

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.32 OF 2023
WITH
INTERIM APPLICATION (L) NO.5095 OF 2023

Rajesh Shah ... Petitioner
Vs.
Kotak Mahindra Investment Limited ... Respondent

WITH
INTERIM APPLICATION (L) NO.10700 OF 2023
IN
COMMERCIAL ARBITRATION PETITION NO.32 OF 2023

Kotak Mahindra Investment Limited ... Applicant
In the matter between:
Rajesh Shah ... Petitioner
Vs.
Kotak Mahindra Investment Limited ... Respondent

Mr. Prathamesh Kamat a/w. Mr. Kunal Vaishnav and Mr. Rickin Dang i/b. Ganesh & Co. for Petitioner.

Dr. Abhinav Chandrachud i/b. Mr. Rahul Karnik and Ms. Jinal Rathi for Respondent in CARBP/32/2023 and for Applicant in IAL/10700/2023.

CORAM : MANISH PITALE, J.
DATE : MAY 03, 2023

P.C. :

. By this petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has challenged interim award dated 08.07.2022, passed by a sole arbitrator, whereby an application raising objection to jurisdiction on the ground of limitation has been rejected. According to the petitioner, such an award deciding the question of limitation and hence jurisdiction, against the petitioner, is amenable to challenge under Section 34 of the said Act. The petitioner has raised questions pertaining to Sections 21 and 43 of the said Act, in the backdrop of earlier round of litigation before this court, claiming that a proper appreciation of the chronology of events and the admitted facts

in the present case would show that the claims raised by the respondent were barred by limitation and that therefore, the application filed on behalf of the petitioner ought to have been allowed by the learned arbitrator.

2. Brief facts leading up to filing of the present petition are that a master loan and pledge agreement was executed between the parties on 16.06.2006, whereby the respondent had advanced loan to the petitioner. The respondent alleged that the petitioner had defaulted in repayment of the loan and on 13.06.2008, the respondent issued demand letter to the petitioner seeking recovery of specific amount with interest. In the said letter/notice, the respondent indicated that if the petitioner failed to make good the said amount, the respondent would have to institute legal proceedings before the Court.

3. On 16.10.2008, the respondent appointed a sole arbitrator as per the loan agreement. The letter appointed the arbitrator, but a copy of the same was not marked to the petitioner. On 04.11.2008, the said sole arbitrator addressed a letter to the petitioner as well as the respondent, stating that he had been appointed as the arbitrator under the agreement and fixed a preliminary meeting of the parties. Thereafter, the respondent filed its statement of claim. The petitioner filed an application under Section 16 of the said Act, *inter alia*, raising a ground challenging jurisdiction of the sole arbitrator as notice under Section 21 of the said Act was never issued by the respondent. The said application was decided by the learned arbitrator while passing final award in the matter.

4. On 18.11.2015, the learned arbitrator passed the final award, deciding the aforesaid application of the petitioner under Section 16 of the said Act. It was held that the challenge to the jurisdiction of the arbitrator was without any substance and the claims made by the

respondent were allowed. Aggrieved by the same, the petitioner filed Commercial Arbitration Petition No. 73 of 2018, before this Court, under Section 34 of the said Act.

5. On 30.01.2020, the said petition was disposed of by a learned single Judge of this Court. It was recorded that by the consent of the parties, the arbitral award was being set aside, without assigning any reasons. It was recorded that both parties were agreeable to the disputes being referred to arbitration afresh. The parties also agreed for appointment of a sole arbitrator to decide the disputes. It was recorded that before the previous arbitrator, the respondent had filed a statement of claim, but the petitioner was not permitted to file a statement of defence. In that light, this Court thought it fit to issue further directions in the matter. It is significant that this Court recorded a specific statement made on behalf of the petitioner that he was waiving the objection pertaining to Section 21 of the said Act and that the said statement was recorded, *inter alia*, for the purposes of Section 4 thereof. It was further recorded that the petitioner reserved his rights to raise other jurisdictional grounds, including but not limited to, the question of sufficiency of stamp duty paid on the agreements in question. Thereafter, the learned Single Judge of this Court, while disposing of the petition, recorded that the statement of claim already filed before the previous arbitrator would be presented before the arbitrator appointed under the said order and that the respondent could move an application for amendment of the statement of claim. The petitioner was given an opportunity to file affidavit in reply and the learned arbitrator was requested to decide the amendment application within three weeks. Thereupon, the statement of defence could be filed along with counter claim, if any, and the learned arbitrator was requested to dispose of the arbitration proceedings at the earliest.

