

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: February 07, 2023

+ O.M.P. (COMM) 316/2022, IAs. 11689/2022 & 11690/2022

**MY PREFERRED TRANSFORMATION AND HOSPITALITY
PVT LTD AND ANR**

..... Petitioners

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Harsh Kaushik, Mr. Sachin
Akhoury, Ms. Adrija Mishra &
Mr. Saurabh Seth, Advs.

versus

FARIDABAD IMPLEMENTS PVT LTD

..... Respondent

Through: Mr. Simran Mehta and
Mr. K.B. Acharya, Advs.

**CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO**

J U D G M E N T

V. KAMESWAR RAO, J

I.A. 11689/2022

1. By this order, I shall decide the aforesaid application which has been filed by the petitioner/applicant seeking condonation of delay in filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act of 1996' for short) for quashing and setting aside the arbitral award dated February 04, 2022.

2. The Arbitrator had sent a soft copy of the impugned award dated February 04, 2022 to the applicant / petitioner by email and the

hard copy thereof on February 14, 2022.

3. According to the applicant, the petition under Section 34 of the Act of 1996, is within limitation as the Supreme Court in ***Suo Moto Writ Petition No. 3/2020***, directed that the period from March 15, 2020 till February 28, 2022, shall stand excluded for the purpose of limitation in all proceedings and that the period of limitation would start from March 1, 2022.

4. It is the case of the applicant that the statutory period of three months for challenging the impugned award had started from March 1, 2022 and expired on May 31, 2022, and the additional condonable period of 30 days for challenging the impugned award had expired on June 30, 2022.

5. It is also the case of the applicant that it had commenced internal deliberations for challenging the award and initiated the process for filing the petition under Section 34 of the Act, immediately after receiving the impugned award.

6. Mr. Rajiv Nayar, the learned Senior Counsel for the applicant, stated that the employees and the legal team in the petitioner / applicant company, who are associated with the arbitration proceeding exited the company and due to this sudden departure of the employees, the process of filing the petition got severely hindered for three weeks, i.e., till end of March, 2022. He also stated that the newly recruited employees and legal team fell ill due to spread of COVID-19 and other infections due to seasonal changes, which caused hindrance in the process of filing, for another four weeks, i.e., till end of April, 2022.

7. He stated that, when the applicant approached its counsel and

instructed them to initiate the filing process under Section 34 of the Act, the counsels informed the petitioner / applicant that they were no longer in a position to handle the disputes and declined to file the petition. Therefore, it was extremely difficult for the petitioner / applicant to file Section 34(3) of the Act of 1996 petition before May 31, 2022, the '*prescribed period*'. Thereafter, the petitioner / applicant after many attempts engaged a new counsel to defend its interest in setting aside the impugned award.

8. He stated that the new counsel could not file the petition as this Court was closed for summer vacations from June 3, 2022 till July 04, 2022, which prevented the petitioner / applicant from filing the petition for no fault of its own. He also stated that the number of days falling under summer vacations should be excluded in computing the extended and condonable period of limitation, and a fresh period of limitation would then commence which would actually expire on July 31, 2022.

9. He stated that the petitioner / applicant filed the petition on the re-opening day after the Court vacation and the applicant was well within the condonable period of thirty days, and it is evident that, there has been a delay of only three days beyond the statutory period, which are bona fide and beyond the control of the petitioner. Therefore, the delay of three days is minor and falls within discretionary condonable power of this Court.

10. Mr. Nayar contended the respondents' contention that Section 4 of the Limitation Act, 1963 ('Act of 1963', for short) does not apply to the proviso to Section 34(3) of the Act of 1996, is untenable. He

also submitted that the judgments relied by the respondent in *Assam Urban Water Supply and Sewerage Board v. Subash Projects and Marketing Limited*, (2012) 2 SCC 624, *Sagufa Ahmed and Ors. v. Upper Assam Plywood Products Private Limited and Ors.*, (2021) 2 SCC 317 and *Union of India v. Enarch Consultants Pvt. Ltd., FAO(OS)(COMM) 127/2019 decided on May 28, 2019*, deals and discusses only about applicability of Section 4 of the Act of 1963, to 'prescribed period'. He also stated that the said judgments did not discuss about the applicability of Section 10 of the Act of 1897, in situations, where Section 4 of the Act of 1963 is inapplicable, and that, this argument was neither raised nor decided in the said judgments.

11. He stated that, in *Sagufa Ahmed and Ors. (supra)*, the Supreme Court had granted the benefit of extension of limitation only in respect of the 'prescribed period' and in that case, the appeal was filed after the 'prescribed period', and the Supreme Court had simply reproduced Section 10 of the Act of 1897. The only issue considered by the Supreme Court in the said case was with regard to the meaning of 'prescribed period' and the applicability of Section 4 of the Act of 1963 to the 'prescribed period'.

12. He submitted that Section 10(2) of the Act of 1897 clearly provides that Section 10(1) of the Act applies to all Central Acts including the Arbitration Act. *Ex facie*, Section 10(1) of the Act of 1897, would apply to the provision of Section 34(3) of the Act of 1996. The only inapplicability of Section 10(1) is when the Act of 1963 applies.

