facilitation Council.

3. The case of the appellant is that an award was rendered just before the Covid-19 pandemic engulfed the country and consequent thereto a lock-down was declared in March, 2020. The appellant in such context has referred to an order dated 23 March, 2020 passed by the Supreme Court whereby the Supreme Court extended the period of limitation in relation to all proceedings including the arbitration proceedings. The case of the appellant is that the impugned award was made available/received by the appellant on 21 August, 2020, which itself was during the lock-down period.

4. The appellant has contended that the appellant moved a Writ Petition,

being Writ Petition No. 9317 of 2021 before this Court challenging such arbitral award passed by the Facilitation Council on the ground that initially the Facilitation Council had entertained the matter in Conciliation and hence it was not permissible for the Facilitation Council to take up the matter for arbitration relying on the decision of this Court in *Gujarat State Petronet Ltd. vs. Micro and Mine Enterprises Facilitation Council*¹. There were other contentions as urged on behalf of the petitioner in the said Writ Petition *inter alia* that the disputed amount was paid by the appellant to the respondent, hence no amount was payable. Whereas in such proceedings, on behalf of the respondents, reliance was placed on the decision of Supreme Court in *Jharkhand Urja Vikas Nigam Limited vs. State of Rajasthan and Others*², to contend that the Supreme Court had held that it is open to the Facilitation Council to take up the Arbitration proceedings after failure of the conciliation.

5. On the said Writ Petition filed by the appellant, a learned Single Judge of this Court considering the rival contentions, passed an interim order dated 7 October, 2022, that the parties would be required to be heard, as arguable issues were raised, and accordingly listed the petition for final disposal on 18 November, 2022, thereby granting an interim stay to the impugned award

¹ Writ Petition No. 5449 of 2015 decided on 6 August 2018.

² 2021 SCC OnLine SC 1257

subject to the appellant depositing the amount of Rs.4,52,250/- in this Court. The proceedings thereafter were listed before the learned Single Judge on 11 January, 2023, when the Court passed an order accepting the request as made on behalf of the appellant to withdraw the Writ petition to avail of the alternate remedy which may be available to the appellant in law. The said order reads thus:

- “1. Heard Mr. Kamdar, learned Advocate for Petitioner and Mr. Petkar, learned Advocate for Respondent.
2. At the outset, Mr. Kamdar, learned Advocate for Petitioner seeks to withdraw the present Writ Petition to avail any alternate remedy / relief that may be available to the Petitioner in law in respect of the subject matter of the present Writ Petition.
3. Writ Petition is allowed to be withdrawn with the above liberty.
4. At the request of Mr. Petkar, it is clarified that all contentions of the parties are expressly kept open.”

6. On the backdrop of the aforesaid order passed by the learned Single Judge permitting the appellant to withdraw the Writ Petition, the appellant on 17 March, 2023 filed before the Court of learned District Judge at Pune, an application under Section 34 of the ACA along with a delay application praying for condonation of delay of 66 days in filing the Section 34 proceedings. The respondent opposed the delay condonation application on the ground that the arbitral award was dated 5 February, 2020 and merely on the ground that the appellant had filed a Writ Petition in this Court and

ultimately withdrew the same on 11 January, 2023 would not assist the appellant so as to seek a relief of condonation of delay on the ground that the delay was only of 66 days. The learned District Judge considering the rival contentions has held that Section 34 application was filed beyond the limitation as prescribed under Section 34(3) and has rejected the delay condonation application by the impugned order. It is on such backdrop the parties are before the Court.

7. Learned counsel for the appellant has made extensive submissions. It is his submission that the arbitral award dated 5 February, 2020 was received by the appellant on 21 August, 2020. He submits that the period thereafter was indisputedly the Covid-19 pandemic period in respect of which under the orders passed by the Supreme Court in **Re : Cognizance for Extension of Limitation**³, the period from March, 2020 till 30 May, 2022 was required to be excluded. It is his submission that from 24 December, 2020 till 11 January, 2023, the appellant was bonafide pursuing the proceedings of Writ Petition No. 9317 of 2021 before this Court, in view of the decision of this Court in **Gujarat State Petronet Ltd.** (supra), in which the Division Bench held that the Facilitation Council, being a conciliation forum, could not act as an Arbitration forum. It is submitted that once to such extent, the decision of the Division

