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

Reserved on: 13.09.2018
Date of decision : 20.11.2018

\+ O.M.P. (COMM) 356/2018

M/S. DSC LIMITED & ANR. ..... Petitioners
Through: Mr.Ashish Dholakia, Mr.Gautam Bajaj & Mr.Rohan Chawla, Advs.

versus

M/S. S. P. SINGLA CONSTRUCTIONS PVT. LTD... Respondent
Through: Mr.Rajshekhar Rao & Mr.Sameer Dawar, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

1. This petition under Section 34 of the Arbitration and Conciliation Act, 1996(hereinafter referred to as the 'Act') has been filed by the petitioners challenging the Interim Award dated 09.06.2018 passed by the Sole Arbitrator adjudicating the disputes that have arisen between the parties in relation to the Work Order dated 07.03.2008. The Interim Award has held that the Claim of the respondent for payment of the amount due in terms of the reconciliation statement dated 02.08.2010 executed between the parties, is not barred by the Law of limitation.

2. The petitioner no.1 vide Letter of Intent dated 07.01.2008 and subsequent Work Order dated 07.03.2008 awarded the work for Design and Construction of Grade Separator at NH-1 and Grade Separator at NH-10 on the Kundli-Manesar-Palwal Expressway to the respondent.

3. Clause 13 of the Work Order dated 07.03.2008 provides for payment of bills by the employer, that is the petitioner no.1, within 14 days of submission of such bills by the contractor, that is the respondent. The Final Bill is to be paid within 30 days of completion of work/ submission of bill by the contractor. Clause 13 is quoted hereinbelow:-

> *"(13)**Payment Terms***
>
> *The Employer shall pay to the contractor the amounts certified by the Engineer within 14 days of the date of submission of bills by the Contractor. The final bill will be paid within 30 days of the completion of the work / submission of bill by contractor. Interest at the rate of 12 percent per annum will be payable to the contractor by the employer in case of delayed payments."*

4. The respondent vide letter dated 14.02.2010, while giving a proposal on revised contract price, called upon the petitioner No.1 to make payment of the outstanding interim bills of Rs.83.21 lacs for the disputes to be amicably resolved and for it to continue the work with required diligence.

5. The respondent vide letter dated 06.04.2010 reiterated the request and also showed an intent to invoke arbitration incase the interim bills remain unpaid. The letter is quoted hereinbelow:-

> *"Our relations in the past have always been friendly. It is therefore, now we are making final request for release of immediate payment and amicable settlement based on our proposal vide our letter No.SPS/P-163/44 dated 14.02.2010 within 45 days from date of this letter.*
>
> *In performance of work with required diligence during aforesaid notice period, immediate payment of outstanding payments in full is to be taken requirement precedent in view of financial crunch arisen in the contract on account of persistent state of outstanding payments, breach of contract, and continuing effect of inordinate prolongation of the contract attributable to the Employer.*
>
> *Should we not receive satisfactory response and outstanding payments in full, we will finally elect to treat this as referable dispute to arbitration and the matter would be referred to arbitration."*
>
> *(Emphasis supplied)*

6. Though, the learned counsel for the respondent sought to urge that this be treated as a letter invoking arbitration, I cannot agree with the same. This letter only states that in case the petitioner no.1 does not release the payment, the respondent "will elect" to treat the dispute having arisen as referable to arbitration and such dispute "would be referred to arbitration". This letter was, therefore, a notice to the petitioner no.1 that the respondent would invoke the arbitration in case the payment as demanded is not made. It was envisaging an intent to invoke arbitration in future and cannot be considered to be a notice under Section 21 of the Act. In any case, even the Arbitrator has not taken the letter dated 06.04.2010 to be a letter of invocation of arbitration.

7. I may also emphasize that if letter dated 06.04.2010 is treated as a letter invoking Arbitration, the petition filed by the respondent under Section 11 of the Act, on which the Sole Arbitrator was appointed, would itself have been barred by law of limitation, having been filed in 2016.