13. He stated that the Section 4 of the Act of 1963, does not apply

to the proviso to Section 34(3) of the Act of 1996, therefore, Section 4 of the Act of 1963, becomes inapplicable to the proviso of Section 34(3) and therefore, Section 10(1) of the Act of 1897 would apply. In support of this contention, he relied upon the judgment of the Supreme Court in the case of ***Sridevi Datla v. Union of India & Ors. (2021) 5 SCC 321***, wherein, the Supreme Court with respect to Section 16 of National Green Tribunal Act, 2010 ('Act of 2010', for short) held that the Act of 1963 does not apply to Section 16 of Act of 2010, and therefore, Section 10 of the Act of 1897 will apply. In the said case, the last date of the extended period was a 'Sunday' and the appeal was filed on the very next working day. He stated that the Court while analysing Section 16 of the Act of 2010 and Section 10 of Act of 1897, relied on the judgment of a four-Judge Bench of the Supreme Court in ***H.H. Raja Harinder Singh v. S Karnail Singh, AIR 1957 SC 271***, and a three-Judge Bench of the Supreme Court in ***Manohar Joshi v. Nitin Bhaurao Patil, (1996) 1 SCC 169***, wherein, it held that Section 10 of Act of 1897, will be applicable. He has also relied upon the judgment of the Nagpur High Court in the case of ***Rambir Narhagir Gosai v. Prabhakar Bhaskar Gadhwai, AIR (1966) Nag 300***.

14. He stated that the respondent's contention that the Act of 1963, is inapplicable to the proviso to the Section 34(3) of the Act of 1996 and the applicant submission that Section 10(1) of the Act of 1897, apply to Section 34(3) of the Act, does not lead to any conflict with the ratio of the judgments in ***Assam Urban Water Supply and Sewerage Board (supra)*** and ***Sagufa Ahmed and Ors. (supra)***.

15. Mr. Nayar stated that Section 34(3) of the Act of 1996, must be

given full effect and cannot be rendered otiose in situation where last day of extended period falls on a holiday, as it cannot be accepted in law, while litigants' whose last day of the extended period falls on a holiday, will be deprived from availing the said proviso, which will make the provision *ex facie* arbitrary and discriminatory and therefore, the applicability of Section 10 of the Act of 1897, to the proviso to Section 34(3) of the Act ought to be upheld.

16. Furthermore, he stated that the judgments relied by the petitioner holds the need to grant an opportunity to a litigant to file when there is inapplicability of Section 4 of the Act of 1963. He also stated that the applicant is seeking condonation of delay in filing which falls within the preview of the extended period. He reiterated that the applicant could have filed the petition on the last day of the extended period, i.e., July 2, 2022, but this Court after summer vacation re-opened only on July 4, 2022 and the petitioner / applicant filed the petition under Section 34(3) of the Act of 1996, on the first opportunity that was available, i.e., July 4, 2022, and it is covered by Section 10(1) of the Act of 1897.

17. He stated that the rationale behind granting the litigants the benefit of Section 10(1) of Act of 1897, is that a party cannot be expected to do impossible, i.e., to file a petition / appeal on a day when it is impossible to do so in law. He reiterated that, since Section 4 of the Act of 1963, is not available for the litigant under Section 34(3) of the Act of 1996, Section 10(1) of Act of 1897, becomes applicable.

18. He submitted that the extension to the '*prescribed period*' provided under Section 34(3) of the Act of 1996 is to provide an

opportunity to approach the Court, when it has reasons for not filing the same during the '*prescribed period*'. He also stated that, when the period ends during Court vacation and the petitioner / applicant, is not given the benefit under the Act of 1963 and the Act of 1897, then it would deprive the petitioner / applicant the opportunity to approach this Court to exercise the discretion, which it would have otherwise exercised, if there has been no Court vacation. Therefore, the Court vacations should not deprive a litigant from utilising an opportunity to approach the Court.

19. He seeks prayer as made in the application.

20. Mr. Simran Mehta, the learned counsel for the respondent stated that the '*prescribed period*' to challenge the arbitral award under Section 34 of the Act is three months, and it is well-settled law by the Supreme Court in the case of ***Assam Urban Water Supply and Sewerage Board (supra)***, that the period of thirty days beyond three months, which the Court may condone on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the Act, 1996 is not the "*period of limitation*" and as such Section 4 of the 1963 Act, is not at all attracted to the facts of the present case.

21. He has relied upon the judgment of the Supreme Court in the case of ***Sagufa Ahmed and Ors. (supra)***, wherein, the Supreme Court stated that the expression "*prescribed period*" appearing in Section 4 cannot be construed to mean anything other than '*period of limitation*'.

22. He stated that the above said principle has to be applied to the facts of the present case and the "*prescribed period*" for filing having expired on May 31, 2022, when this Court was not closed for

vacations, the applicant was required to file before June 30, 2022. The filing of petition on July 04, 2022 shall make the petition not maintainable. He also stated that the applicant is not entitled to the benefit of Section 4 of the Act of 1963, as the applicability of the provision is premised on the ground, that the filing is made in the “*prescribed period*”.

