
(2023) 01 BOM CK 0111

In the Bombay High Court

Case No : Commercial Arbitration Petition (L) No. 9936 Of 2021, Interim Application (L) No. 32068 Of 2022

Gammon Engineers & Contractors, Pvt. Ltd

APPELLANT

Vs

Sahay Industries

RESPONDENT

Date of Decision : 27-01-2023

Acts Referred:

Micro Small And Medium Enterprises Development Act, 2006 — Section 15, 17, 18, 18(1), 18(2), 18(3), 18(4), 19
Arbitration And Conciliation Act, 1996 — Section 7(1), 34, 34(2)(b)(ii), 21, 43
Code Of Civil Procedure, 1908 — Section 16, 17, 18, 19, 20, 21
Limitation Act, 1963 — Section 18

Citation : (2023) 01 BOM CK 0111

Hon'ble Judges : Manish Pitale, J

Bench : Single Bench

Advocate : P.G. Sabnis, Devashish Godbole, Prasad Nagargoje

Final Decision : Allowed

Judgement

Manish Pitale, J

1. Two questions arise in the present petition, firstly, as to whether this Court has territorial jurisdiction to entertain the petition and secondly, as to whether the impugned award passed by the Arbitral Tribunal deserves to be quashed on the ground that the Arbitration proceeding was initiated beyond the period of limitation.

2. The Petitioner herein has challenged impugned award dated 24th September, 2020, passed by the Facilitation Council for Arbitration constituted under the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "MSMED Act"). According to the Petitioner, the Arbitration proceeding initiated under the provisions of the MSMED Act at the behest of the Respondent, was hit by limitation and that therefore, the Facilitation Council ought not to have entered into the merits of the matter. It was further submitted

that the question of limitation was specifically raised before the Facilitation Council, but the same was not even adverted to, in the impugned award. In the context of preliminary objection as regards territorial jurisdiction raised on behalf of the Respondent before this Court, the Petitioner claims that on a proper interpretation of the MSMED Act and the Arbitration and Conciliation Act, 1996, (hereinafter referred to as the "Arbitration Act"), it would be clear that there is no substance in the preliminary objection.

3. The facts in the present case are in a narrow conspectus. The Respondent, claiming to be an enterprise covered under the provisions of the MSMED Act, entered into a contract with the Petitioner for supply of fabricated metal in the year 2010. It was in the nature of a sub-contract containing an Arbitration Clause. The Respondent supplied the material between 2010 and 2014. It claimed that certain amounts were due and payable from the Petitioner. In this backdrop, the Respondent approached the Facilitation Council under Section 18 of the MSMED Act for resolution of disputes by Arbitration. The Facilitation Council issued notice to the Petitioner. In the reply filed before the Facilitation Council, the Petitioner took a preliminary objection regarding limitation, on the basis that although the supply of material under the sub-contract was undertaken by the Respondent between 2010 and 2014, with the last payment being released by the Respondent on 02nd November, 2015, the claim was filed beyond the period of three years, in the year 2019. The Petitioner also contested the claim on merits.

4. By the impugned award dated 24th September, 2020, the Facilitation Council allowed the claim of the Respondent and directed that the Petitioner was liable to pay amount of Rs. 07,02,333/- with compound interest. There was no reference to the objection regarding limitation raised on behalf of the Petitioner.

5. Aggrieved by the impugned award, the Petitioner filed the present petition under Section 34 of the Arbitration Act. As per statutory requirement under Section 19 of the MSMED Act, the Petitioner deposited 75% of the amount, although by installments as permitted by this Court. It appears that the Respondent claims that the amount so deposited is not equivalent to 75% of the awarded amount. The Respondent filed its reply affidavit in the present petition and raised a preliminary objection regarding territorial jurisdiction of this Court, on the ground that the impugned award was passed by the Facilitation Council under the MSMED Act at Madurai and that therefore, the petition challenging the said award ought to have been filed before the Competent Court at Madurai. Apart from this, the Respondent submitted that the claim preferred by the Respondent before the Facilitation Council could not be said to be barred by limitation, as the provisions of the Limitation Act, 1963, do not apply to arbitration proceedings under the MSMED Act.