³ (2020) 19 SCC 10

Bench was overruled by the Supreme Court in the case of *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.*⁴ and the appellant, having become aware of the said decision, had withdrawn the Writ Petition filed before this Court on 11 January, 2023 and soon thereafter within the stipulated limitation as prescribed under Section 34(3), filed the Section 34 petition before the District Court at Pune on 17 March, 2023. It is submitted that Section 34 proceedings were thus filed within the prescribed limitation and there was no delay in filing of the said proceedings. It is also his submission that even the language of the delay condonation application would indicate that the same was filed merely as a formality, as the appellant clearly believed that the proceedings under Section 34 were filed within the prescribed period of limitation. It is, therefore, prayed that the impugned order be set aside and it be held that Section 34 proceedings filed by the appellant well within the prescribed limitation, so that the proceedings are adjudicated by the District Court in accordance with law.

8. In supporting the aforesaid contentions, the learned counsel for the appellant would submit that this is a case where the provisions of Section 14 of the Limitation Act had clearly become applicable for the Court to condone the delay in filing Section 34 application, for the reason that the appellant was

⁴ (2023) 6 SCC 401 (Judgment dated 31 October, 2022)

bonafide pursuing Writ Petition No. 9317 of 2021 filed by it on 24 December, 2020 till the same was withdrawn on 11 January, 2023. In supporting the contention that it is permissible for Section 34 Court, to consider the applicability of Section 14 of the Limitation Act, 1963, reliance is placed on the decision of this Court in *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors.*⁵, decision of the Supreme Court in *Kripal Singh vs. Government of India, New Delhi & Ors.*⁶ as also the order passed by the learned Single Judge of this Court in *Kisan Mouldings Ltd. vs. Micro and Small Enterprises Facilitation Council (MSEFC) Konkan Thane & Anr.*⁷.

9. On the other hand, Mr. Limaye, learned counsel for the respondent in opposing the submissions as urged on behalf of the appellant would submit that no interference is called for in the order passed by the learned District Judge rejecting the delay condonation application as filed by the appellant, as the delay of 66 days as calculated by the appellant is a misnomer. In supporting such submissions, Mr. Limaye would submit that taking into consideration the case of the appellant, there is no dispute that the copy of the arbitral award dated 5 February, 2020 was received by the appellant on 21

⁵ (2008) 7 SCC 169

⁶ 2024 SCC OnLine SC 3814

⁷ Interim Application (L) No. 28278 of 2024 in Commercial Arbitration Petition (L) No. 25371 of 2024.

August, 2020, it is submitted that even assuming that the period of limitation stood extended considering the orders passed by the Supreme Court in **Re : Cognizance for Extension of Limitation** (supra), the limitation as prescribed under sub-section (3) of Section 34 was required to be reckoned from 30 May, 2022, which would be the period of three months plus 30 days, i.e. upto 30 September, 2022. It is submitted that the Section 34 application was admittedly filed on 17 March, 2023, which is after a period of 5 months and 17 days, from the limitation having expired even considering the order of the Supreme Court.

10. On the appellant's submission of applicability of Section 14 of the Limitation Act, as a ground for condonation of delay, Mr. Limaye would have two fold submissions. Firstly, the overall facts and circumstances of the case are required to be considered inasmuch as the appellant having received the arbitral award on 21 August, 2020 filed Writ Petition in this Court. It is his submission that it cannot be accepted that the writ petition was bonafide pursued by the appellant, inasmuch as the position in law that the Facilitation Council would have authority to enter arbitration was well settled in view of the decision of the Supreme Court in *Jharkhand Urja Vikas Nigam Limited* (supra) and as noted by the learned Single Judge in the order dated 7 October,

