

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5164 OF 2021**

JSW Dharamtar Port Pvt Ltd ...Petitioner
Versus
Maharashtra Maritime Board Indian Mercantile ...Respondents
Chambers & Anr

**Mr Rahul Narichania, Senior Advocate, with Kamini Topnani, i/b
Mulla & Mulla & Craigie Blunt & Caroe, for the Petitioner.**
**Mr Gopalkrishna Nayak, with Advait Hattangedi, i/b Flavia Legal,
for Respondent No. 1.**
Ms PN Diwan, AGP, for the Respondent-State.

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**CORAM G.S. Patel &
 Neela Gokhale, JJ.**
DATED: 28th March 2023

PC:-

1. There is or was a contractual arrangement dated 3rd December 2014 between the Petitioner and the 1st Respondent. This has a broadly worded arbitration clause for dispute resolution.
2. For various reasons that are presently unimportant, although the Petitioner had given certain bank guarantees, the project could not fructify. The claim is for a return of the amounts said to be wrongly invoked and paid out under those bank guarantees.

3. Clearly these are commercial matters that are to be resolved in an appropriate litigation in a jurisdictionally competent forum, be it a civil court or an arbitral tribunal. We leave all those remedies open. We have expressed no opinion on the merits of the controversy.

4. We believe we would be justified in saying that the time spent in prosecuting the Writ Petition must be excluded for the purposes of limitation because the Maritime Board is, after all, an instrumentality of the State within the meaning of Article 12 of the Constitution of India. Even in matters of contract, as *Tata Cellular*¹ points out, the State cannot act in an arbitrary manner.

5. The Petition is dismissed, but reserving liberty as aforesaid, and excluding from limitation the period of pendency of this Writ Petition.

6. All contentions including as to limitation are expressly kept open.

(Neela Gokhale, J)

(G. S. Patel, J)

1 *Tata Cellular v Union of India*, (1994) 6 SCC 651.