6. Mr. Sabnis, learned Counsel appearing for the Petitioner submitted that the preliminary objection regarding territorial jurisdiction, raised on behalf of the Respondent, was misplaced and it was based on a misinterpretation of the

provisions of the MSMED Act and the Arbitration Act. The learned Counsel for the Petitioner submitted that the position of law laid down by the Hon'ble Supreme Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd., AIR 2022 SC 5545 clarified that insofar as the procedure governing the Arbitration between the parties was concerned, Section

18 of the MSMED Act would prevail over the provisions of the Arbitration Act. It was submitted that the position of law clarified in the said judgment cannot lead to the conclusion that the exclusive jurisdiction of Mumbai Courts, agreed between the parties in the sub-contract, would be taken away. The learned Counsel for the Petitioner submitted that as per settled law the place of Arbitration, according to the exclusive jurisdiction clause agreed between the parties, would continue to be Mumbai for the purpose of filing petition under Section 34 of the Arbitration Act and that Madurai was merely a venue of Arbitration due to operation of Section 18 of the MSMED Act. The learned Counsel relied upon judgment of the Division Bench of Delhi High Court in the case of Indian Oil Corporation Ltd. Vs. Fepl Engineering (P) Ltd & Anr. 2019 SCC Online Del 10265 in support of the said contention.

7. On the question of limitation, the learned Counsel for the Petitioner relied upon judgment of the Hon'ble Supreme Court in the case of Silpi Industries etc. Vs. Kerala State Road Transport Corporation & Anr. AIR 2021 SC 5487 It was submitted that in the said judgment the Hon'ble Supreme Court specifically laid down that the provisions of the Limitation Act, 1963, apply to Arbitrations covered under Section 18 of the MSMED Act. On this basis, it was submitted that in the present case, when the admitted documents on record demonstrated that the last payment to the Respondent was made on 02nd November, 2015, the claim being submitted on behalf of the Respondent before the Facilitation Council in June, 2019, was clearly beyond the period of limitation. Reliance was placed on Section 43 of the Arbitration Act to contend that Limitation Act clearly applied. It was submitted that the impugned award does not make any reference to the question of limitation, although a specific objection in that regard was raised on behalf of the Petitioner. In the face of the admitted facts, it was submitted that the impugned award was clearly against the fundamental policy of the Indian Law and therefore, the award deserved interference under Section 34 (2)(b)(ii) of the Arbitration Act. The learned Counsel for the Petitioner submitted that reliance placed on various judgments on the question of limitation, on behalf of the Respondent was irrelevant, so long as the Hon'ble Supreme Court in the case of Silpi Industries Etc. Vs. Kerala State Road Transport Corporation and Anr. (supra) had specifically laid down the law in the context of MSMED Act. On this basis, it was submitted that the petition deserved to be allowed.

8. On the other hand, Mr. Devashish Godbole, learned Counsel appearing for the Respondent submitted that the ratio of judgment of the Hon'ble Supreme Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (supra) clearly holds that once Arbitration proceedings are initiated

under Section 18 of the MSMED Act, the provisions of the Arbitration Act would not apply, as the MSMED Act has overriding effect. It was submitted that the agreement between the parties was completely obliterated by the operation of the statutory provisions under the MSMED Act and that therefore, the actual place of Arbitration being Madurai, the petition filed under Section 34 of the Arbitration Act, cannot be entertained by this Court. On the objection regarding territorial jurisdiction itself, according to the learned Counsel for the Respondent, the present petition deserves to be dismissed.

