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

Date of decision: 08th JANUARY, 2025

IN THE MATTER OF:

\+ **O.M.P. (COMM) 479/2018**

TEFCIL BREWERIES LIMITED .....Petitioner

Through: Mr. Sushil Bajaj, Mr. Bhavook Chauhan, Mr. Amit Sanduja, Ms. Sakshi Singh, Mr. Tushar Batra, Advocates

Versus

ALFA LAVAL (INDIA) LIMITED .....Respondent

Through: Mr.Shankar Vaidialingam with Mr. Shivain Vaidialingam, Advocate

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner has approached this Court under Section 34 of the Arbitration & Conciliation Act ("Arbitration Act"), 1996 challenging an Award dated 17.10.2017 and an additional Award dated 18.05.2018 passed by the learned Arbitrator.

2. A preliminary objection has been raised by the learned Counsel for the Respondent that this petition to set aside the arbitral award is belated and is therefore barred by time.

3. The facts in brief, leading to this petition are that the Petitioner and the Respondent entered into a Contract dated 17.03.2005 for supply, erection and commissioning of a Brewery Plant at Nargala Industrial Area, Samlana-Jwali, District Kangara, Himachal Pradesh. It is stated that the said Contract

contains an Arbitration Clause. It is stated that since the disputes have arisen between the parties. The Arbitrator was appointed by this Court and an Award was rendered by the Ld. Arbitrator on 17.10.2017 which was received by both the parties on 23.10.2017.

4. An application under Sections 33(1)(a), 33(1)(b) and 33(4) of the Arbitration and Conciliation Act, 1996 was filed by the Respondent (Claimant before the Arbitral Tribunal) stating that Claim No.1 which was for the final claim in respect of goods not paid for invoice value of Rs.2,80,19,799/- had been omitted in the Award. The said application was considered by the Ld. Arbitrator after issuing notice to both the parties and the application was disposed of *vide* Order dated 18.05.2018 allowing Claim No.1. It is stated that there was a typographical error in the Order dated 18.05.2018 which was corrected on an application filed by the Claimant/Respondent herein on 23.05.2018. The present petition under Section 34 of the Arbitration Act has been filed by the Petitioner on 13.11.2018.

5. The short question which arises for consideration is as to whether the petition filed under Section 34 of the Arbitration Act on 13.11.2018 is within time as prescribed under Section 34(3) of the Arbitration Act or not.

6. It is the case of the Petitioner that the Order dated 18.05.2018 and the typographical error corrected by the Ld. Arbitrator *vide* corrigendum dated 23.05.2018 was received by the Petitioner herein only on 21.08.2018 (a fact stated in the rejoinder) and therefore, the instant petition, which was filed on 13.11.2018, is within time.

7. Before adverting to the arguments by both sides, it is necessary to bring out the list of dates of events

17.10.2017	Date of Award
23.10.2017	Date of receipt of the Award by both the parties.
16.11.2017	Date of filing of the application under Sections 33(1)(a), 33(1)(b) and 33(4) of the Arbitration and Conciliation Act, 1996 by the Claimant/Respondent in the present petition.
18.05.2018	Application filed by the Claimant/Respondent under Sections 33(1)(a), 33(1)(b) and 33(4) is disposed of in presence of the Advocates of both parties.
23.05.2018	Some typographical error was corrected by the Ld. Arbitrator. The said correction was made on the basis of application filed by the Respondent herein. An copy of the Order dated 18.05.2018 and 23.05.2018 has been sent by e-mail to the Advocates of both the parties.
21.08.2018	A signed copy of the additional Award dated 18.05.2018 was received by the Petitioner.

8. Sections 33 and 34(3) of the Arbitration Act are being reproduced, which read as under:-

> *"**33. Correction and interpretation of award; additional award**.—*
>
> *(1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—*
>
> *(a) a party, with notice to the other party, may request the arbitral tribunal to correct any*

computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or

interpretation of the arbitral award or to an additional arbitral award made under this section.

34. Application for setting aside arbitral award.—

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(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."

9. The learned Counsel appearing on behalf of the Respondent states that in the present case the *terminus quo* for calculating limitation would be 18.05.2018, i.e., the date on which the application under Section 33 of the Arbitration Act filed by the Respondent/Claimant was disposed of and it cannot be the date on which the copy of the corrected award was received.