8. Subsequently, the petitioner no.1 vide letters dated 15.06.2010 and 13.07.2010 informed that the RA bills of the respondent stood verified at its end and requested the respondent to send its representative to petitioner no.1's Gurgaon office to check the same. Further, by letter dated 31.07.2010 the petitioner no.1, referring to their telephonic discussion, called upon the respondent to be present at their Manesar office to settle the bills. The letter dated 31.07.2010 is reproduced hereinbelow:-

> *"We regret to inform you that despite of our several requests, you have not deputed your representative to settle the bills (for work done) which are lying verified at our end.*
>
> *Reference our telephonic discussion on date, we have again advised you to send your representative positively on Monday i.e. 2nd August, 2010 to our Manesar Office for this purpose.*
>
> *Please note that on settlement of your bills, we shall proceed to arrange immediate payment (due to you) and close the Contract amicably, as agreed."*

9. Though, the learned counsel for the petitioners submitted that the aforesaid letters had been denied by the petitioners and were not proved, in my opinion, the Arbitrator has rightly held these letters as duly proved

by relying on the testimony of Mr.Deepesh Chandra, witness of the respondent.

10. It is the case of the respondent that on 02.08.2010 the parties met and reconciled the accounts, whereunder a sum of Rs.1,28,47,705/- was found due and payable by the petitioner no.1 to the respondent. A document in this regard was also executed in form of statement of account signed by Mr.Deepesh Chandra on behalf of the respondent and Mr.Jain, Head of Billing, on behalf of the petitioner no.1. It is the further case of the respondent that a "Foreclosure & Settlement Agreement" dated 10.08.2010 was also drafted and circulated by the petitioner no.1. The same was duly signed by Mr.Deepesh Chandra on behalf of the respondent and handed over to Mr.D.K. Gupta, Senior Official of the petitioner no.1. However, later the petitioner no.1 wrongly refused to sign the same. The respondent further asserts that vide letter dated 19.08.2010 the petitioner no.1 further circulated the draft of the Authorization Letter that it sought to be executed by the respondent; the said Authorization Letter was duly executed and handed over to the petitioner no.1. It is the further case of the respondent that Mr.Deepesh Chandra made repeated visits to the office of the petitioner no.1 where he was assured that the payment would be released, however, finding such assurance to be false, the respondent addressed letters dated 25.11.2010 and 03.02.2012 to the petitioner no.1 reminding the petitioner no.1 to make payment in terms of the settlement between the parties.

11. The respondent submits that having failed to receive any payment, the respondent nominated its Arbitrator and communicated the same to

the petitioner no.1 vide letter dated 23.10.2013. In the said letter the respondent, however, stated as under:

> *"Without prejudice the foregoing and other remedies, we are still ready and willing to settle the matter of unpaid amount of Rs.1,28,47,705/- (Rupees One crore twenty eight lac forty seven thousand seven hundred & five only) referred <u>in the proposed settlement agreement</u>, as on 2.08.2010. Plus the interest on the above said amount at the rate of 18% per annum from 02.08.2010 upto the date of payments under the interest Act, 1978, by agreement within above notice period of 30 days."*
>
> *(Emphasis Supplied)*

12. The respondent thereafter filed an application under Section 11 of the Act, being Arb.P.321/2016, in May, 2016 seeking appointment of an Arbitrator. In the said petition the following averments were made with regard to the settlement arrived at between the parties:

> *"13. However, it is pertinent to note that after much deliberation, both parties arrived at a mutual understanding whereby the Respondent agreed to pay to the Petitioner a sum of Rs.1,28,47,705/- towards full and final settlement of the Petitioner's claims. Accordingly, a draft Settlement Agreement was prepared but, unfortunately, the Respondent, for reasons best known to it, did not execute the same despite the Petitioner's best efforts.*
>
> *xxxxx*
>
> *14. Following the aforementioned Settlement Agreement, the Petitioner sent several reminders to the Respondent requesting it to close the matter once and for all and make payments, but the same were to no avail. Pertinently, vide letter dated 19.08.2010 issued by the Respondent, the Respondent forwarded the draft Authorization letter to the Petitioner so as to enable the Respondent to release the payments due.*
>
> *xxxxx*

15. Having failed miserably to amicably settle the matter and make the due payments, the Petitioner, :in furtherance of clause 27 of the Work Order, nominated and appointed Justice (Retd.) Arun Kumar Goel, former Judge of the Himachal Pradesh High Court on its behalf and accordingly, vide letter dated 23.10.2013, requested the Respondent, to nominate its arbitrator within 30 days for the constitution of the Arbitral Tribunal.
xxxxxx
16. That to the shock and surprise of the Petitioner, the Respondent till now, has not bothered to reply to the said letter dated 23.10.2013 and appoint an arbitrator on its behalf as agreed under the Work Order dated 07.03.2008.