9. As regards the question of limitation, it was submitted that the Hon'ble Supreme Court in the case of Tamil Nadu Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited (2014) 11 SCC 53 had specifically held in the context of the Electricity Act, 2003, that the provisions of the Limitation Act would not apply and since procedure of Arbitration was provided under the Electricity Act, 2003 also, the ratio of the said judgment supported the contention of the Respondent. On this basis, it was submitted that since the provisions of the Limitation Act do not apply to the Arbitration proceedings initiated under the MSMED Act, there was no substance in the contention raised on behalf of the Petitioner. It was further submitted that therefore, no error could be attributed to the Facilitation Council in ignoring the aspect of Limitation, while passing the impugned award. The learned Counsel for the Respondent further relied upon the judgment of the Hon'ble Supreme Court in the case of NTPC Ltd Vs. Deconar Services Pvt. Ltd, AIR 2021 SC 2588 to contend that the Petitioner would have to demonstrate existence of specific grounds enumerated in Section 34 of the Arbitration Act to claim that the impugned award deserved interference. On the judgment of the Division Bench of the Delhi High Court passed in the case of Indian Oil Corporation Ltd. Vs. Fepl Engineering (P) Ltd & Anr. (supra), the learned Counsel for the Respondent submitted that it was a judgment rendered prior to the latest judgment of the Hon'ble Supreme Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (supra) and that therefore, the judgment of the Division Bench of the Delhi High Court was not good law.

10. An attempt was made by the learned Counsel for the Respondent to contend that since the judgment in the case of Silpi Industries etc. Vs. Kerala State Road Transport Corporation & Anr. (supra) was pronounced after the impugned award was passed, even if the position of law stated therein was to be relied upon, it would apply prospectively. On this basis, it was contended that the said position of law cannot come to the aid of the Petitioner and hence, the present petition deserved to be dismissed.

11. Having heard the learned Counsel for the rival parties, as noted at the outset, two questions arise for consideration. The first question pertains to the very jurisdiction of this Court, as the Respondent claims that this Court does not have territorial jurisdiction to entertain challenge against the impugned award, as it was rendered by the Facilitation Council at Madurai in Tamil Nadu. Some

admitted facts need to be appreciated, while considering the rival contentions pertaining to the said question of territorial jurisdiction. It is an admitted position that the Arbitration Clause in the sub-contract executed between the parties, specifically provides for exclusive jurisdiction of the Mumbai Courts in case disputes arise between the parties. It is also an admitted position that the Arbitration proceedings in the present case stood initiated under Section 18 of the MSMED Act and it was placed before the Facilitation Council at Madurai for Arbitration. The Petitioner did not challenge the jurisdiction of the Facilitation Council at Madurai in Tamil Nadu to entertain the claim raised by the Respondent by invoking Section 18 of the MSMED Act.

12. A proper reading of the judgment of the Hon'ble Supreme Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd., (supra) shows that once Arbitration is initiated under Section 18 of the MSMED Act, the provisions of the said Act would have an overriding effect on the provisions of the Arbitration Act. The Hon'ble Supreme Court has taken into consideration the non-obstante clauses in sub Sections (1) and (4) of Section 18 of the MSMED Act, read with Section 24 thereof, to arrive at the said conclusion. The Hon'ble Supreme Court has also referred to Section 19 of the MSMED Act, which mandates pre-deposit of 75% of the awarded amount, before a challenge to the award is entertained by any Court.

13. The Hon'ble Supreme Court found that the Arbitration Act has to be treated as the general law and MSMED Act as the Special Law and that the Special law must prevail over the general law. It is also observed that even if both the laws are to be treated as Special Laws, the MSMED Act, having been enacted in the year 2006, subsequent to the Arbitration Act, the provisions of the MSMED Act shall prevail over the provisions of the Arbitration Act.

14. There can be no quarrel with the said proposition, as it is law of the land. But, the crucial question is, as to which Court shall have jurisdiction when an aggrieved party intends to challenge an Arbitral Award passed by the Facilitation Council under the provisions of the MSMED Act. It is an admitted position that under the provisions of the MSMED Act, there is no avenue of challenge or appeal provided to the aggrieved party. In fact, sub Section (3) of Section 18 of the MSMED Act, specifically provides that when the Facilitation Council takes up the dispute for Arbitration, the provisions of the Arbitration Act shall apply to the dispute, as if the Arbitration was in pursuance of an Arbitration Agreement under Section 7(1) of the Arbitration Act. In the said judgment in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (supra), the Hon'ble Supreme Court concluded that the proceedings before the Facilitation Council, acting as the Arbitral Tribunal, would be governed by the Arbitration Act. Consequently, when the Facilitation Council renders its Arbitration Award, any challenge raised against the same is governed by the provisions of the Arbitration Act. The only provision under which the Arbitration Award can be challenged is Section 34 of the Arbitration Act. The Court having jurisdiction to