10. Learned Counsel for the Respondent places reliance on the judgment of the Apex Court in Union of India v. Ved Prakash Mithal & Sons, **2017 SCC OnLine Del 9039**, the judgment of the Ld. Single Judge of this Court which has been upheld by the Apex Court in Ved Prakash Mithal & Sons v. Union of India **2018 SCC OnLine SC 3181.** He also places reliance on the judgment of a Division Bench of this Court in Prakash Atlanta JV v. National Highways Authority of India, **227 (2016) DLT 691** to contend that a challenge to an Award which has been corrected under Section 33 of the Arbitration and Conciliation Act, 1996 has to be filed within a period of 3

months from the date of disposal of the application under Section 33 of the Arbitration and Conciliation Act. He states that if the challenge is not made within three months then 30 days grace period is provided under proviso to Section 34(3) of the Arbitration Act. It is contended by the learned Counsel for the Respondent that the date of receipt of the Award as corrected under Section 33 of the Arbitration Act cannot be the date from which the period of limitation begins.

11. *Per contra*, learned Counsel for the Petitioner/Applicant contends that a challenge to an Award can only be raised after the same is received, read and understood by the parties and therefore, the time period can be calculated only from the date on which the Award is received by the parties. Learned Counsel for the Petitioner/Applicant places reliance on the order passed by the Apex Court in USS Alliance v. State of Uttar Pradesh and Others, **2023 SCC OnLine SC 778**.

12. Learned Counsel for the Petitioner further states that the Ld. Arbitrator did not send the copy of the Order dated 18.05.2018 to the party but it was sent only to the Advocates of the parties through e-mail which cannot be construed as receipt by the party. It is also stated that in any event, the Order as corrected by the Ld. Arbitrator on 23.05.2018 was also not received by the Petitioner herein and was only e-mailed to the Advocates of the Petitioner which is immaterial. It is further contended that since the Order dated 18.05.2018 by which Claim No.1 was added was received by the Petitioner only on 21.08.2018, the petition is filed within time if 21.08.2018 is taken as the starting point for calculating the period of limitation.

13. Heard the learned Counsel for the parties and perused the material on

record.

14. A perusal of Section 34(3) of the Arbitration Act shows that the time limit to challenge an Award can be summarized as under:

(i) An application for setting aside the award can be filed within 3 months from the date of receipt of the award. The application can also be filed within 30 days after the period of three months with an application for condonation of delay but not thereafter. Meaning thereby, a grace period of 30 days is given over and above the 3 months' period, provided that sufficient reasons are given as to why the application was not filed within a period of 3 months.

(ii) In case, an application is filed under Section 33 of the Arbitration Act, then the 3 months for filing an application for setting aside the award will start on the date on which the application under Section 33 is disposed of by the Tribunal.

15. It is relevant to analyze the facts of the judgments on which reliance has been placed by the learned Counsel for the Respondent who has raised a challenge of limitation.

16. In Union of India v. Ved Prakash Mithal & Sons (*supra*), the facts are that the Award was passed on 30.10.2015, the certified copy of the Award was received by the Respondent therein on 07.11.2015 and an application under Section 33 of the Arbitration and Conciliation Act, 1996 was filed on 16.11.2015 and 20.11.2015 by both the parties and were disposed of together on 14.12.2015. The challenge to the award was made by the Respondent on 11.03.2016. In that scenario, the learned Single Judge held that since the date of disposal of the application under Section 33 of the

Arbitration Act i.e., 14.12.2015 should be taken as the date for calculating the limitation and the challenge to the Award filed on 11.03.2016 was taken to be within time. Meaning thereby, the learned Single Judge held that the time period for calculating the limitation in cases where an application under Section 33 of the Arbitration and Conciliation Act, 1996 is filed for correcting an Award that the date of the disposal of that application should be the time on which the limitation period would start. The said case would not apply to the facts of this case for the reason that the question as to when the Award was received after correction was not in issue in that case. The said Order was upheld by the Apex Court in Ved Prakash Mithal & Sons v. Union of India(*supra*).