17. Subsequently, the Petitioner, during the last two years, again made attempts to amicably settle the matter with the Respondent and as such, from time to time, requested the Respondent to release the payments as illustrated hereinabove. However, the same was to no avail. Pertinently, the Respondent assured that it shall settle the disputes and release the outstanding payments to the Petitioner, however, the said assurances turned out to be false."

13. This Court vide its order dated 01.12.2016 passed in Arb. P. 321/2016 appointed the Sole Arbitrator, leaving the question of limitation open to be examined by the Arbitrator.

14. The Impugned Interim Award has been passed by the Sole Arbitrator deciding the issue if the claim of the respondent based on the reconciliation statement is barred by limitation. The said issue has been decided in favour of the respondent.

15. The petitioners have denied the existence of the reconciliation statement dated 02.08.2010 between the parties and stated that the same

was never even signed by the petitioner no.1. The Arbitrator, considering the evidence on record and more particularly, the testimony of Mr. Deepesh Chandra, Deputy General Manager of the respondent, has held as under:

> *"5. xxxxx*
>
> *iii) It is the Claimant's case that on 02.08.2010, the parties met and carried out reconciliation of RA Bills, work done, WCT, TDS and debit notes, payment details, etc. The Reconciliation Statement of RA bills was prepared and is annexed to the letter dated 02.08.2010 of the claimant. The reconciliation statement is signed on behalf of the Claimant by Mr.Deepesh Chandra. It is also signed by Mr. Jain, head of the billing, of the Respondent as per the deposition of the Mr. Deepesh Chandra. The signature appears at point "A". The said document appearing at page 134 of the paper book carries endorsement in hand made by Deepesh Chandra to the following effect "Final Measurement accepted & reconciled for Rs.1,28,47,705/- only" Mr. Deepesh Chandra in his deposition on oath stated that reconciliation and computation sheet was executed and signed by Mr.Jain (SK or SC), billing head of Respondent, in his presence. The testimony of Mr. Deepesh Chandra remains unrebutted on this account and inspires confidence. It corroborates the event as set out by the Claimant.*
>
> *xxxx*
>
> *8. A perusal of the testimony of Mr. Deepesh Chandra, shows that inspite of a comprehensive cross-examination, he withstood his ground and his testimony remains steadfast and unshaken . It may be noted that the Respondent on the other hand had denied number of crucial letters, which were confronted to the witness in cross-examination, who confirmed the contents of the*

affidavit as also the receipt or issuance of the said letters. These letters accordingly stand duly proved. While confronting these letters in cross examination, reference was made to the paras of the affidavit without questioning the authenticity of the said letters. The denial of documents such as Ex. C-38 which has also been produced in original by which the Claimant's representative was called upon to attend the meeting on 02.08.2010, appears to be a part of strategy to deny all communications, which support the Claimant's case. Ex. C-38 contains the further assurance that on settlement of bills, the Respondents would proceed to make payment. An extract of the same is reproduced for reference:- "Please note that on your settlement of the bills, we shall proceed to arrange immediate payment (due to you) and close the contract amicably, as agreed." The witness has duly explained that there were a number of meetings earlier, and the reconciliation statement was under preparation during the period. The witness also explained the handing over in good faith of the Foreclosure agreement in original to Mr. DK Gupta, after signing the same. He stated that this was done in good faith and that is why no acknowledgement of receipt of the same was obtained. The conduct of the Claimant through its representative Mr. Deepesh Chandra, has been that of a party, acting in good faith and striving for an amicable settlement. His testimony has been forth right and candid in as much as it also admits when no written communication was sent from the Claimant to the Respondent. The testimony inspires confidence. Accordingly, Claimant has proved the execution of the reconciliation between the parties. The same being signed by Mr. Deepesh Chandra and on behalf of the Respondent by the Head of the Billing Mr. Jain. The fact that the reconciliation statement was under preparation also explains that why while being executed on 02.08.2010, it carried an earlier date on top."

16. The above finding being based on appreciation of evidence by the Arbitrator, which even otherwise I agree with, cannot be interfered with by this Court in exercise of its power under Section 34 of the Act. However, the question would still remain whether the invocation of Arbitration by letter dated 23.10.2013 by the respondent would still be barred by law of limitation.