6. Accordingly, the proceedings commenced before the learned arbitrator appointed as per the aforesaid order dated 30.01.2020, passed by the learned Single Judge of this Court. In this proceeding, the petitioner again moved an application under Section 16 of the said Act, raising ground of limitation as also the aspect of stamp duty, thereby challenging the jurisdiction of the learned arbitrator. It is relevant that the ground pertaining to stamp duty was specifically given up before the learned arbitrator. It was claimed that since the objection pertaining to Section 21 of the said Act was waived on 30.01.2020, for the fresh round of arbitration, it was incumbent upon the learned arbitrator to examine as to whether, in the facts of the present case, there was any notice issued under Section 21 of the said Act on the part of the respondent, for the of limitation to be calculated in the backdrop of Section 43 thereof. It was claimed that the waiver recorded in the order of the learned Single Judge dated 30.01.2020, pertained to the arbitral proceedings to be undertaken afresh and therefore, the petitioner was entitled to raise the objection of limitation. It was submitted that none of the documents on record, including the letter/notice dated 13.06.2008, issued by the respondent, qualified to be a notice under Section 21 of the said Act and therefore, the period of limitation was not arrested by any of the said documents, indicating that it continued to run against the respondent from the point in time that the loan agreement was closed and the cause of action arose for the respondent. On this basis it was submitted that the application under Section 16 of the said Act deserved to be allowed and the arbitral proceedings deserved to be terminated.

7. The respondent resisted the said application filed on behalf of the petitioner by relying upon the statement recorded in the order dated 30.01.2020 of the learned Single Judge this Court, wherein it was specifically recorded that the petitioner had waived the objection pertaining to Section 21 of the said Act. On this basis, it was submitted

that effectively, the objection pertaining to limitation also stood waived. It was submitted that, in any case, the documents on record indicated that the requirement under Section 21 of the said Act stood satisfied on a proper reading of the letter/notice dated 13.06.2008, read with letter appointing arbitrator on 16.10.2008 and the notice sent by the previous arbitrator dated 04.11.2008, to both parties. It was submitted that a proper reading of the said documents, along with the order dated 30.01.2020, passed by the learned Single Judge of this Court demonstrated that applying Section 43(4) of the said Act resulted in negating the objection pertaining to limitation raised on behalf of the petitioner. On this basis, it was submitted that the application filed on behalf of the petitioner under Section 16 of the said Act deserved to be dismissed.

8. By the impugned award dated 08.07.2022, the learned arbitrator dismissed the application filed by the petitioner. It was held that by waiving the objection under Section 21 of the said Act before this Court, the petitioner had waived his right to raise objection pertaining to limitation. It was held that Section 43(4) of the said Act applied to the facts of the present case in favour of the respondent and that therefore, the period pertaining to arbitral proceedings before the previous arbitrator was to be excluded. It was also held that a proper reading of the notice dated 13.06.2008 issued by the respondent, along with contemporaneous documents showed that the requirement of Section 21 of the said Act was sufficiently satisfied, as per the position of law recognized in various judgements, thereby demonstrating that the objection pertaining to limitation raised on behalf of the petitioner was without any substance.

9. Aggrieved by the said award of the learned arbitrator, the petitioner filed the present petition. On 09.03.2023, this Court issued

notice for final disposal and in the meanwhile granted ad-interim stay of further proceedings before the learned arbitrator, till the returnable date. The ad-interim stay was extended on further dates of listing. The respondent entered appearance through counsel and opposed the prayers made in the present petition. It was stated that the impugned award did not deserve interference. An application for vacation of ad-interim stay was also filed, alleging that while the date allotted for hearing of the present petition along with the interim application was 10.03.2023, the petitioner got the matter listed a day before i.e. on 09.03.2023, on a *praecipe*, without notice to the respondent. On this ground, it was prayed that the ad-interim stay deserved to be vacated forthwith. The petition itself was taken up for final disposal.