17. The judgment on which reliance has been placed by the learned Counsel for the Petitioner which is a judgment passed by the Apex Court in USS Alliance (*supra*) though the facts have not been brought out in the order dismissing the Special Leave Petition, the facts which are discernible from the Order dated 21.11.2022 passed by the learned Single Judge of the Allahabad High Court indicates that the Award therein was passed on 18.04.2018. There was a *suo moto* correction of the Award on 05.05.2018. The Corrected Award was challenged on 03.08.2018. The learned District Judge accepted the challenge taking into account that it is within the extra grace period of 30 days. An objection was taken before the learned Single Judge stating that the period should be corrected from 18.04.2018 which is the date of the Award and the three months' period as provided for in Section 34(3) of the Arbitration Act ends on 18.07.2018 and, since the challenge was made only on 03.08.2018, that too in the absence of an application for condonation of delay, the learned District Judge could not

have proceeded with petition under Section 34 of the Arbitration and Conciliation Act, 1996. This petition was dismissed by the learned Single Judge of the Allahabad High Court. It is this Order which was in challenge before the Apex Court.

18. The question as to whether the time period for filing a challenge should begin from the date of the receipt of the corrected award was never in question either before the learned District Judge where the challenge was made under Section 34 of the Arbitration and Conciliation Act, 1996 or before the learned Single Judge which dismissed the petition under Article 227 or before the Apex Court. However, the Apex Court in paragraph No.2 of the said Order has observed as under:-

> *"2. In our opinion, looking at the purpose and object behind Section 34 (3) of the Act, which is to enable the parties to study, examine and understand the award, thereupon, if the party chooses and is advised, draft and file objections within the time specified, the starting point for the limitation in case of suo moto correction of the award, would be the date on which the correction was made and the corrected award is received by the party. Once the arbitral award has been amended or corrected, it is the corrected award which has to be challenged and not the original award. The original award stands modified, and the corrected award must be challenged by filing objections."*

19. The learned Counsel appearing for the Petitioner therefore states that this judgment would be binding on this Court and therefore time period for challenging an Award should begin only from the date on which it is received.

20. The judgment in Ved Prakash Mithal & Sons (*supra*) states that the

order, date of disposal of the application under Section 33 of the Arbitration and Conciliation Act, 1996 would be *terminus quo* whereas the order of the Apex Court in USS Alliance (*supra*) holds that the date of receipt of the order passed under Section 33 of the Arbitration and Conciliation Act, 1996 would be the *terminus a quo* for calculating limitation. The said Orders are directly in conflict with each other.

21. There are two conflicting Orders of the Apex Court passed in two Special Leave Petitions by exercising powers under Article 136 of the Constitution of India. It is well-settled that dismissal under Article 136 does not amount to affirmation of the orders of the High Court and that the Apex Court has only decided not to exercise his jurisdiction under Article 136 while granting Special Leave to Appeal but that is not the position in this case as both the orders are reasoned orders and therefore both the orders would be binding on this Court under Article 141 of the Constitution of India.

22. The issue when there are two conflicting orders of the Apex Court which are equally binding on the High Court's as to which of the judgment should be followed by the High Court was dealt with by the Apex Court in Sandeep Kumar Bafna v. State of Maharashtra (**2014) 16 SCC 623** where the Apex Court has opined that the earliest view should be binding and the succeeding view would fall within the category of being *per incuriam*. The Apex Court observed as under:-

> *"**19**. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of*

courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. ***We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam****."*

(emphasis supplied)

23. However, on the other hand, the Apex Court in Indian Petrochemicals Corporation v. Shramik Sena **(2001) 7 SCC 469** has taken a different view that the High Court must decide the case on merits according to its own interpretation and judgment. Paragraph 8 of the said Judgment reads as under:-

*"**8**. We have perused the impugned order of the High Court. We are unable to appreciate the approach of the High Court. Even when it was faced with diametrically apposite (sic opposite) interpretation of the judgment of this Court, it was expected of the High Court to decide the case (writ petition) on merit according to its own interpretation of the said judgment. Instead the High Court after referring to rival contentions of the parties, in para 3, observed thus:*

"In our view, the right course for the petitioner will be to approach the Apex Court and to seek a

clarification of the said order. Mr Singhvi is agreeable to take necessary steps."

And having directed the appellants herein to take back the employees for a period of four months or until order is passed by this Court, whichever is earlier, disposed of the writ petition."