17. The counsel for the petitioners has urged that even if the reconciliation statement dated 02.08.2010 is taken to be a valid document, it can only be considered as an acknowledgment in writing of liability as per Section 18 of Limitation Act, 1963 and, therefore, the period of limitation should have to be calculated from the date the acknowledgment was signed, that is, 02.08.2010. He further urges that the Arbitrator has wrongly applied Article 26 of the Schedule to the Limitation Act, 1963 to the facts of the present case. He submits that the claim being based on the RA Bill, was not one of money found to be due on accounts being stated between the parties. He further submits that even otherwise, there being no simultaneous agreement in writing postponing the date of payment to a future time, the period of limitation commenced from the date that the accounts are allegedly said to be signed, that is, 02.08.2010 and the Arbitration having been invoked by the letter dated 23.10.2013, would be barred by limitation.

18. The arbitrator while considering the issue of limitation, has held as under:-

> *"15. The above findings of the Supreme Court in Harishankar Singhania case (supra) duly lend support to the Claimant's case. Especially when from June to August*

2010 negotiations and dialogue were going on till August, 2010 when verification of pending RA bills and reconciliation was done and accounts were settled. From August to November 2010 the Claimant was having a regular follow up and had hope of the money being paid as per the acknowledgement and accounts settled with the Respondent. Respondent has sought to distinguish Hari Shankar Singhania & Ors. (Supra), by stating that the same applies only to family settlement. The perusal of the judgment in Hari Shankar Singhania & Ors. (Supra) shows that Supreme Court has used the expression 'particularly in family dispute' in para 23 of the judgment. This cannot be taken as per se excluding its application to situations other than family disputes. Hence, the judgment would be applicable in the present case.

16. It is the Claimant's case that the Respondent had indicated payment to be made in 2 parts without giving any firm date but stating that it would be made soon. The witness has deposed that he used to visit the Claimant's corporate office in Gurgaon, where the then CEO Mr. Banerjee and Mr. Narula MD had stated that the settlement amount would be paid and the Claimant need not to worry about it.

17. As time passed, Claimant found that there was no positive response to the follow up and the Respondent was turning evasive. Claimant's witness Mr. Deepesh Chandra, deposed that his visits were duly recorded by the Respondent in their entry registers. With the passage of time, Respondent became evasive to inquiries and follow up about the making of payment. Claimant gave a reminder on 25.11.2010, which has been duly produced on record with the postal receipt reminding the Respondent that the settlement of the account was overdue. This was followed by letter dated 03.02.2012 and finally by the notice of 23.10.2013.There is merit in the submission of the Claimant that in such a case, the cause of action if at all commences *upon a clear denial by the Respondents to refuse to honour the amicable settlement arrived at for Rs. 12847705/. It is also seen that in the present case there was no categorical time fixed for payment of the agreed settlement amount. Reference is invited to Article 26 of the Schedule to the Limitation Act, 1963, which runs as follows:*

Description of suit	*Period of limitation*	*Time from which period begins to run*
26. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them.	*Three years*	*When the accounts are stated in writing signed by the defendant or his agent duly authorized in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as aforesaid, made payable at a future time, and then when that time arrives.*

18. In the instant case, there is no time mentioned for payment. It would of necessity have to be construed to be as a reasonable time. Besides, cause of action would arise only, when the Claimant could reasonably gather the Respondent's intention not to honour its obligation as settled between them. From the course of event as narrated, it can be seen that the Claimant made earnest efforts to amicably settle the matter before finally invoking arbitration.

XXXX

19. In our view, time stood extended by Ex C-38 containing acknowledgement in writing of arranging immediate payment upon settlement of bills and the reconciliation statement executed on 02.08.2010, by another three years. Further, there was no clear indication by the Respondent of non-payment of the dues. The Claimant in good faith again sent reminder on 25.11.2010. A copy of the reminder letter is placed on record alongwith the postal receipt. The conduct of the Claimant is justified as parties were under negotiation which is evident from the correspondence exchanged between them. In view of the aforesaid events, there was no occasion for the Claimant to invoke arbitration when the dispute had been resolved amicably and only payment of settled amount remained. A cause of action would arise only when Claimant has a clear indication of Respondent's intention of not honouring or breaching the settlement. It was only in November/ December, 2010, after numerous follow ups, Claimant realized that the Respondent is not willing to pay the due amount even after admitting its liabilities."

19. I have considered the submissions made by the counsels for the parties. A perusal of the document dated 02.08.2010 executed between the parties clearly shows that the same was a settlement of accounts between the parties. It narrates the net amount payable on account of various running bills, payment made and other adjustments to be made between the parties, to arrive at a final figure of Rs.1,28,47,705/- as being due and payable by the petitioner no.1 to the respondent. The same would therefore, fall under Article 26 of Schedule to the Limitation Act, 1963.