entertain such a challenge is the Court where the place of Arbitration was agreed between the parties. The Hon'ble Supreme Court in the cases of *Swastik Gases Pvt. Ltd Vs. Indian Oil Corporation Ltd.* (2013) 9 SCC 32 and *Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd.* (2017) 7 SCC 678 laid down that even though the venue of Arbitration may be different from the place of Arbitration agreed between the parties, the challenge to an Arbitration Award shall be entertained only by the Court having jurisdiction over the place of Arbitration. It was held that the place of Arbitration would be determined on the basis of agreement between the parties, including an agreement to exclusively provide for jurisdiction in a particular Court.

15. It is relevant that the Hon'ble Supreme Court in the case of *Indus Mobile Distribution Pvt. Ltd. Vs. Datawind Innovations Pvt. Ltd.* (supra), in the context of exclusionary jurisdiction clause contained in an arbitration agreement held as follows:

"19. A conspectus of all the aforesaid provisions shows that the moment the seat is designated, it is akin to an exclusive jurisdiction clause. On the facts of the present case, it is clear that the seat of arbitration is Mumbai and Clause 19 further makes it clear that jurisdiction exclusively vests in the Mumbai courts. Under the Law of Arbitration, unlike the Code of Civil Procedure which applies to suits filed in courts, a reference to "seat" is a concept by which a neutral venue can be chosen by the parties to an arbitration clause. The neutral venue may not in the classical sense have jurisdiction — that is, no part of the cause of action may have arisen at the neutral venue and neither would any of the provisions of Sections 16 to 21 of CPC be attracted. In arbitration law however, as has been held above, the moment "seat" is determined, the fact that the seat is at Mumbai would vest Mumbai courts with exclusive jurisdiction for purposes of regulating arbitral proceedings arising out of the agreement between the parties."

16. This Court is of the opinion that even though, in the case of *Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd.* (supra), the Hon'ble Supreme Court has observed that statutory Arbitration under Section 18 of the MSMED Act, would override the agreement between the parties, it necessarily applies to the agreed procedure of Arbitration between the parties. It is clear that if parties agreed for Arbitration by a sole Arbitrator or by an agreed procedure of constituting an Arbitral Tribunal, the same would stand obliterated by operation Section 18 of the MSMED Act. But once the Arbitration Award is pronounced, and there is an exclusionary clause of jurisdiction agreed between the parties, thereby agreeing upon jurisdiction of only one Court, in exclusion to others, the challenge initiated by the aggrieved party under the Arbitration Act, even against an award passed by the Facilitation Council under the MSMED Act, will lie only before the Court upon which the parties agreed to place exclusive jurisdiction. This Court is in agreement with the view taken by the Division Bench of the Delhi High Court in the case of *Indian Oil Corporation Ltd. Vs. Fepl Engineering (P) Ltd & Anr.* (supra), to the effect that Arbitration proceedings

undertaken before the Facilitation Council under Section 18 of the MSMED Act are undertaken at the venue where the Facilitation Council is located. The place of the Arbitration continues to be the place over which the Court has exclusive jurisdiction, as agreed between the parties. By the operation of the provisions of the MSMED Act, only the procedure of constitution of the Arbitral Tribunal is overshadowed in terms of the law laid down by the Hon'ble Supreme Court in case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (supra) and it does not eclipse the agreement between the parties of foisting exclusive jurisdiction on a particular Court. In law, it is that place which is covered under the exclusive jurisdiction of the Court agreed between the parties, which continues to be the place of Arbitration, thereby determining the Court that shall have territorial jurisdiction to entertain a petition under Section 34 of the Arbitration Act, to challenge the award passed by the Facilitation Council under the MSMED Act.