2022. It is his submission that despite the position as laid down in the said decision, the appellant did not take steps to invoke Section 34 and filed proceedings to challenge the arbitral award as passed by the Facilitation Council and in fact the appellant waited upto 11 January, 2023 to withdraw the Writ Petition with liberty to take recourse to the remedy as may be available in law. It is submitted that the order dated 11 January, 2023 passed by the learned Single Judge permitting the appellant to withdraw the petition also does not refer to any recent knowledge of the decision rendered by the Supreme Court in the case of *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr. (supra)* being rendered on 31 October, 2022. It is submitted that even considering the date of such decision of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr. (supra)*, Section 34 proceedings were required to be filed on or before 28 February, 2023 and which in fact came to be filed by the appellant on 17 March, 2023 before the District Court at Pune. It is, therefore, his submission that the Section 34 proceedings were clearly time barred, being filed beyond the prescribed limitation of 3 months and the extended period of 30 days, under the proviso to sub-section (3) of Section 34 of ACA. Mr. Limaye in supporting the aforesaid contentions that Section 14 cannot be invoked as the appellant was not bona fide pursuing the present proceedings,

Mr. Limaye has placed reliance on the decision of the Supreme Court in the case of *Deena (Dead) through LRs. vs. Bharat Singh (Dead) through LRs. And Ors.*⁸

Analysis

11. We have heard learned counsel for the parties. With their assistance, we have perused the record. The questions which arise for our consideration in the present proceedings are:

“(i) Whether Section 34 application as filed by the appellant was barred by limitation as prescribed under Section 34(3) of ACA?

(ii) Whether in the facts and circumstances of the case, the benefit of Section 14 of the Limitation Act, 1963 was available to the appellant to seek condonation of delay of 66 days?

12. To answer the aforesaid questions, some of the admitted facts are required to be noted:

The arbitral award was rendered by the Facilitation Council on 5

⁸ (2002) 6 SCC 336

February 2020. The same was received by the appellant on 21 August 2020. At the relevant time, as rightly contended on behalf of the appellant, the position in law qua the challenge to the decision of the Facilitation Council was as to what was held by the Division Bench of this Court in the case of ***Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.*** (supra). In such decision, the Division Bench observed that the Facilitation Council had no jurisdiction to initiate arbitration proceedings and that the Facilitation Council was required to refer the disputes to any institution or Centre providing Alternate Dispute Resolution Services for arbitration. Such observations of the Division Bench are required to be noted:

“23. Admittedly, in the present case, respondent No.1 conducted the conciliation proceedings between the petitioner and respondent No.3 and by the impugned order, terminated the same as being unsuccessful. What is surprising is that respondent No.1 - MSEFC, having conciliated the dispute between the parties and conciliation proceedings being unsuccessful and terminated, the MSEFC itself initiated to arbitrate the dispute between the same parties. In our view, respondent No.1-MSEFC itself, could not have initiated arbitration proceedings between the petitioner and respondent No.3. In terms of the provisions of sub-section (3) of Section 18 the MSMED Act, respondent No.1 - MSEFC ought to have referred the dispute between the petitioner and respondent No.3 to any institution or centre providing alternate dispute resolution services for arbitration. The impugned order, so far as it relates to authorising respondent No.1 - MSEFC to initiate arbitration proceedings/arbitral dispute cannot be sustained and the same deserves to be quashed and set-aside.”

13. The said decision of the Division Bench in ***Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.*** (supra) was

challenged before the Supreme Court in the proceedings of SLP(C) No. 31227 of 2018.

14. In the aforesaid circumstances, after receipt of the said award, the appellant being guided by the said decision of the Division Bench, approached this Court by filing Writ Petition No.9317 of 2021, which was filed on 24 December 2020. This writ petition was filed during the period the nation was hit by the Covid-19 pandemic and more particularly when orders passed by the Supreme Court extending limitation to file legal proceedings were in operation, by virtue of which generally the limitation to file proceedings had stood extended in terms of its orders in **Re : Cognizance for Extension of Limitation**⁹. The order dated 8 March, 2020 passed by the Supreme Court reads thus:

1. Due to the onset of COVID-19 pandemic, this Court took suo motu cognizance of the situation arising from difficulties that might be faced by the litigants across the country in filing petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State). By an order dated 23.03.2020 this Court extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from 15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 23.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.

⁹ (2020) 19 SCC 10tion

2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions: -

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

3. The Suo Motu Writ Petition is disposed of accordingly.”

15. Thereafter, by an order dated 10 January, 2022, the Supreme Court further extended the limitation upto 28 February, 2022. According to the appellant, thus the entire period from March, 2020 till 30 May, 2022 was excluded under the aforesaid order passed by the Supreme Court extending the

period of limitation. The order dated 10 January, 2022 passed by the Supreme Court reads thus:

1. In March, 2020, this Court took Suo Motu cognizance of the difficulties that might be faced by the litigants in filing pet applications/ suits/ appeals/ all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic.