20. At the same time, counsel for the petitioners is right in his submission that in terms of Article 26 of Schedule to the Limitation Act,

1963, the time from which the period begins to run for purposes of limitation has to be taken as the date on which the said account in writing was signed by the petitioner no.1 or its representative. It is only in case of a simultaneous agreement "in writing" which makes the amount payable at a future time, that the time from which the period is to run for purposes of limitation would be the date or time so stipulated in such simultaneously executed agreement. In the present case, no such simultaneous agreement in writing extending the period of payment was even pleaded by the respondent, leave alone proved.

21. The letters dated 15.06.2010, 13.07.2010 and 31.07.2010 from the petitioner no.1 to the respondent also do not postpone the date of payment of the amount settled to a future date. In fact, letter dated 31.07.2010 and Clause 3 of the "Foreclosure and Settlement Agreement" would indicate that the said amount was payable immediately. Therefore, time for period of limitation would begin to run from the date of execution of the reconciliation statement or the "Foreclosure and Settlement Agreement". From either dates, the invocation of arbitration on 23.10.2013, would be barred by limitation.

22. A reading of the finding of the Arbitrator in the Impugned Interim Award would show that the Arbitrator has extended the time from which the limitation is to start by holding that as the parties were negotiating for an amicable settlement, no dispute can be said to arise between the parties and therefore, the period of limitation would commence only when the petitioners denied liability to pay. For this purpose the Arbitrator placed reliance on the judgment of the Supreme Court in ***Hari Shankar Singhania and Ors. v. Gaur Hari Singhania and Ors.*** AIR

2006 SC 2488 and ***Shree Ram Mills Ltd. v. Utility Premises (P) Ltd.*** (2007)4 SCC 599 and of this Court in ***National Highways Authority of India v. Progressive Construction Ltd.*** (2014) 211 DLT 62.

23. In my opinion, the above finding of the Arbitral Tribunal cannot be sustained both on facts and in law. The Arbitrator has held that the respondent between the period August to November, 2010 was regularly following up and had hoped that money would be paid as per the acknowledgment and account settled with the respondent. In this regard, he has placed reliance on the testimony of Mr.Deepesh Chandra, witness of the respondent. I would herein quote the relevant extract of affidavit of evidence filed by Mr.Deepesh Chandra before the Arbitrator:

> *"14. I state that such was the assurance that the said amount of Rs.1,28,47,705/- was assured to be paid in 2 parts. Believing the said assurances to be true, I used to visit the Claimant's corporate office in Gurgaon. Initially, it was assured by one Mr. Banerjee, the then COO, and Mr. Narula, MD, that the settlement amount would be paid and the Claimant need not worry about the same.*
>
> *15. I state that, accordingly, I used to visit the Respondent's Gurgaon office at least once every week in the months of August-November 2010. However, on some pretext or the other, the senior officials, including the aforesaid persons, were evasive in their conduct and all visits were futile and I was made to visit on numerous occasions. I state that all such visits were duly recorded by the Respondent in their entry registers.*
>
> *16. I also state that whenever, during the said visits, I used to inquire with the Respondent's billing staff about the status of payments, I was given a cold shoulder and deprived of the admitted due payments. It is also relevant*

to mention, that on the other hand, other contractors used to be duly paid."

24. The above testimony of Mr.Deepesh Chandra is also to be read alongwith respondent's letters dated 25.11.2010 and 03.02.2012, which are quoted herein below:

> *Letter dated 25.11.2010*
> *"We are at a loss to understand why we have not received payment of the above account. We are writing again to remind you that settlement of the account, is considerably over due, we shall be grateful to receive your cheque by return."*
>
> *Letter dated 03.02.2012*
> *"We are quite disappointed not have received payments in settlement of account in settlement of account pursuant to "Foreclosure & Settlement Agreement" dated 10.08.2010 which still remains unsettled. It is therefore with utmost concerns we again write to remind M/s D.S. Constructions Ltd. to draw immediate attention to our account and request to release the payments by return to discharge the settlement of account with respect to the captioned contract."*

25. A reading of the above affidavit would show that there were contrary pleas taken in the pleadings. On the one hand it was said that there was an assurance given that the payment would be made, in the same breath it was said that the officials of the petitioner no.1 were evasive in their conduct and all visits were futile. He states that on such visits a cold shoulder was given to him. Equally in the letters dated 25.11.2010 and 03.02.2012 addressed by the respondent to the petitioner no.1 there is no mention of any such assurance being given by the

petitioner no.1. The story of such assurance, therefore was clearly an afterthought and pleaded only to justify the inordinate delay in filing of the petition under Section 11 of the Act.