23. He stated, the reliance on Section 10 of the Act of 1897, is misplaced and a plain reading of the provision will show that the applicability of Section 10 of the Act of 1897 is contingent upon the expiry of the ‘*prescribed period*’. He stated that, in the present case, it has been admitted that the “*prescribed period*” expired on May 31, 2022, even Section 10 of the Act of 1897, will not come to the aid of the petitioner’s case, which is liable to threshold rejection.

24. Mr. Mehta has stated that the reliance placed by the applicant on an administrative notification **No. 48/Estt./EI/DHC** dated May 20, 2022, is misplaced and is merely a manifestation of Section 4 of the Act of 1963 and Section 10 of the Act of 1897, as both of the Sections are inapplicable once the “*prescribed period*” of limitation of three months expires.

25. He stated that the Clause 5 of the said notification stops “*limitation*” during the vacation period, but this will not aid the applicant, as the Supreme Court in **Sagufa Ahmed and Ors. (supra)** has drawn a clear distinction between ‘period of limitation’ and period during which ‘delay can be condoned in exercise of discretion conferred by the statute’.

26. He stated that the judgments relied upon by the applicant did

not examine the meaning of expression '*prescribed period*', as the said issue was not raised before the Supreme Court. He also stated that the judgment of the Supreme Court in *Sridevi Datla (supra)* is at variance with the view taken by the Supreme Court in the cases of *Assam Urban Water Supply and Sewerage Board (supra)* and *Sagufa Ahmed and Ors. (supra)*. Further, he also stated that the judgment of the Supreme Court in the case of *Sridevi Datla (supra)* is not an authority for the meaning to be attributed to the expression "*prescribed period*", as that issue was neither raised nor considered by the Supreme Court.

27. Furthermore Mr. Mehta stated that the judgment relied upon by the petitioner in *Simplex Concrete Piles (India) Ltd. v. UOI, ILR 2010 II Delhi 699*, has no application to the facts of the present case and *Manohar Joshi v. Nitin Bhaurao Patil (1996) 1 SCC 169*, does not deal with the meaning of expression "*prescribed period*" as in the said, judgment, there was no extended period during which delay could be condoned by the Court, which is quite different from the scheme of Section 34 (3) of the Act of 1996. In the said case, the "*period of limitation*" or the "*prescribed period*" was a Court holiday, the petition was filed on the first day of the opening of the Court which was permissible. But in the present case, the facts being different the petitioner is not entitled to the benefit of Section 10 of the Act of 1897.

28. He seeks dismissal of the present application.

29. Having heard the learned counsel for the parties and perused the record, the issue which arises for consideration is whether the present petition, having been filed on July 4, 2022, i.e., on opening of

Courts after vacation, is barred by limitation and as such not maintainable.

30. Though I have delineated the facts in the above paragraphs, for the purpose of clarity, the following dates are required to be mentioned/highlighted:

1. The date of award is February 4, 2022 and copy of the same was sent and received on February 14, 2022.
2. In view of the Judgment of the Supreme Court in ***Suo Moto Writ Petition (Civil) No. 3/2020***, the limitation for filing a petition under Section 34 shall commence only on March 1, 2022.
3. The period of three months in filing the petition expired on May 31, 2022.
4. The condonable period of additional 30 days had expired on June 30, 2022.
5. The petition was filed on July 4, 2022 on the first date of opening of the Court after summer vacation.

31. The submission of Mr. Simran Mehta, learned counsel appearing for the respondent is that the additional 30 days for challenging the impugned award, being not a *prescribed period*, i.e., three months and the additional 30 days having expired on June 30, 2022, the filing of the petition on July 4, 2022 shall be barred by time and the same cannot be condoned. In support of the aforesaid submission, Mr. Mehta has relied upon the judgment of the Supreme Court in the case of ***Sagufa Ahmed and Ors. (supra)***. In the said

Judgment, the Supreme Court has referred to the Judgment in the case of *Assam Urban Water Supply and Sewage Board (supra)*.

32. On the other hand, Mr. Rajiv Nayar has relied upon the Judgment of the Supreme Court in *Sridevi Datla (supra)* wherein, the facts are, the fifth respondent proposed the construction of New Green Field International Airport, for which environmental clearance was required by law and extant statutory notifications. The fifth respondent applied to the Ministry of Environment, Forests and Climate Change ('MoEF' for short) to seek environmental clearance. The MoEF after following the procedure approved the clearance by an order dated August 14, 2017. In terms of Section 19 of the Act of 2010. The approval was posted on website of the MoEF on August 14, 2017.

33. The appellant therein, along with her appeal, preferred an application for condonation of delay in approaching the NGT, given the stipulation of Section 19 which mandates filing of the appeal within 30 days from the date of communication of the impugned order, before NGT on November 13, 2017. It was her case that, since the clearance and related documents were voluminous, the matter required some technical expertise thereby requiring the papers to be forwarded to experts and lawyers in Delhi and in view of the *inter-se* communication delay had occurred and the NGT needs to condone the delay in the interest of justice. The NGT rejected the application and consequently, the appeal was filed before the Supreme Court.