17. In the present case, there is no dispute about the fact that the parties agreed that the Courts at Mumbai shall have exclusive jurisdiction. Therefore, the place of Arbitration continues to be Mumbai, although the venue of Arbitration was Madurai, where the Facilitation Council under the MSMED Act passed the impugned award. Thus, this Court finds that there is no substance in the preliminary objection raised on behalf of the Respondent regarding territorial jurisdiction of this Court to entertain the present petition.

18. On the question of limitation, the Respondent claims that the provisions of the Limitation Act do not apply at all to the Arbitration proceedings initiated under the provisions of the MSMED Act. Reliance is placed on judgment of the Hon'ble Supreme Court in the case of Tamil Nadu Generation and Distribution Corporation Limited Vs. PPN Power Generating Company Private Limited (supra). A perusal of the said judgment of the Hon'ble Supreme Court shows that applicability of Limitation Act was tested in the context of provisions of the Electricity Act, 2003. The Hon'ble Supreme Court found that the Electricity Act, 2003, being a complete code, the provisions of the Limitation Act would not apply. It was held that, therefore, the challenge raised before the State Commission under the said Act could not be repudiated on the grounds of limitation. This Court is of the opinion that the provisions of the Electricity Act, 2003 and the facts of the said case are at variance with the provisions of the MSMED Act and the facts of the present case.

19. In any case, the Hon'ble Supreme Court has specifically held in the case of Silpi Industries Etc. Vs. Kerala State Road Transport Corporation and Anr. (supra), in the context of the MSMED Act itself, that the provisions of the Limitation Act apply to Arbitrations under Section 18 of the MSMED Act. When such a position of law has been clarified in the context of the specific statute i.e. MSMED Act with which this Court is concerned in the present case, the Respondent cannot contend that the Limitation Act is not applicable. The relevant portion of the judgment of the Hon'ble Supreme Court in case of Silpi Industries

Etc. Vs. Kerala State Road Transport Corporation and Anr., reads as follows:

"18. With regard to first issue, namely, applicability of Limitation Act, 1963 to the arbitration proceedings initiated under provisions of Micro, Small and Medium Enterprises Development Act, 2006, we need to notice certain relevant sections of the Act. As per Section 15 of the said Act, where supplier supplies any goods or renders any services to any buyer, the buyer shall make payment on or before the agreed date between the parties in writing or where there is no agreement, before the appointed day. Section 16 deals with date from which and rate of interest payable in the event of not making the payment. The recovery mechanism for the amount due is covered by Sections 17 and 18 of the said Act. If any party has a dispute with regard to amount due under Section 17, a reference is required to be made to the Micro and Small Enterprises, Facilitation Council. On such reference, the Council is empowered to conduct conciliation in the matter or seek assistance of any institution or centre providing alternate dispute resolution services by making a reference to such institution for conducting conciliation. If the conciliation is not successful, as contemplated under Section 18 (2) of the said Act, same stands terminated under Section 18(3) of the said Act. Thereafter, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of Arbitration and Conciliation Act, 1996 are made applicable as if the arbitration was in pursuance of arbitration agreement between the parties, under sub-section (1) of Section 7 of the 1996 Act. Applicability of Limitation Act, 1963 to the arbitrations is covered by Section 43 of the 1996 Act. The High Court, while referring to abovesaid provisions and the judgment of this Court in the case of Andhra Pradesh Power Coordination Committee and Ors. vs. Lanco Kondapalli Power Ltd & Ors. (2016) 3 SCC 468 has held that the Limitation Act, 1963 is applicable to the arbitrations covered by Section 18(3) of the 2006 Act. A reading of Section 43 itself makes it clear that the Limitation Act, 1963 shall apply to the arbitrations, as it applies to proceedings in Court. When the settlement with regard to a dispute between the parties is not arrived at under Section 18 of the 2006 Act, necessarily, the Micro and Small Enterprises Facilitation Council shall take up the dispute for arbitration under Section 18(3) of the 2006 Act or it may refer to institution or centre to provide alternate dispute resolution services and provisions of Arbitration and Conciliation Act, 1996 are made applicable as if there was an agreement between the parties under sub-section (1) of Section 7 of the 1996 Act. In view of the express provision applying the provisions of the Limitation Act, 1963 to arbitrations as per Section 43 of the Arbitration and Conciliation Act, 1996, we are of the view that the High Court has rightly relied on the judgment in the case of Andhra Pradesh Power Coordination Committee and Ors. vs. Lanco Kondapalli Power Ltd & Ors., and held that Limitation Act, 1963 is applicable to the arbitration proceedings under Section 18(3) of the 2006 Act. Thus, we are of the view that no further elaboration is necessary on this issue and we hold that the provisions of Limitation Act, 1963 will apply to the