24. A Full Bench of the Punjab and Haryana High Court in Indo Swiss Time Ltd. v. Umrao, **1981 SCC OnLine P&H 45,** has observed as under:-

*"**25**. A perusal of the judgments in the Municipal Corporation of the City of Ahmedabad and Himalaya Tiles' cases would plainly indicate that there is a direct conflict on the point therein. Both the judgments have been rendered by a Bench consisting of two Hon'ble Judges and cannot possibly be reconciled. This situation at once brings to the force the somewhat intricate question which is now not of infrequent occurrence, namely—'when there is a direct conflict between two decisions of the Supreme Court rendered by co-equal Benches, which of them should be followed by the High Courts and the Courts below".*

***26**.Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminance irrespective of any other consideration does not commend itself to me. When judgments of the Superior Court are of co equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extent then both of them cannot be binding on the Courts below. Inevitably a choice*

though a difficult one, has to be made in such a situation. ***On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co equal Benches of the Superior Court are earlier or later is a consideration which appears to me as hardly relevant****."*

(emphasis supplied)

25. A Full Bench of the Bombay High Court in Kamleshkumar Ishwardas Patel v. Union of India & Ors., **1994 SCC OnLine Bom 404**, has observed as under:-

> *"**14.** It has been pointed out by one of us, while speaking for a Special Bench of the Calcutta High Court in Bholanath v. Madanmohan, AIR 1988 Cal 1 at p. 5-7, on the question as to the course to be followed by the High Court when confronted with contrary decisions of the Supreme Court emanating from Benches of co-equal strength, as hereunder:—*
>
> > *".... When contrary decisions of the Supreme Court emanate from Benches of equal strength, the course to be adopted by the High Court is, firstly, to try to reconcile and to explain those contrary decisions by assuming, as far as possible, that they applied to different sets of circumstances. This in fact is a course which was recommended by our ancient Jurists — "Srutirdwaidhe Smritirdwaidhe Sthalaveda Prakalapate" — in case there are two contrary precepts of the Sruties or the Smritis, different cases are to be assumed for their application. As Jurist Jaimini said, contradictions or inconsistencies are not to be readily assumed as they very often be not real but only apparent resulting from the application of the very same principle to different sets of facts — "Prayoge Hi Virodha Syat".*

But when such contrary decisions of co-ordinate Benches cannot be reconciled or explained in the manner as aforesaid, the question would arise as to which one the High Court is obliged to follow."

"One view is that in such a case the High Court has no option in the matter and it is not for the High Court to decide which one it would follow but it must follow the later one. According to this view, as in the case of two contrary orders issued by the same authority, the later would supersede the former and would bind the subordinate and as in the case of two contrary legislations by the same Legislature, the later would be the governing one, so also in the case of two contrary decisions of the Supreme Court rendered by Benches of equal strength, the later would rule and shall be deemed to have overruled the former. P.B. Mukharji, J. (as His Lordship, then was) in his separate, though concurring, judgment in the Special Bench decision of this Court in Pramatha Nath v. Chief Justice, AIR 1961 Cal 545 at p. 551, para 26, took a similar view. S.P. Mitra, J. (as His Lordship then was) also took such a view in the Division Bench decision of this Court in Sovachand Mulchand v. Collector, Central Excise, AIR 1968 Cal 174 at p. 186, para 56. To the same effect is the decision of a Division Bench of the Mysore High Court in New Krishna Bhavan v. Commercial-tax Officer, AIR 1961 Mys 3 at p. 7 and the decision of the Division Bench of the Bombay High Court in Vasant v. Dikkaya, 1980 Mah LJ 229 : AIR 1980 Bom 341 at p. 345. A Full Bench of the Allahabad High Court in U.P. State Road Transport Corpn. v. Trade Transport Tribunal, AIR 1977 All 1 at p. 5 has also ruled to that effect. The view appears to be that in case of conflicting decisions, by Benches of matching authority, the law is the latest pronouncement made by the latest Bench and the old

law shall change yielding place to new."

"The other view is that in such a case the High Court is not necessarily bound to follow the one which is later in point of time, but may follow the one which, in its view, is better in point of law. Sandhawalia, C.J. in the Full Bench decision of the Punjab and Haryana High Court in Indo-Swiss Time Ltd. v. Umarao, AIR 1981 Punj. and Har. 213 at pp. 219-220 took this view with the concurrence of the other two learned Judges, though as to the actual decision, the other learned Judges differed from the learned Chief Justice. In the Karnataka Full Bench decision in Govinda Naik v. West Patent Press Co., AIR 1980 Kant 92, the minority consisting of two of the learned Judges speaking through Jagannatha Shetty, J. also took the same view (supra, at p. 95) and in fact the same has been referred to with approval by Sandhawalia, C.J. in the Full Bench decision in Indo-Swiss Time (supra)."