34. It was argued on behalf of the appellant before the Supreme Court that, in the circumstances, the appeal cannot be said to be time barred. It was argued that the date of reckoning limitation is from

August 14, 2017, when the MoEF uploaded the decision on its website. The 90 days period within which the appeal was to be filed expired on November 12, 2017, which was a Sunday. It was submitted that, under Section 10 of the Act of 1897, if any period prescribed ends on a Sunday or a day on which the Court or the Tribunal does not function, the next day should be considered as the terminus quo in point of time.

35. The appeal was opposed by the Union of India stating that the impugned order does not require any interference inasmuch the publication of environmental clearance dated August 14, 2017 was done on August 21, 2017 when the appellant came to know of the same. It is that day which has given cause of action to the appellant to approach the NGT. That apart it was argued that the period of limitation prescribed is actually 30 days of filing of appeal and the further period of 60 days is only by way of acceptance of application for condonation of delay. Thus, no appeal is maintainable after expiry of 90 days.

36. The Supreme Court, on the argument on behalf of the appellant, held that the NGT should have considered the issue whether the appeal was filed within the extended period prescribed under the proviso to Section 16, i.e., within 60 days after the expiry of the initial 30 days period stipulated in the main provision. It was also argued on behalf of the appellant that, since there is no intention to the contrary, the appeal is to be considered as having been filed within the extended period of 60 days, since the last day was a Sunday. The appellant relied upon Section 10 of the Act of 1897 for that purpose. The Supreme Court in paragraphs 21 and 22 on which heavy reliance has been

placed by Mr. Nayar, was of the following view:

“21. Section 10 of the General Clauses Act, 1897 stipulates that when the last date for doing something falls on a public holiday, the act “shall be considered as done..” if it “is done or taken on the next day afterwards on which the Court or office is open”. This provision applies to all Central Acts enacted after the said Act was brought into force. The scope of this provision was considered by this Court in H.H. Raja Harinder Singh v. S. Karnail Singh¹³ by a four judge Bench, which explained the object of Section 10 and held as under:

“5. ... Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday.”

22. Other decisions have followed the same reasoning. It is also noticeable that there is no indication in the NGT Act that Section 10 of the General Clauses Act cannot be applied. It is therefore, held that the provision applies proprio vigore to all appeals filed under the NGT Act.”

37. In other words, it was his submission that, for the purpose of extended period beyond the prescribed period, Section 10 of the Act of 1897, shall have applicability. In other words, when the last date for doing something falls on a public holiday that can be considered as done, if it is done or taken on the next day on which the Court or office is open. The Supreme Court in *Sridevi Datla(supra)*, has also referred to its earlier Judgment in the case of *H.H. Raja Harinder Singh (supra)*, wherein in paragraph 5, the following has been stated:

“5. This argument proceeds on an interpretation of Section 10

of the General Clauses Act which, in our opinion, is erroneous. Broadly stated, the object of the section is, to enable a person to do what he could have done on a holiday, on the next working day. Where, therefore, a period is prescribed for the performance of an act in a court or office, and that period expires on a holiday, then according to the section the Act should be considered to have been done within that period, if it is done on the next day on which the court or office is open. For that section to apply, therefore, all that is requisite is that there should be a period prescribed, and that period should expire on a holiday. Now, it cannot be denied that the period of fourteen days provided in Rule 119 (a) for presentation of an election petition is a period prescribed, and that is its true character, whether the words used are “within fourteen days” or “not later than fourteen days”. That the distinction sought to be made by the appellant between these two expressions is without substance will be clear beyond all doubt, when regard is had to Section 81 of the Act. Section 81(1) enacts that the election petition may be presented “within such time as may be prescribed”, and it is under this Section that Rule 119 has been framed. It is obvious that the rulemaking authority could not have intended to go further than what the section itself had enacted, and if the language of the Rule is construed in conjunction with and under the coverage of the section under which it is framed, the words “not later than fourteen days” must be held to mean the same thing as “within a period of fourteen days”. Reference in this connection should be made to the heading of Rule 119 which is, “Time within which an election petition shall be presented”. We entertain no doubt that the legislature has used both the expressions as meaning the same thing, and there are accordingly no grounds for holding that Section 10 is not applicable to petitions falling within Rule 119.”

38. In so far as the judgment in the case of **Manohar Joshi** (*supra*), which was relied upon by Mr. Nayar is concerned, the facts as noted from the Judgment are; Manohar Joshi was the candidate of the

BJP-Shiv Sena Alliance at an election, while the original election petitioner Bhaurao Patil was the candidate of the Congress (I) Party. Manohar Joshi secured highest number of votes, i.e., 47,737 while Bhaurao Patil secured 24,354 votes and accordingly, Manohar Joshi was declared as elected on March 1, 1990. The last date of filing the election petition according to the limitation prescribed under sub-section (1) of Section 81 of the Representation of the People Act ('RP Act', for short) was April 14, 1990, but the election petition was actually presented in the Bombay High Court on April 16, 1990. It is also admitted that April 14, 1990 was a Saturday on which date, the High Court as well as its office was closed and April 15, 1990, was a Sunday on which date also the High Court as well as its office was closed. Therefore the election petition could not have been presented on either of these two dates.

39. The question which arose before the Supreme Court related to the compliance of Section 81 of the RP Act which renders the election petition as not maintainable under Section 86 of the RP Act. The High Court rejected the contention that the election petition was time-barred.