10. Mr. Prathamesh Kamat, learned counsel appearing for the petitioner submitted that the order passed by the learned arbitrator in the present case amounted to an award as it decided the question of limitation. It was submitted that such an award could certainly be challenged under Section 34 of the said Act. Reliance was placed on judgement of the Supreme Court in the case of *Indian Farmers Fertilizer Co-operative Ltd Vs. Bhadra Products*, **2018 (2) SCC 534** and order dated **17.03.2022**, passed by a learned Single Judge of this Court in **Commercial Arbitration Petition No. 95 of 2022 (MM developers Vs. Bharat Bhushan Gupta and others)**.

11. It was further submitted that the learned arbitrator in the present case completely misread the statement pertaining to waiver recorded by the learned Single Judge of this Court in the order dated 30.01.2020, passed in Commercial Arbitration Petition No. 73 of 2018. The learned counsel submitted that the petitioner had waived the objection pertaining to notice under Section 21 of the said Act as on the date of the order passed by the learned Single Judge of this Court. Hence, there was no

question of such waiver dating back to the documents pertaining to the previous round of arbitration. It was claimed that the statement of waiver was recorded in respect of fresh arbitration proceedings agreed between the parties, when the learned Single Judge set aside the arbitral award by consent of parties, without assigning reasons.

12. It was further submitted that when the waiver recorded in the said order of this Court is understood in the correct perspective, it becomes evident that while passing the impugned award, the learned arbitrator committed a grave error. In any case, according to the petitioner, the learned arbitrator erred in holding that the letter/notice dated 13.06.2008, read with the letter appointing arbitrator on 16.10.2008 and the notice issued by the previous arbitrator dated 04.11.2008 amounted to sufficient compliance with Section 21 of the said Act. Reliance was placed on judgement of the Delhi High Court in the case of *Alupro Building Systems Private Limited Vs Ozone Overseas Private Limited*, **2017 SCC OnLine Del 7228**, and the judgement of this Court in the case of *D. P. Construction Vs Vishvaraj Environment Private Limited*, **2022 SCC OnLine Bom 1410**, to contend that none of the documents on record could be construed as notice under Section 21 of the said Act and hence, the period of limitation did not get arrested and kept on running against the respondent. In this regard, reliance was also placed on judgement of Division Bench of Delhi High Court in the case of *Shriram Transport Finance Co. Ltd, Vs Shri Narender Singh*, passed on **13.10.2022** in **FAO (COMM) No. 179 of 2021**.

13. It was further submitted that as per the order dated 30.01.2022, passed by learned Single Judge of this Court in Commercial Arbitration Petition No. 73 of 2018, the arbitration proceedings were to commence afresh. By placing reliance on judgement of the Supreme Court in the case of the *Dakshin Haryana Bijli Vitran Nigam Ltd Vs Navigant*

Technologies Private limited, **2021 (7) SCC 657**, the learned counsel for the petitioner submitted that the disputes between the parties were required to be decided afresh and that it was only in the context of such fresh proceedings contemplated between the parties that the requirement of Section 21 of the said Act was waived and therefore, the petitioner was certainly entitled to raise the objection of limitation on the basis of documents pertaining to the disputes that arose between the parties and the nature of letters/notices issued by the respondent. It was submitted that the learned arbitrator while passing the impugned award completely failed to appreciate the correct position of law and wrongly treated the subsequent arbitral proceedings as a continuation of the previous arbitral proceedings. According to the petitioner, this was a fundamental flaw, justifying setting aside of the impugned award and holding that the claims raised by the respondent were barred by limitation.

14. It was submitted that the application for vacation of ad-interim order deserved to be rejected as no wrongdoing could be attributed to the petitioner or his advocates. On this basis, it was submitted that the petition be allowed by setting aside the impugned award and holding that the claims of the respondent stood barred by limitation.

15. On the other hand, Dr. Abhinav Chandrachud, learned counsel appearing for the respondent submitted that the scope of interference under Section 34 of the aforesaid Act was limited, post amendment of the said Act in the year 2015 and the position of law clarified by the Supreme Court in the case of *SsangYong Engg. & Construction Co. Ltd. Vs NHAI*, **(2019) 15 SCC 131** and this Court in the case of *Union of India Vs RECON*, **2020 (6) Mh.L.J. 509**. It was submitted that the learned arbitrator had taken a reasonable and possible view in the facts and circumstances of the present case, thereby indicating that no ground was made out for interference with the impugned award.