26. Even if it is assumed that any such assurances were given by the petitioner no.1, the same were clearly not in writing as required by Article 26 of the Schedule to the Limitation Act, 1963 or Section 18 of the Limitation Act, 1963 and the time having begun to run for the purposes of limitation, could not have stopped or be extended based on such oral assurance.

27. Reliance of the Arbitrator on the judgment in ***Hari Shankar Singhania*** (supra) was ill-founded as the same was a case where Article 137 of the Schedule to the Limitation Act, 1963 was applicable. Article 137 of the Schedule to the Limitation Act, 1963 is reproduced hereinbelow:

Description of application	*Period of limitation*	*Time from which period begins to run*
137. Any other application for which no period of limitation is provided elsewhere in this division.	*Three years*	*When the right to apply accrues.*

28. In Article 137 of the Schedule to the Limitation Act, 1963 as the time begins to run only when the right to apply accrues, the Supreme Court held that as long as the parties were in dialogue and even the

differences would have surfaced, it cannot be said that the time for purposes of limitation under Article 137 has commenced. The same can have no application to the present case which falls under Article 26 of the Schedule to the Limitation Act, 1963, which prescribes the commencement date for the period of limitation as the one when accounts are stated in writing and signed by the parties.

29. ***Shree Ram Mills*** (supra) was also a case where Article 137 to the Limitation Act, 1963 was applicable.

30. The Judgment of this Court in ***Progressive Construction Ltd.***(supra) would also be of no application to the facts of the present case as in that case, the Court found that after the issuance of the Variation Orders, the issue of revision of the rates was under the active consideration of the respondent therein and even a committee had been formed for revising the rates. The committee rejected the proposal for revised rates only on 27.04.2009. The Court, therefore, held that limitation cannot be said to have started with the issuance of the Variation Orders.

31. The learned counsel for the respondent has placed reliance on the judgment of this Court in ***National Highways Authority of India v. Progressive Construction Ltd.*** 2015 SCC OnLine Del 7887. In my opinion, the said judgment is clearly distinguishable. In that case, the arbitration procedure itself provided for the dispute to be first raised before the Engineer and thereafter before the Dispute Review Expert(DRE). It was in that light that this Court has held that the period of limitation would not commence till the time given by the parties to the DRE for its decision has expired. In the present case, there was no

embargo on the respondent to have initiated arbitration immediately on the non-payment of the dues by the petitioner no.1.

32. Even if reliance is to be placed on the letter dated 19.08.2010 addressed by the petitioner no.1 to the respondent calling upon the respondent to send the Authorization Letter for purposes of settlement of payment, the same can at best amount to an acknowledgement of liability under Section 18 of the Limitation Act, 1963 and a fresh period of limitation can be said to have commenced from that date. Even assuming this to be the date of commencement of limitation, the invocation of arbitration by the letter dated 23.10.2013 would be barred by the law of limitation.

33. The Arbitrator has further relied upon Sub-Section 3 of Section 43 of the Act to draw support to his finding that the time for purposes of limitation would begin to run from December, 2010, which may be taken as the reasonable period within which any prudent or reasonable person would endeavour in efforts to seek implementation of the settlement reached.

34. Sub-section (3) of Section 43 of the Act is reproduced hereinbelow:

> *"43.(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 step 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."*

35. Sub-Section (3) of Section 43 of the Act has absolutely no application to the facts of the present case. The said provision merely empowers the Court to extend the time provided in the Agreement within which steps have to be taken to commence arbitral proceedings by the party. The said provision, however, cannot be used to extend the period of limitation prescribed in the Limitation Act, 1963, which is expressly made applicable to the arbitration proceedings in terms of Sub-Section (1) of Section 43 of the Act. Even otherwise, in view of Clause 13 of the Work Order quoted hereinabove, the reasonable period for payment could not have exceeded 30 days.

36. In view of the above, the Impugned Interim Award cannot be sustained and is set aside. There shall be no order as to cost.

NAVIN CHAWLA, J

NOVEMBER 20, 2018/Arya