40. The Supreme Court after noting the provisions of Sections 81, 83 and 86 (1) has in paragraph 8 stated as under: -

“8. In substance, the point for decision is whether the election petition filed on 16-4-1990 was presented within 45 days from the date of election of the returned candidate as required by sub-section (1) of Section 81, since the last day of limitation, so reckoned, fell on 14-4-1990. Admittedly, the High Court and its office was closed on 14-4-1990 as well as 15-4-1990 on account of which the election petition could not have been presented in the High Court on any of these two days.

Incidentally, even 13-4-1990 was a holiday when the High Court and its office was closed, but that is not of any significance since the last day of limitation was 14-4-1990. There is no controversy that the provisions of the Limitation Act, 1963 are not applicable to the election petitions required to be presented under the R.P. Act and, therefore, Section 4 of the Limitation Act is of no avail. The only question is whether Section 10 of the General Clauses Act, 1897 applies to an election petition to permit filing of the election petition on the date when the High Court opened after the holidays. If Section 10 of the General Clauses Act is applicable then the election petition presented on 16-4-1990 was within the time prescribed by sub-section (1) of Section 81 and there would be no non-compliance of that provision to attract Section 86(1) of the R.P. Act requiring dismissal of the election petition as time-barred.”

41. The Supreme Court has also in paragraph 9 noted Section 10 of the Act of 1897, as under:

*“9. The submission of Shri Jethmalani is that the R.P. Act is a self-contained code and, therefore, no provision outside the Act can be imported for the purpose of computing the limitation for presentation of an election petition. On this basis, he submitted that Section 10 of the General Clauses Act has no application. In reply, Shri Ashok Desai, learned counsel for the respondents, submitted that the scheme of the R.P. Act and the legislative history of the limitation prescribed by the Act for presentation of an election petition clearly show that Section 10 of the General Clauses Act applies for computing limitation for presentation of an election petition. Shri Desai also relied on the legal maxim — *lex non cogit ad impossibilia* — which means “the law does not compel a man to do that which he cannot possibly perform”. Shri Desai submitted that the election petitioner was entitled as of right to present the election petition on the last day of limitation which fell on 14-4-1990, but that day and the next day being holidays when the High Court and its office was closed, the election petition presented on 16-4-1990, the first day on which the Court and*

its office opened after the holidays, was presented within the prescribed period of limitation. On this basis, Shri Desai submitted, there was no non-compliance of sub-section (1) of Section 81 of the R.P. Act. ”

42. In paragraphs 12, 13 and 15, the Supreme Court has held as under:

“12. A similar question relating to applicability of Section 10 of the General Clauses Act arose when the limitation was prescribed by the Rules as required by the then existing sub-section (1) of Section 81 in H.H. Raja Harinder Singh v. S. Karnail Singh [1957 SCR 208 : AIR 1957 SC 271] . It was held by this Court that Section 10 of the General Clauses Act is applicable to the presentation of election petitions. Thereafter, the same view has been taken in Hukumdev Narain Yadav v. Lalit Narain Mishra [(1974) 2 SCC 133 : (1974) 3 SCR 31] ; Hari Shanker Tripathi v. Shiv Harsh [(1976) 1 SCC 897 : (1976) 3 SCR 308] and Simhadri Satya Narayana Rao v. M. Budda Prasad [1994 Supp (1) SCC 449 : (1991) 1 SCJ 281] . The later decisions were in relation to election petitions filed after amendment of Section 81(1) by Act 27 of 1956 prescribing the limitation in this section itself. Shri Jethmalani tried to distinguish those decisions on the ground that the earlier decision in H.H. Raja Harinder Singh v. S. Karnail Singh [1957 SCR 208 : AIR 1957 SC 271] was followed without noticing the legislative change by amendment of sub-section (1) of Section 81. In view of the fact that this point was not raised in the manner it has been done by Shri Jethmalani before us, it is appropriate that we consider the merit of this submission.

13. It is settled by the decision of this Court in Ramlal v. Rewa Coalfields Ltd. [(1962) 2 SCR 762 : AIR 1962 SC 361] (SCR at p. 767) that the litigant has a right to avail of limitation up to the last day and his only obligation is to explain his inability to present the suit/petition on the last day of limitation and each day thereafter till it is actually presented. This being the basic premise, it cannot be doubted that the election petitioner in the

present case was entitled to avail of the entire limitation of 45 days up to the last day, i.e., 14-4-1990 and he was required to explain the inability of not filing it only on 14-4-1990 and 15-4-1990 since the petition was actually presented in the High Court on 16-4-1990. If Section 10 of the General Clauses Act applies, the explanation is obvious and the election petition must be treated to have been presented within time.

15. In view of the basic premise that the election petitioner is entitled to avail of the entire limitation of 45 days for presentation of the election petition as indicated by Ramlal [(1962) 2 SCR 762 : AIR 1962 SC 361] , if the contrary view is taken, it would require the election petitioner to perform an impossible task in a case like the present, to present the election petition on the last day of limitation on which date the High Court as well as its office is closed. It is the underlying principle of this legal maxim which suggests the informed decision on this point, leading to the only conclusion that Section 10 of the General Clauses Act applies in the computation of the limitation prescribed by sub-section (1) of Section 81 of the R.P. Act for presentation of an election petition. So computed, there is no dispute that the election petition presented in the present case on 16-4-1990 was within limitation and there was no non-compliance of sub-section (1) of Section 81 of the R.P. Act.”