16. By referring to the order dated 30.01.2020, passed by the learned Single Judge of this Court in Commercial Arbitration Petition No. 73 of 2018, the learned counsel appearing for respondent submitted that the petitioner had clearly waived objection pertaining to Section 21 of the said Act, indicating that the documents relied upon by the respondent to claim commencement of arbitral proceedings under Section 21 of the said Act were accepted on behalf of the petitioner. It was submitted that the petitioner was not justified in claiming that the waiver pertaining to Section 21 of the said Act was in the context of fresh arbitral proceedings proposed between the parties. It was further submitted that, in any case, a proper application of the law would show that the letter/notice dated 13.06.2008, issued by the respondent to the petitioner, read with the letter appointing the arbitrator on 16.10.2008 and the notice issued by the arbitrator dated 04.11.2008, to both the parties, sufficiently satisfied the requirement of Section 21 of the said Act. For this purpose, the learned counsel for the respondent relied upon the judgements of the Supreme Court in the case of *State of Goa Vs. Praveen Enterprises*, **2012 (12) SCC 581**, *Milkfood Ltd Vs. GMC Ice Cream Ltd.*, **2004 (7) SCC 288** and judgement of this Court in the case of *Veena Vs Seth Industries Ltd.*, **2011 (2) Mh.L.J. 226**. Reliance was also placed on judgement of the Delhi High Court in the case of *Sarvesh Security Services Private Limited Vs. Managing Director, DSIIDC*, **2018 SCC OnLine Del. 7996**. The learned counsel for the respondent submitted that the judgement of the Delhi High Court in the case of **Alupro Building Systems Private Limited Vs. Ozone Overseas Private Limited** (*supra*) had not correctly interpreted the judgement of the Supreme Court in the case of **State of Goa Vs. Praveen Enterprises** (*supra*). The judgement of this Court in the case of the **D. P. Construction Vs. Vishvaraj Environment Private Limited** (*supra*) was sought to be distinguished.

17. By placing reliance on the judgement of the Supreme Court in the case of **State of Goa Vs. Praveen Enterprises** (*supra*), the learned counsel for the respondent went to the extent of submitting that there was no necessity of issuance of notice under Section 21 of the said Act and that statement of claim could be directly filed before the arbitrator. The service of such statement of claim on the opposite party was enough notice and the only purpose of the notice under Section 21 of the said Act was with regard to the question of limitation in the context of Section 43 of the said Act. On this basis, it was submitted that even if the documents on record including letter/notice dated 13.06.2008, were held to be not in compliance with the requirements of Section 21 of the said Act, in the present case filing a statement of claim before the previous arbitrator was enough and that the same being within the period of limitation, there was no question of the claims of the respondent being barred by limitation. On this basis, the learned counsel for the respondent submitted that the present petition deserved to be dismissed.

18. Heard learned counsel for the parties, in the backdrop of the material placed on record. At the outset, this Court is of the opinion that the petitioner is justified in relying upon the law laid down by the Supreme Court in the case of **Indian Farmers Fertilizer Cooperative Ltd Vs. Bhadra Products** (*supra*) and by this Court in the case of **M. M. Developers Vs. Bharat Bhushan Gupta and others** (*supra*), wherein it was held that an order/award passed by the arbitrator deciding the question of limitation is amenable to challenge under Section 34 of the said Act. Hence, it is held that the present petition is maintainable.

19. After the amendment of the said Act in the year 2015 and as per the law laid down by the Supreme Court in the case of **SsangYong Engg. & Construction Co. Ltd. Vs NHAI** (*supra*) followed by this

Court in **Union of India Vs RECON** (*supra*), it is sufficiently clear that the scope of interference with an arbitral award under Section 34 of the said Act is narrowed down. If the learned arbitrator has taken a reasonable and possible view, in the facts and circumstances of the case, this court would not interfere with the impugned award while exercising jurisdiction under Section 34 of the said Act. Thus, the rival submissions will have to be appreciated in the backdrop of the said position of law, applying the same to the facts of the present case.