"This later view appears to us to be in perfect consonance with what our ancient Jurist Narada declared — Dharmashastra Virodhe Tu Yuktiyukta Vidhe Smrita — that is, when the Dharmashastras or Law Codes of equal authority conflict with one another, the one appearing to be reasonable, or more reasonable is to be preferred and followed. A modern Jurist, Seervai, has also advocated a similar view in his Constitutional Law of India, which has also been quoted with approval by Sandhawalia, C.J. in Indo-Swiss Time (supra, at p. 220) and the learned Jurist has observed that "judgments of the Supreme Court, which cannot stand together, present a serious problem to the High Courts and Subordinate Courts" and that "in such circumstances the correct thing is to follow that judgment which appears to the Court to state the law

accurately or more accurately than the other conflicting judgment."

"It appears that the Full Bench decision of the Madras High Court in R. Rama Subbarayalu v. Rengammal, AIR 1962 Mad 450, would also support this view where it has been observed (at p. 452) that ***"where the conflict is between two decisions pronounced by a Bench consisting of the same number of Judges, and the subordinate Court after a careful examination of the decisions came to the conclusion that both of them directly apply to the case before it, it will then be at liberty to follow that decision which seems to it more correct, whether such decision be the later or the earlier one".*** *According to the Nagpur High Court also, as would appear from its Full Bench decision in D.D. Bilimoria v. Central Bank of India, 1943 NLJ 569 : AIR 1943 Nag 340 at p. 343, in such case of conflicting authorities, "the result is not that the later authority is substituted for the earlier, but that the two stand side by side conflicting with each other", thereby indicating that the subordinate Courts would have to prefer one to the other and, therefore, would be at liberty to follow the one or the other."*

"Needless to say that it would be highly embarrassing for the High Court to declare one out of the two or more decisions of the Supreme Court to be more reasonable implying thereby that the other or others is or are less reasonable. But if such a task falls upon the High Court because of irreconcilable contrary decisions of the Supreme Court emanating from Benches of co-ordinate jurisdiction, the task, however uncomfortable, has got to be performed."

"We are inclined to think that a five-judge Bench of

the Supreme Court in Atma Ram v. State of Punjab, AIR 1959 SC 519, has also indicated (at p. 527) that such a task may fall on and may have to be performed by the High Court. After pointing out that 'when a Full Bench of three Judges was inclined to take a view contrary to another Full Bench of equal strength', 'perhaps the better course would have been to constitute a larger Bench', it has, however, been observed that for 'otherwise the subordinate Courts are placed under the embarrassment of preferring one view to another, both equally binding on them'. According to the Supreme Court, therefore, when confronted with two contrary decisions of equal authority, the subordinate Court is not necessarily obliged to follow the later, but would have to perform the embarrassing task "of preferring one view to another"."

"… We are, however, inclined to think that no blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in Atma Ram (supra), the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction."

15. The law as enunciated in that Special Bench decision, as quoted hereinabove, has our unqualified concurrence*."*

(emphasis supplied)

26. Faced with conflicting opinions in the two decisions of the Apex Court which though have been passed while exercising powers under Article 136 of the Constitution of India but being reasoned orders are binding on this Court under Article 142 of the Constitution of India, it is better to analyse the facts of the present case and the facts in the case which were before the Apex Court in USS Alliance (*supra*) and Ved Prakash Mithan & Sons (*supra*).

27. USS Alliance (*supra*) does not deal with the issue as to whether the date of the receipt of the corrected award should be the *terminus a quo* or not and the observation made in paragraph No.2 of the said judgment does not apply on the facts of that case. The question which arises in this case did not arise in that case at all.

28. Similarly, in Ved Prakash Mithan & Sons (*supra*), the question as to whether the date of the receipt of the corrected award should be the *terminus a quo* or not, also did not arise in the facts of that case and only an observation has been made that date of the disposal of the application be the date from which time will begin to run.

29. This question squarely arose in Prakash Atlanta JV (*supra*) and was answered by the Division Bench of this Court in Prakash Atlanta JV (*supra*). The facts in Prakash Atlanta JV (*supra*) indicate that the Ld. Arbitrator published the Award on 05.08.2014. The application under Section 33 of the Arbitration and Conciliation Act, 1996 was disposed of *vide* Order dated 13.09.2014. The copy of the Corrected Award was received by the parties on 07.11.2014 and the challenge to the said Award was made on 05.02.2015 by the Respondent therein. The learned Single Judge therein took a view that

the date of receipt of the Corrected Award which was 07.11.2014, should be the date from which the period of limitation for raising a challenge under Section 34 of the Arbitration Act should start. The order of the learned Single Judge was reversed by the Division Bench by observing as under:-