arbitrations covered by Section 18(3) of the 2006 Act. We make it clear that as the judgment of the High Court is an order of remand, we need not enter into the controversy whether the claims/counter claims are within time or not. We keep it open to the primary authority to go into such issues and record its own findings on merits.”

20. Even otherwise Section 43 of the Arbitration Act is clear and it reads as follows:

“43. Limitations.

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in the Court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in Section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some steps to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

21. It is already noted hereinabove that the Hon’ble Supreme Court in the case of Gujarat State Civil Supplies Corporation Ltd. Vs. Mahakali Foods Pvt. Ltd. (supra) has held that the provisions of the Arbitration Act would apply to the Arbitration proceedings undertaken before the Facilitation Council of the MSMED Act. This would necessarily include applicability of Section 43 of the Arbitration Act, which is quoted hereinabove. Thus, this Court is of the opinion that the Limitation Act, 1963, applies in the present case also. In this backdrop, this Court finds no substance in the contention raised on behalf of the Respondent that the Limitation Act ought to be held applicable to arbitrations under the MSMED Act, from the date of pronouncement of judgment of the Hon’ble Supreme Court in the case of Silpi Industries Etc. Vs. Kerala State Road Transport Corporation and Anr. (supra)

22. On the question of limitation, the Petitioner specifically relied upon the documents on record to contend that even as per claim raised on behalf of the Respondent, on an appreciation of chronology of events, it was evident that the

claim petition filed by the Respondent before the Facilitation Council, akin to invocation of under Section 21 of the Arbitration Act, was hit by Limitation.

23. To appreciate the said contention, this Court considered the admitted material on record. The documents on record show that the Respondent claimed payment of dues from the Petitioner for the period between 2010 and 2014. The last payment made to the Respondent was on 02nd November, 2015, indicating that the claim petition before the Facilitation Council ought to have been filed by the Respondent within three years from 02nd November, 2015. Admittedly, the claim petition was filed on 19th June, 2019, beyond the period of limitation of three years. There is nothing on record to show that there was any acknowledgment of debt on the part of the Petitioner for invoking Section 18 of the Limitation Act. Thus, on the face of it, the claim petition filed by the Respondent before the Facilitation Council under the MSMED Act, was barred by limitation.

24. The Petitioner had raised a specific objection before the Facilitation Council, stating the aforementioned dates, yet the Facilitation Council failed to even advert to the aforesaid aspect of the limitation and proceeded to issue directions against the Petitioner in the impugned award.

25. This Court finds that approach of the Facilitation Council under the MSMED Act was unsustainable and the Petitioner has indeed made a ground under Section 34(2)(b)(ii) of the Arbitration Act, to demonstrate that impugned award is against the fundamental policy of Indian Law. A time barred claim could not have been entertained by the Facilitation Council, thereby indicating that the impugned award deserves interference. It is significant that the Respondent did not make any attempt to dispute the dates and chronology of events on which the Petitioner relied, demonstrating that the claim raised by the Respondent was beyond the limitation period of three years.

26. Thus, the Petitioner has made out a ground for interference with the impugned award, within the narrow scope available under Section 34 of the Arbitration Act. Hence, the petition is allowed and the impugned award is set aside.

27. Pending applications, if any, stand disposed of. No order as to costs.