20. There is no dispute about the fact that the earlier arbitral award passed in the previous proceedings, dated 18.11.2015, stood set aside by consent of both parties, without assigning any reasons. In the order of the learned Single Judge dated 30.01.2020, it was specifically recorded that the parties were agreeable to referring their disputes to arbitration afresh. The parties also agreed to nomination of a fresh sole arbitrator. Thereupon, in the said order this court recorded in paragraphs 3 and 4 as follows:

“3. Before the previous Arbitrator the Respondents filed a Statement of Claim. The Petitioners were not permitted to file a Statement of Defence. They did however file an application under Section 16, inter alia contending that there had been no invocation by the Respondents as required by law under Section 21 of the Arbitration and Conciliation Act 1996. It is in view of these developments that a few further directions are necessary.

4. As regards the Section 21 objection, Dr Saraf on behalf of the Petitioners, on instructions, waives that contention as of today. This is noted including inter alia for the purposes of Section 4 of the Arbitration and Conciliation Act 1996. He, however, reserves the right to raise the other jurisdictional grounds including, but not limited to, the question of sufficiency of stamp paid on either or both of the agreements in question.”

21. Reading the above quoted paragraphs 3 and 4 of the order dated 30.01.2020, passed by this Court in Commercial Arbitration Petition No.

73 of 2018, shows that the petitioner specifically waived the objection pertaining to Section 21 of the said Act. This is significant, for the reason that under Section 21 of the said Act the arbitral proceedings are deemed to have commenced on the opposite party receiving the notice invoking such arbitration on the part of the claimant. This Court also specifically recorded that the waiver was noted for the purpose of Section 4 of the said Act, which pertains to waiver of right to object. The petitioner has laid much stress on the words “as of today” recorded in paragraph 4 of the said order dated 30.01.2020, passed by this Court in Commercial Arbitration Petition No. 73 of 2018. By laying stress on the said words, the petitioner claims that the waiver applied from the date of the said order and that it applied only to the fresh arbitral proceedings contemplated between the parties, upon setting aside of the previous arbitral award dated 18.11.2015, by consent. According to the petitioner, such waiver did not pertain to the objection raised under Section 21 of the said Act in the previous round of arbitration in the application filed under Section 16 of the said Act before the erstwhile arbitrator.

22. But, this Court is of the opinion that a conjoint reading of the above quoted paragraphs 3 and 4 of the said order dated 30.01.2020, passed by this Court in Commercial Arbitration Petition No. 73 of 2018, shows that the waiver of objection under Section 21 of the said Act on the part of the petitioner has to be read in the context of such objection raised in the application under Section 16 of the said Act in the previous round of arbitration before the erstwhile arbitrator. Merely because the words “as of today” were recorded in paragraph 4 of the said order, does not mean that such waiver would not relate back to the original objection raised under Section 21 of the said Act in the application filed under Section 16 thereof, before the erstwhile arbitrator. This is fortified by the contents of paragraph 4 of the order dated 30.01.2020, quoted above, to the effect that the petitioner reserved his rights to raise other

jurisdictional grounds.

23. This Court is of the opinion that the petitioner is not justified in claiming that the waiver recorded in the above quoted order pertained to requirement of issuance of notice under Section 21 of the said Act in the context of fresh arbitral proceedings to be undertaken as per the said order. Viewed from this angle, it becomes clear that the petitioner gave up his rights to raise any objection on the assertion of the respondent that the letter/notice dated 13.06.2008, read with the other aforementioned documents on record, amounted to invocation of arbitration under Section 21 of the said Act. Once this aspect becomes clear, the interpretation on the aspect of limitation placed by the learned arbitrator in paragraph 82 of the impugned award cannot be found fault with. In paragraph 75 of the impugned award, the learned arbitrator correctly observed that the waiver on the part of the petitioner recorded in the order dated 30.01.2020, passed by this Court in Commercial Arbitration Petition No. 73 of 2018, was unqualified and that the petitioner had agreed not to raise such an objection ever again.