2. On 23.03.2020, this Court directed extension of the period of limitation in all proceedings before Courts/Tribunals including this Court w.e.f. 15.03.2020 till further orders. On 08.03.2021, the order dated 23.03.2020 was brought to an end, permitting the relaxation of period of limitation between 15.03.2020 and 14.03.2021. While doing so, it was made clear that the period of limitation would start from 15.03.2021.

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates on Record Association (SCAORA) intervened in the Suo Motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23.03.2020 relaxing limitation. The aforesaid Miscellaneous Application No.665 of 2021 was disposed of by this Court vide Order dated 23.09.2021, wherein this Court extended the period of limitation in all proceedings before the Courts/Tribunals including this Court w.e.f 15.03.2020 till 02.10.2021.

4. The present Miscellaneous Application has been filed by the Supreme Court Advocates-on-Record Association in the context of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country. Considering the prevailing conditions, the applicants are seeking the following:

- i. allow the present application by restoring the order dated 23.03.2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) NO. 3 of 2020 ; and
- ii. allow the present application by restoring the order dated 27.04.2021 passed by this Hon'ble Court in M.A. no. 665 of 2021 in Suo Motu Writ Petition (C) NO. 3 of 2020; and
- iii. pass such other order or orders as this Hon'ble Court may deem fit and proper.

5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

6. As prayed for by learned Senior Counsel, M.A. No. 29 of 2022 is dismissed as withdrawn.”

16. Insofar as Writ Petition No.9317 of 2021 as filed by the appellant before this Court is concerned, it is seen that an interim order dated **7 October 2022** was passed by the learned Single Judge recording that an arguable case arises for consideration in the said petition and accordingly, directed that the matter be listed for final disposal noting the contentions as urged on behalf of the petitioner on the decision of Division Bench in *Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.* (supra) as also the

respondent's contention referring to the decision in *Jharkhand Urja Vikas Nigam Limited vs. State of Rajasthan and Others* (supra).

17. It clearly appears that the appellant was pursuing the writ petition considering the legal position as laid down by the Division Bench of this Court in *Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.* (supra) that the Facilitation Council would not have jurisdiction to enter arbitration and it would have jurisdiction only of conciliation, hence a Writ Petition challenging the orders of the Facilitation Council was maintainable.

18. However, it appears that the basis of the appellant's cause to pursue the Writ Petition, stood extinguished, in view of the Supreme Court partly reversing the decision of the Division Bench of this Court in *Gujarat State Petronet Ltd. Vs. Micro and Small Enterprises Facilitation Council & Ors.* (supra), when such proceedings were adjudicated along with other cases in its decision in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.* (supra). In such context, the Supreme Court laid down the following legal position:

“52. The upshot of the above is that:

52.1 Chapter-V of the MSMED Act, 2006 would override the provisions of the Arbitration Act, 1996.

52.2 No party to a dispute with regard to any amount due under Section 17 of the MSMED Act, 2006 would be precluded from making a reference to the Micro and Small Enterprises Facilitation Council, though an independent arbitration agreement exists between the parties.

52.3. The Facilitation Council, which had initiated the Conciliation proceedings under Section 18(2) of the MSMED Act, 2006 would be entitled to act as an arbitrator despite the bar contained in Section 80 of the Arbitration Act.

52.4 The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/arbitration tribunal under Section 18(3) of MSMED Act, 2006 would be governed by the Arbitration Act, 1996.

52.5 The Facilitation Council/institute/centre acting as an arbitral tribunal by virtue of Section 18(3) of the MSMED Act, 2006 would be competent to rule on its own jurisdiction as also the other issues in view of Section 16 of the Arbitration Act, 1996.....”

19. The obvious legal consequence which had arisen in view of the decision of the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.* (supra) was on the petitioner’s cause being pursued in the writ petition, no more surviving. Thus, to challenge the award of the Facilitation Council, a party was required to take recourse to the provisions of Section 34 of the ACA and a Writ Petition on such count was not maintainable.