43. In so far as the judgment in the case of **Rambir Narhargir Gosai (supra)** is concerned, the facts in the said case are the appellant before the High Court was the plaintiff, who filed a suit of title after dispossession, for possession with regard to certain lands. The claim for possession as well as mesne profit was decreed by the Trial Court. The appellate Court further modified the decree by decreeing joint possession of only half the interest in the fields/land in the suit and dismissing the claim for mesne profits. The respondents / defendants

filed cross-objections. The issue before the Division Bench was whether Section 4 of the Act of 1963 applies to the cross-objections filed under Order XLI Rule 22 of the CPC. The appellant urged that the cross-objection was barred by time. It was not disputed that the respondents received the memo of appeal on May 19, 1948 and filed the cross-objection on June 21, 1948. The period of one month which was given under Order XLI Rule 22 of the CPC expired during the summer vacation and the cross-objection was filed on the re-opening after the vacation. The Court held Section 4 of the Act of 1963 and Section 10 of the Act of 1897 embody the general principles enshrined in two maxims *lex non cogit ad impossibilia* and *actus curiae neminem gravabit*. Even if section 4 of the Act of 1963 is not applicable, as contended by the appellant, the respondents can invoke Section 10 of the Act of 1897. If neither of the provisions can assist the respondents, they can still invoke the general principles embodied in judgment of the Supreme Court in ***Dhanusingh v. Keshoprasad, AIR 1923 Nag 246 (D)***.

44. I am not in agreement with the submissions made by Mr.Nayar, in view of the position of law as laid down by the Supreme Court in ***Assam Urban Water Supply and Sewage Board (supra)*** and also in ***Sagufa Ahmed and Ors. (supra)***. Since the Judgment in ***Sagufa Ahmed and Ors. (supra)*** is of three Hon'ble Judges, I intend to deal with the same at the first instance, as according to me, the issue in hand is covered by the said judgment.

45. In ***Sagufa Ahmed and Ors. (supra)***, the appellants before the Supreme Court claimed to hold 24.89% shares of a Company namely

Upper Assam Plywood Products (P) Ltd., which is the first respondent before the Supreme Court. The appellants moved an application before the Gauhati Bench of the National Company Law Tribunal ('NCLT', for short) for the winding up of the company. The said petition was dismissed by the NCLT by an order dated October 25, 2019. According to the appellants, they applied for a certified copy of order of the NCLT dated October 25, 2019 on November 21, 2019. According the appellants, the certified copy of the order dated October 25, 2019 passed by the NCLT was received by their counsel on December 19, 2019 pursuant to the application made on November 21, 2019. Though the appellants admittedly received certified copy of the order on December 19, 2019, they chose to file the statutory appeal before the National Company Law Appellate Tribunal (NCLAT) only on July 20, 2020.

46. The appeal was filed along with an application for condonation of delay. By an order dated August 4, 2020, the Appellate Tribunal dismissed the application for condonation of delay on the ground that the Tribunal has no power to condone the delay beyond the period of 45 days, resulting in dismissal of the appeal as well. It is against the dismissal of the application as well as the appeal that the appellants had approached the Supreme Court.

47. The contention raised by the counsel for the appellants were: (i) the Tribunal erred in computing the period of limitation from the date of the order of Tribunal contrary to Section 421 (3) of the Companies Act, 2013 and (ii) the Appellate Tribunal failed to take note of the lockdown as well as the order passed by the Supreme Court on

March 23, 2020 in a ***Suo Moto Writ Petition (C) No.3/2020***, extending the period of limitation of filing in any proceedings w.e.f March 15, 2020 until further orders.

48. On contention No.1, the Supreme Court referred to the provisions of Section 420 (3) of the Companies Act, 2013, which mandates Tribunal to send a copy of every order passed under Section 420 (3) to all the parties concerned. The Supreme Court in paragraphs 9 and 10 noted as under:

“9.XXXX XXXX XXXX
420. Orders of Tribunal (1)-(2)
(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned”.

10. Rule 50 of the National Company Law Tribunal Rules, 2016 also mandates the Registry of the NCLT to send a certified copy of the final order to the parties concerned free of cost. However, Rule 50 also enables the Registry of the NCLT to make available the certified copies with cost as per schedule of fees in all other cases (meaning thereby ‘to persons who are not parties’). Rule 50 reads as follows:

“50. Registry to send certified copy. The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per the schedule of fees, in all other cases. ””

49. The Supreme Court has also referred to Rule 50 of the National Company Law Tribunal Rules, 2016 which stipulates that the Registry shall send a certified copy of the final order to the parties free of cost. That apart, the Supreme Court has also referred to Section 421 (1) of the Companies Act, 2013 which provides for a remedy of appeal to the Appellate Tribunal against the order of Tribunal. Sub-Section 3

of Section 421 prescribes the period of limitation for filing the appeal and the proviso therein confers a limited discretion upon the Appellate Tribunal to condone the delay. Sub-Section 3 of Section 421 is reproduced as under:

“421. Appeal from orders of Tribunal (1)-(2)

(3) Every appeal under subsection (1) shall be filed within a period of forty five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty five days from the date aforesaid, but within a further period not exceeding forty five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.”