24. This has a crucial bearing on the aspect of arbitration and reading the waiver on the part of the petitioner correctly leads to the conclusion that the petitioner could not raise the objection of limitation against the respondent, in the facts and circumstances of the present case. In this context, Section 43 for the said Act is also correctly applied by the learned arbitrator to hold that exclusion of the time period, where an arbitral award is set aside, accrues to the benefit of the respondent, in the facts of the present case. The view adopted by the learned arbitrator on this aspect of the matter is a reasonable view and it is certainly a possible view in the matter. Therefore, no ground can be said to have been made out by the petitioner to invoke Section 34 of the said Act for setting aside of the impugned award. The petitioner is not justified in

contending that the impugned award can be said to be contrary to the public policy of India.

25. As regards the rival contentions on the aspect of the ingredients of a notice under Section 21 of the said Act and the aspect of commencement of the arbitral proceedings, indicating that the limitation period stands arrested the moment notice under Section 21 of the said Act is received by the opposite party, this court is of the opinion that the extreme position canvassed on the part of the respondent cannot be accepted. The reliance placed on judgement of the Supreme Court in the case of **State of Goa Vs. Praveen Enterprises** (*supra*) in this context needs to be examined. For the said purpose it is necessary to appreciate the questions that arose for consideration in the said case before the Supreme Court. In paragraph 9 thereof, the Supreme Court recorded the questions that arose for consideration, as follows:

“9. Therefore, the questions that arise for our consideration are as under:

whether the respondent in an arbitration proceedings is precluded from making a counter-claim, unless

- (a) it had served a notice upon the claimant requesting that the disputes relating to that counter-claim be referred to arbitration and the claimant had concurred in referring the counter claim to the same arbitrator; and/or
- (b) it had set out the said counter claim in its reply statement to the application under Section 11 of the Act and the Chief Justice or his designate refers such counter claim also to arbitration.”

26. The Supreme Court then analyzed the interplay between Sections 21 and 43 of the said Act, in the context of Section 3 of the Limitation Act, 1963. Thereupon, the Supreme Court held in paragraphs 18 and 19 as follows:

“18. In regard to a claim which is sought to be enforced by filing a civil suit, the question whether the suit is within the period of limitation is decided with reference to the date of

institution of the suit, that is, the date of presentation of a plaint. As Limitation Act, 1963 is made applicable to arbitrations, there is a need to specify the date on which the arbitration is deemed to be instituted or commenced as that will decide whether the proceedings are barred by limitation or not. Section 3 of Limitation Act, 1963 specifies the date of institution for suit, but does not specify the date of 'institution' for arbitration proceedings. Section 21 of the Act supplies the omission. But for Section 21, there would be considerable confusion as to what would be the date of 'institution' in regard to the arbitration proceedings. It will be possible for the respondent in an arbitration to argue that the limitation has to be calculated as on the date on which statement of claim was filed, or the date on which the arbitrator entered upon the reference, or the date on which the arbitrator was appointed by the court, or the date on which the application was filed under section 11 of the Act. In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which "the request for that dispute to be referred to arbitration is received by the respondent" the said confusion is cleared. Therefore the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not.

19. There can be claims by a claimant even without a notice seeking reference. Let us take an example where a notice is issued by a claimant raising disputes regarding claims A and B and seeking reference thereof to arbitration. On appointment of the arbitrator, the claimant files a claim statement in regard to the said claims A and B. Subsequently if the claimant amends the claim statement by adding claim C [which is permitted under Section 23(3) of the Act] the additional claim C would not be preceded by a notice seeking arbitration. The date of amendment by which the claim C was introduced, will become the relevant date for determining the limitation in regard to the said claim C, whereas the date on which the notice seeking arbitration was served on the other party, will be the relevant date for deciding the limitation in regard to Claims A and B. Be that as it may.”

27. This Court is of the opinion that the sentence “There can be claims by a claimant even without a notice seeking reference” have been read out of context and in isolation on behalf of the respondent. The said sentence has to be read in the context of the discussion in paragraphs 18

and 19 of the said judgement, quoted hereinabove. It is specifically in the context of the illustration given by the Supreme Court that when a notice under Section 21 of the said Act raises only two claims, subsequent claim made before the arbitrator could still be adjudicated even though there was no notice in the context of the said claim, observing that with regard to such an additional claim, the relevant date for determining limitation would be the date when such additional claim stood added in the statement of claim. This does not mean that as per the observations made in the said judgement, notice under Section 21 of the said Act is not required in arbitral proceedings. There are other situations, such as statutory arbitrations under the National Highways Act, 1956 or the Micro, Small and Medium Enterprises Development Act 2006, where the statement of claim would be filed without a notice seeking reference. But, those situations are clearly distinguishable from the facts of the present case and the said observation of the Supreme Court cannot be applied to the present case.