20. The decision in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.* (supra) was declared by the Supreme Court on 31 October, 2022. Considering such legal position, on 11 January 2023 (supra), the learned Single Judge permitted the petitioner to withdraw Writ

Petition No.9317 of 2021, so as to pursue such appropriate remedy as available in law. Thereafter, the appellant filed the Section 34 proceedings before the District Judge on 17 March 2023.

21. Thus, the aforesaid periods of delay if any were required to be considered in the context of the limitation, Section 34(3) of the ACA would prescribe. Section 34(3) provides for limitation of three months and the extended period of 30 days to assail the arbitral award in the following terms:

“34. Application for setting aside arbitral award.—

... ..

(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. Considering the aforesaid position in law and the facts of the case as noted by us, we do not find any fault with the petitioner in pursuing Writ Petition No. 9317 of 2021 before this Court, as at the time of filing of the said Writ Petition, the decision of Division Bench of this Court in **Gujarat State Petronet Ltd. (supra)** continued to hold the field, which was to the effect that the Writ Petition assailing the decision of the Facilitation Council was held to be maintainable, as it was held that the Facilitation Council had no jurisdiction

to render an arbitral award. It is clear from the record that the proceedings of Writ Petition had remained pending including on interim orders passed on the same. There also appears to be no doubt about the limitation being extended for all purposes under the orders passed by the Supreme Court, the benefit of which was available to the appellant till 28 February, 2022. Admittedly, on 28 February, 2022, Writ Petition filed by the petitioner, as validly filed, was subjudice before this Court and pending final consideration.

23. It is on such backdrop, what is material is the Supreme Court rendered its judgment on a batch of proceedings in ***Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.*** (supra) on 31 October, 2022, which included the challenge to the decision of the Division Bench in ***Gujarat State Petronet Ltd.*** (supra), reversing the same, when it held that the Facilitation Council had the jurisdiction to render an arbitral award. In such circumstances, the Court would not take a hard technical view that the limitation to file Section 34 proceedings for the appellant would commence on 31 October, 2022, i.e., when the Supreme Court delivered the said decision and therefore, *stricto sensu* the limitation as prescribed under sub-section (3) of Section 34, namely, the period of three months and the extended period of 30 days would become applicable from the date of the decision of the Supreme

Court. The appellant considering the law declared by the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. vs. Mahakali Foods Pvt. Ltd. & Anr.* (supra), rightly withdrew Writ Petition No. 9317 of 2021 as permitted by the learned Single Judge of this Court by an order dated 11 January, 2023 to pursue an alternate remedy, i.e., proceedings under Section 34 and accordingly filed Section 34 proceedings on 17 March, 2023.

24. In these circumstances, we are inclined to accept the appellant's contention that even assuming that there is a delay in filing of Section 34 proceedings, the same would be required to be condoned applying the provisions of Section 14 of the Limitation Act. The appellant would also be correct in its contention that in fact, if the limitation as prescribed under Section 34(3) is to be applied from the date the Court permitted withdrawal of the proceedings of Writ Petition No. 9317 of 2021 on 11 January, 2023, Section 34 proceedings were filed within the limitation as prescribed under sub-section (3) of Section 34 of ACA. This clear position, not only on facts but also in law, has been completely overlooked and/or missed by the learned District Judge in passing the impugned order.

25. Even assuming that there was a delay on the part of the appellant in filing Section 34 proceedings, the applicability of the provisions of Section 14

of the Limitation Act certainly is an acceptable proposition, in the facts and circumstances of the present case. The following discussion would aid our conclusion. In such context, at the outset, the provisions of Section 14 of the Limitation Act are required to be noted, which reads thus:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