50. The Supreme Court noting the above provision, has in paragraph 15 held as under:

“By virtue of the proviso to Section 421(3), the Appellate Tribunal was empowered to condone the delay up to a period of period of 45 days. This period of 45 days started running from 02.02.2020 and it expired even according to the appellants on 18.03.2020. The appellants did not file the appeal on or before 18.03.2020, but filed it on 20.07.2020. It is relevant to note that the lock down was imposed only on 24.03.2020 and there was no impediment for the appellants to file the appeal on or before 18.03.2020. To overcome this difficulty, the appellants rely upon the order of this Court dated 23.03.2020. This takes us to the second contention of the appellants.”

(emphasis supplied)

51. On contention No. 2, the Supreme Court referred to its order dated March 23, 2020 in the ***Suo Moto Petition No. 3/2020***, and held

that the appellants cannot take refuge under the said order, as according to the Supreme Court the said order was intended to benefit the litigants who are prevented due to the pandemic and lockdown, from initiating proceedings within the period of limitation prescribed by general or special law. It also referred to Section 10 of the Act of 1897, which is reproduced as under:

“10. Computation of time.- (1) Where, by any 19 [Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877 (15 of 1877), applies.

(2) This section applies also to all [Central Acts] and, Regulations made on or after the fourteenth day of January, 1887.”

52. The Supreme Court in paragraph 19, was of the view that the principle forming the basis of Section 10 (1) of the Act of 1897, also finds a place in Section 4 of Act of 1963.

“19. The principle forming the basis of Section 10(1) of the General Clauses Act, also finds a place in Section 4 of the Limitation Act, 1963 which reads as follows:

“4. Expiry of prescribed period when court is closed. — Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.— A court shall be deemed to be closed on any

day within the meaning of this section if during any part of its normal working hours it remains closed on that day.””

53. In paragraphs 20-22, the Supreme Court has held as under:

“20. The words “prescribed period” appear in several Sections of the Limitation Act, 1963. Though these words “prescribed period” are not defined in Section 2 of the Limitation Act, 1963, the expression is used throughout, only to denote the period of limitation. We may see a few examples:

*20.1. Section 3(1) makes every proceeding filed after the **prescribed period**, liable to be dismissed, subject however to the provisions in Sections 4 to 24.*

*20.2. Section 5 enables the admission of any appeal or application after the **prescribed period**.*

*20.3. Section 6 uses the expression **prescribed period** in relation to proceedings to be initiated by persons under legal disability.*

*21. Therefore, the expression “prescribed period” appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the **prescribed period**, during which the Court or Tribunal has the discretion to allow a person to institute the proceedings, cannot be taken to be “prescribed period”.*

*22. In **Assam Urban Water Supply and Sewerage Board Versus Subash Projects and Marketing Limited**, this Court dealt with the meaning of the words “prescribed period” in paragraphs 13 and 14 as follows:*

“13. The crucial words in Section 4 of the 1963 Act are “prescribed period”. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines”

“2(j) 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation Schedule computed in accordance with the provisions of this Act.

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows subsection (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to subsection (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case."

(emphasis supplied)

54. From the above, it is noted that three Hon'ble Judges of the Supreme Court have held that the words "*prescribed period*" appearing in Section 4 of the Act of 1963 cannot be construed to mean anything other than the period of limitation. Any period beyond the '*prescribed period*' during which the Court or the Tribunal has the discretion to allow a person to institute the proceedings cannot be taken to be '*prescribed period*'.

55. The Supreme Court in ***Assam Urban Water Supply and Sewage Board (supra)***, was concerned with a dispute between the parties which was adjudicated by a sole arbitrator who passed two awards in favour of the respondents on August 22, 2003. These awards were received by the appellants on August 26, 2003. On January 2, 2004, the appellants made two applications for setting aside the awards dated August 22, 2003 under Section 34 of the Act of 1996. These applications were accompanied by two separate applications for

extension of time under Section 34 (3) of the Act of 1996. The District Judge, Kamrup (Gauhati) dismissed the appellant's applications under Section 34 on June 1, 2004 and June 5, 2004 on the ground of limitation.

56. The challenge before the Gauhati High Court in two separate arbitration appeals, were rejected. It was contended that the Judgment in *Union of India v. Popular Construction Co., (2001) 8 SCC 470*, has no application to the facts of that case. Reliance was placed on Section 2 (j) of the Act of 1963 which defines the period of limitation and Section 43 of the Act of 1996 makes the Act of 1963 applicable to arbitration matters.

57. On the other hand, the case of the respondents was that the High Court did not commit any error in upholding the view of the District Judge, Kamrup, Gauhati as the High Court's view was consistent with Section 34 (3) of the Act of 1996. The Supreme Court has referred to provisions of Section 34 (3) which provides that an application for setting aside the award shall be filed within three months and that on sufficient cause being shown, the Court may entertain the application for setting aside the award after the period of three months and within a further period of 30 days, but not thereafter.