28. It cannot be said that the judgement of the Delhi High Court in the case of **Alupro Building Systems Private Limited Vs. Ozone Overseas Private Limited** (*supra*) misinterpreted the aforesaid judgement of the Supreme Court in the case of **State of Goa Vs. Praveen Enterprises** (*supra*). The purpose of notice under Section 21 of the said Act is not only for indicating the commencement of the arbitral proceedings and for calculating limitation under Section 43 of the said Act, but it is for the purpose of putting the other side to notice with regard to the intention of the claimant to go for arbitration, as per the arbitration agreement. This leads to further sequence of events wherein the opposite party can agree for reference to arbitration and even to the name proposed by the claimant, in which case the arbitral proceedings go ahead with the agreed arbitrator entering upon reference. If the opposite party disagrees upon the proposed arbitrator, the procedure

fails, leading to the claimant entitled to invoke jurisdiction under Section 11 of the said Act for appointment of arbitrator. Upon the proceedings under Section 11 of the said Act leading to appointment of arbitrator, the further events of filing of statement of claim and so on take place. In any event, the arbitral proceedings are deemed to have commenced as per Section 21 of the said Act. There are various eventualities contemplated upon issuance of notice under Section 21 of the said Act and therefore, it cannot be said that a party could straightaway file statement of claim before an arbitrator appointed without even notice of invocation of arbitration under Section 21 of the said Act and then claim that since the arbitrator so appointed has issued notice along with copy of statement of claim to the opposite party, the requirement under Section 21 of the said Act stands satisfied. Such interpretation sought to be placed on behalf of the petitioner is not in consonance with the scheme contemplated under the provisions of the said Act and therefore, it is rejected.

29. The said interpretation on behalf of the respondent was canvassed, perhaps to get over the interpretation of the letter/notice dated 13.06.2008, read with letter appointing the arbitrator dated 16.10.2008 and the notice issued by the previous arbitrator dated 04.11.2008 to both parties, in the impugned award. This Court is of the opinion that in the impugned award, the learned arbitrator did interpret the said documents to return findings in favour of the respondent, which appear to be in the teeth of the law in respect of the contents and manner of issuance of notice under Section 21 of the said Act. But, this Court is of the opinion that the learned arbitrator, while discussing rival contentions and rendering findings in the impugned award, considered both the alternative arguments raised on behalf of the respondent. Once the learned arbitrator returned the finding that the nature of waiver on the part of the petitioner, in the facts and circumstances present case, meant that the petitioner had agreed not to raise objection in respect of notice

under Section 21 of the said Act ever again and that such waiver was unqualified, the necessary concomitant of the same was clear that the petitioner could no longer raise objection on the assertion of the respondent that the letter/notice dated 13.06.2008, read with the other aforementioned documents amounted to compliance with the requirements of Section 21 of the said Act. Therefore, even if certain findings have been rendered in the impugned award on the alternative argument of the respondent, it cannot be fatal and the impugned award cannot be said to be vulnerable to interference.

30. As noted hereinabove, this Court finds that the conclusion rendered in the impugned award is based on a reasonable and possible view, in the facts and circumstances of the present case, thereby indicating that no ground is made out for interference under Section 34 of the said Act, particularly under Section 34(2)(b)(ii) thereof. Hence the impugned award does not deserve interference.

31. As regards the rival contentions pertaining to the application seeking vacation of ad-interim stay, suffice it to say that when this Court has heard the parties and the petition is being disposed of finally by this order, there is no need to consider the said contentions in respect of the aforesaid application.

32. In view of the above, this Court finds no merit in the present petition. Accordingly, the petition is dismissed and the order of ad-interim stay stands vacated. All pending applications stand disposed of in the light of disposal of the petition.

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(MANISH PITALE, J.)

Minal Parab