26. It appears to be a settled position in law that the provisions of Section 14 of the Limitation Act would be available to a party seeking condonation of

delay even in filing of proceedings under Section 34 of the Arbitration Act and qua the limitation, as prescribed under sub-section 3 of Section 34 of the ACA. In *Consolidated Engineering Enterprises vs. Principal Secretary, Irrigation Department & Ors.* (supra) the Supreme Court in such context held that there is no provision under the ACA which excludes the applicability of the provisions of Section 14 of the Limitation Act to the applications under Section 34 of the ACA. It was observed that Section 43 of the ACA in fact makes the provisions of the Limitation Act, 1963 applicable to the arbitration proceedings. The Court held that the proceedings under Section 34 of the ACA are for the purpose of challenging the Award, whereas the proceedings referred to under Section 43 are the original proceedings which can be equated with the proceedings of a suit. It was held that Section 43 incorporating the Limitation Act, will apply to the proceedings of the arbitration as it applies to the proceedings of a suit in the Court. It was held that if under sub-section (4) of Section 43 of the Act, the period between commencement of arbitration proceedings till the award is set aside by the Court, has to be excluded in computing period of limitation provided for any proceedings with respect to the dispute, in such event, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would not be applicable to an application submitted under Section 34 of the ACA, more

particularly, when no provision is to be found in the ACA, which excludes the applicability of Section 14 of the Limitation Act to an application made under Section 34 of the ACA. The Court thus held that having regard to the legislative intent, the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the ACA for setting aside an arbitral award. In reaching such conclusion, the Court also referred to the decision of the Supreme Court in **State of Goa vs. Western Builders**¹⁰ wherein the Court had taken a similar view. Referring to such decision, the Supreme Court also held that the interpretation of Section 14 has to be liberal, the language of beneficial provision contained in Section 14 of the Limitation Act must be construed liberally so as to suppress the mischief and advance its object. In the context of applicability of Section 14, the Supreme Court in paragraph 21 of the decision observed that five conditions are required to be satisfied for Section 14 of the Limitation Act to be pressed into service. The observations in paragraph 21 read thus:

“Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said Section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;

(2) The prior proceeding had been prosecuted with due diligence and in

¹⁰ (2006)6 SCC 239

good faith;

(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;

(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;

(5) Both the proceedings are in a court.’

27. In the aforesaid context, to attract the provisions of Section 14 of the Limitation Act, the Supreme Court observed that due diligence and caution are essential pre-requisites for attracting the provisions of Section 14 and that due diligence cannot be measured by any absolute standards as the due diligence is a measure of prudence or activity expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. It was held that the time during which a Court holds up a case while it was discovering that it ought to have been presented in another Court, must be excluded, as the delay of the Court cannot affect the due diligence of the party. It was held that Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. In such context referring to the definition of ‘good faith’ as found in Section 2(h) of the Limitation Act, it was observed that the definition of good faith would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. The Court observed that Section 14 will not help a party

who is guilty of negligence, lapse or inaction, however, there can be no hard and fast rule as to what amounts to good faith and the same is required to be decided on the facts of each case.

28. In *Deena (Dead) through LRs. vs. Bharat Singh (Dead) through LRs. And Ors.* (supra) as relied on behalf of the respondents, the Supreme Court similarly held that the main factor which would influence the Court in extending the benefit of section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. It was observed that a party prosecuting a suit in good faith in the Court having no jurisdiction is entitled to exclusion of that period. In observing on the expression 'good faith' as used in Section 14 the Court observed that it would mean "exercise of due care and attention" as the expression 'good faith' qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. Thus, it was held that the finding as to good faith or the absence of it, is a finding of fact. Also, referring to the decision in the case of **Vijay Kumar Rampal and others vs. Diwan Devi and others**¹¹, the Supreme Court observed thus:

“14. The main factor which would influence the Court in extending the benefit of section 14 to a litigant is whether the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting

¹¹ AIR 1985 SC 1669

the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period. The expression 'good faith' as used in Section 14 means "exercise of due care and attention". In the context of Section 14 expression 'good faith' qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. This Court in the case of Vijay Kumar Rampal and others vs. Diwan Devi and others AIR 1985 SC 1669 observed :

“The expression good faith qualifies prosecuting the proceeding in the Court which ultimately is found to have no jurisdiction. Failure to pay the requisite court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a Court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in section 14 of the Limitation Act.”