> *"**21**. The learned Single Judge has reasoned that notwithstanding a situation contemplated by a request made to correct any computation errors, clerical or typographical errors or errors of a similar kind and a request made to make an additional award by pointing to the Arbitral Tribunal that certain claims presented have been omitted from the arbitral award; and the latter making a reference to an additional arbitral award but the former not, the doctrine of merger would necessitate limitation commencing from the date when the additional award or the corrected/amended award is made.*
>
> ***22**. The error by the learned Single Judge is to overlook the principle of law, that if legislative intention is clear, other provisions of the same enactment have not to be looked into, unless a conflict arises. The rule of harmonious construction would then come into play and the two provisions have to be harmoniously read. Meaning thereby, the territory occupied by the two has to be delineated with precision.*
>
> ***23**. But the learned Single Judge has not brought out any conflict. On the contrary, we find no conflict. Para (a) of Sub-Section (1) of Section 33 contemplates a request made to an Arbitral Tribunal concerning computation, clerical, typographical and other errors of the kind in an award. Para (b) of the said Sub-Section contemplates a request made to the Arbitral Tribunal to give an interpretation of a specific point or part of the award. Sub-Section (2) vests the Arbitral*

Tribunal the jurisdiction to consider the request made under Sub-Section (1) and to make the correction or give interpretation, which as per Sub-Section (2) 'Shall form part of the arbitral award.' Thus, the legislator has not contemplated any supplementary award to be made. The legislator has provided for the said decision to be forming part of the arbitral award. Sub-Section (3) confers a suo moto power on the Arbitral Tribunal to correct an error of the kind contemplated by clause (a) of Sub-Section (1) to be made. Sub-Section (4) and (5) deal with a situation where an award has omitted to consider claims presented and empowers the Arbitral Tribunal to make an additional award. Since a time limit is prescribed under Sub-Section (4) and (5) to deal with a request made under Sub-Section (1), Sub-Section (6) empowers the Arbitral Tribunal to extend the time limit prescribed. Sub-Section (7) simply imports the requirement of Section 31 which are applicable to an award to an order correcting or interpreting an arbitral award or making an additional arbitral award. We fail to understand as to in what manner interpretation of Sub-Section (3) of Section 34 of the Act, which has a bearing on the date from which limitation would run to file an application under Sub-Section (1) of Section 34 of the Act, can possibly come into conflict with the provisions of Section 33 of the Act.

***24**. It is not unknown to law that for different kinds of cause of action accruing, a different date wherefrom limitation commences.*

***25**. Conscious of the fact that if after an award is published a request has been made under Section 33 of the Act, a party should be entitled to the benefit of limitation not running against it with reference to the date of the award, the legislator has stipulated the trigger date as the one when the request under Section*

33 of the Act is disposed of. This additionally shows the consciousness of the legislator to provide two trigger of dates.

***26**. The appeal is accordingly allowed. Impugned order dated August 07, 2015 is set aside. Objections filed by the respondent to the award dated August 05, 2014 are declared to be barred by limitation."*

30. This judgment of the Division Bench squarely covers the facts of this case.

31. This Court is of the opinion that the judgment of the Division Bench is not only binding but also analyses the provisions of Section 34(3) of the Arbitration and Conciliation Act, 1996 which actually gives two timelines. One, where an application under Section 33 of the Arbitration and Conciliation Act, 1996 has not been filed in which case the legislature was conscious enough to state that it would be the date of the receipt of the award whereas, in the case where an application under Section 33 of the Arbitration and Conciliation Act, 1996 has been filed, the legislation was conscious enough to lay down that the date of disposal would be the starting point for calculation of limitation.

32. To state that the date of receipt of the corrected award even in cases where an application under Section 33 of the Arbitration and Conciliation Act, 1996 has been filed will be taken as the starting point of the time period under Section 34 of the Arbitration and Conciliation Act, 1996 and not the date of the disposal would actually go contrary to the plain reading of Section 34(3) of the Arbitration and Conciliation Act, 1996.

33. In view of the above, this Court is of the opinion that the present challenge is belated and therefore, the application filed by the Petitioner

under Section 34 of the Arbitration and Conciliation Act, 1996 challenging an Award dated 17.10.2017 and the additional Award dated 18.05.2018 passed by the learned Arbitrator is hit by limitation.

34. With these observations, the petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

JANUARY 8, 2025
RJ