29. On the aforesaid discussion, in our opinion, this is a case wherein the appellant cannot be labelled as a litigant who was not conscious of its rights to assail the impugned arbitral award. The appellant, in a situation when the orders of the Supreme Court on limitation were in operation and guided by the decision of the Division Bench in *Gujarat State Petronet Ltd. (supra)*, was advised to approach this proceedings of Writ Petition No. 9317 of 2021 to challenge the award on an assumption of a legal position that the Facilitation Council had no jurisdiction to enter arbitration and thus, the decision of the Facilitation Council would not be an arbitral award. For such reason, the petitioner bonafide accepting such legal position, assailed the decision of the Facilitation Council in a Writ Petition filed before this Court. The Court found substance in the contention as urged on behalf of the appellant and

accordingly proceeded for hearing while granting interim stay. All these events cannot be overlooked by the Court when it comes to a party being non-suited on refusal to condone delay and in terms of the provisions of Section 34(3) of the ACA. However, in view of the decision as rendered by the Supreme Court in *Gujarat State Civil Supplies Corporation Ltd. (supra)*, which was pronounced on 31 October, 2022, the appellant moved the learned Single Judge of this Court to withdraw the petition with liberty to file Section 34 proceedings. The said order dated 11 January, 2023 reads thus:

1. Heard Mr. Kamdar, learned Advocate for Petitioner and Mr. Petkar, learned Advocate for Respondent.
2. At the outset, Mr. Kamdar, learned Advocate for Petitioner seeks to withdraw the present Writ Petition to avail any alternate remedy/relief that may be available to the Petitioner in law in respect of the subject matter of the present Writ Petition.
3. Writ Petition is allowed to be withdrawn with the above liberty.
4. At the request of Mr. Petkar, it is clarified that all contentions of the parties are expressly kept open.”

30. As noted above, after withdrawal of the Writ Petition, Section 34 proceedings came to be filed before the learned District Judge on 17 March, 2023. In our opinion, considering the provisions of Section 34(3), which provides for a limitation of three months to file an application for setting aside of the arbitral award from the date the award was received and for a further extended period of 30 days as ordained by the proviso, considering the peculiar

facts of the case, it ought not to be a situation that the delay condonation application as filed by the petitioner was required to be rejected by the learned District Judge taking a strict view of the matter. This, more particularly, considering the applicability of the provisions of Section 47 and the principles of law as laid down in that regard in *Consolidated Engineering Enterprises (supra)*, *State of Goa vs. Western Builders (supra)* and *Deena (Dead) through LRs. (supra)*, for the reason that the principles and five parameters as laid down in such decision and as noted by us in paragraph 26 (supra) are squarely applicable to the effect **firstly**, that both the prior and subsequent proceedings are civil proceedings prosecuted by the same party; **secondly**, the prior proceeding had been prosecuted with due diligence and in good faith; **thirdly**, the failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature; **fourthly**, the earlier proceeding and the latter proceeding must relate to the same matter in issue; and **fifthly**, both the proceedings are in a court. The provisions of Section 14 are intended to aid substantive justice and the parties not suffering the hard technicalities of law so as to be rendered remediless. This ought to have been the consideration which ought to have weighed with the learned District Judge.

31. Before parting, we may observe that in taking any decision which is

likely to render a party remediless, the Court would be required to exercise utmost care and caution, to minutely examine the facts in applying the relevant provisions of the Law of Limitation. This is a clear case wherein there was blending of the Covid-19 period, in respect of which orders were passed by the Supreme Court as also quite peculiarly, the appellant accepting the legal position as available under the decision of the Division Bench of this Court which was ultimately upset by the Supreme Court. All these were vital considerations in the context of the law which we have applied, and moreso keeping in mind the judicial conscience we wield. The interest of justice is paramount, it cannot be either, dealt casually or under any narrow and pedantic interpretation of the provisions of law, which would in any manner render the justice in the case to be a casualty.

32. In the light of the aforesaid discussion, in our opinion, the appeal needs to succeed. Hence, the following order:

O R D E R

- (i) The impugned judgment and order dated 21 July, 2023 passed by the learned District Judge No. 2 at Pune dismissing the Miscellaneous Application no. 343 of 2023 filed by the appellant is quashed and set aside;

(ii) Miscellaneous Application No. 343 of 2023 is allowed by condoning the delay in the appellant filing Section 34 application, challenging the arbitral award dated 5 February, 2020 passed by the Micro and Small Enterprises Facilitation Council, Pune.

(iii) Section 34 proceedings shall be decided by the learned District Judge No. 2 on merits and in accordance with law.

(iv) All contentions of the parties on said proceedings are expressly kept open.

33. The appeal stands allowed in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)