The Supreme Court has in paragraphs 9 to 14 held as under:

“9. Section 43(1) of the 1996 Act provides that the 1963 Act shall apply to arbitrations as it applies to proceedings in court. The 1963 Act is thus applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of the express provision contained in Section 34(3) of the 1996 Act.

10. The facts in the present case are peculiar. The arbitral awards were received by the appellants on August 26, 2003. No application for setting aside the arbitral awards was made by the appellants before elapse of three months from the receipt thereof. As a matter of fact, three months from the date of the receipt of the arbitral award by the appellants expired on November 26, 2003. The District Court had Christmas vacation for the period from December 25, 2003 to January 1, 2004. On reopening of the court, i.e., on January 2, 2004, admittedly, the appellants made applications for setting aside those awards under Section 34 of the 1996 Act. If the period during which the District Court, Kamrup, Guwahati, remained closed during Christmas vacation, 2003 is extended and the appellants get benefit of that period over and above the cap of thirty days as provided in Section 34(3), then the view of the High Court and the District Judge cannot be sustained. But this would depend on the applicability of Section 4 of the 1963 Act.

11. The question, therefore, that falls for our determination is – whether the appellants are entitled to extension of time under Section 4 of the 1963 Act in the above facts.

12. Section 4 of the 1963 Act reads as under :-

“4. Expiry of prescribed period when court is closed.- Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation.-A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.”

The above Section enables a party to institute a suit, prefer an appeal or make an application on the day court reopens where the prescribed period for any suit, appeal or application expires on the day when the court is closed.

13. The crucial words in Section 4 of the 1963 Act are 'prescribed period'. What is the meaning of these words?

14. Section 2(j) of the 1963 Act defines 'period of limitation' which means the period of limitation prescribed for any suit, appeal or application by the Schedule, and 'prescribed period' means the period of limitation computed in accordance with the provisions of this Act.

Section 2(j) of the 1963 Act when read in the context of Section 34(3) of the 1996 Act, it becomes amply clear that the prescribed period for making an application for setting aside arbitral award is three months. The period of 30 days mentioned in proviso that follows sub-section (3) of Section 34 of the 1996 Act is not the 'period of limitation' and, therefore, not 'prescribed period' for the purposes of making the application for setting aside the arbitral award. The period of 30 days beyond three months which the court may extend on sufficient cause being shown under the proviso appended to sub-section (3) of Section 34 of the 1996 Act being not the 'period of limitation' or, in other words, 'prescribed period', in our opinion, Section 4 of the 1963 Act is not, at all, attracted to the facts of the present case."

58. From the above narration of the Supreme Court in **Assam Urban Water Supply and Sewage Board (supra)**, it is clear that the "prescribed period" is the three months' time provided under sub-section 3 of Section 34 of the Act of 1996. The period of 30 days beyond three months which the Court may extend on sufficient cause is not the period of limitation or in other words, the 'prescribed period' and as such, there is no applicability of Section 4 of the Act of 1963.

59. Reading the above with the conclusion of the Supreme Court in **Sagufa Ahmed and Ors. (supra)** which also refers to Section 10 of the Act of 1897 though, the 30 days expired on June 30, 2022, during the period of vacation, the petitioner cannot get the advantage of Section 10 of the Act of 1897 being *pari-materia* to Section 4 of the

Act of 1963.

60. Having said that, Mr. Nayar has also relied upon the Notification(supra),dated May 20, 2022, of this Court more specifically clause 5 thereof, which reads as under:

“5. Limitation will not run during the vacation period for purposes of institution of Civil and Criminal Cases.”

61. I find that Clause 7 of the notification also has some effect on the issue in hand and is reproduced as under:

“7. Suits, Appeals, Applications or other proceedings, which are to be filed on the re-opening day, may also be instituted /preferred or made in regular course between 10.00 A.M. and 4.00 P.M. from Monday, the 27th June, 2022 to Saturday, the 2nd July, 2022 as per convenience of the parties though for the purpose of limitation the Court re-opens only on 04.07.2022.”

62. This said submission of Mr. Nayar has been countered by Mr. Mehta by stating that the Clause 7, only enables the filing of proceedings, i.e., *"which are to be filed on the re-opening day"* on July 04, 2022, as is clear from the opening words of the said clause. He also stated that, Clause 7 is merely a manifestation of Section 4 of the Act of 1963 and Section 10 of the Act of 1897, both of which are inapplicable once the *'prescribed period'* of limitation of three months has expired prior to the commencement of vacations. I agree with the submission of Mr. Mehta.

63. The plea of Mr. Nayar that, as the additional period of 30 days expired during vacation, it was impossible for the petitioner to file the petition during that period, is also unsustainable for the above reasons.

Mr. Mehta is also right to say that, Clause 7 of the notification dated May 20, 2022, is primarily relatable to Section 4 of the Act of 1963 and Section 10 of the Act of 1897, which in fact contemplates the stipulation / position when limitation is expiring on a public holiday. In fact, Clause 7 of the notification shall not help the case of the petitioner, rather it demolishes the case as set up by the petitioner, inasmuch as, it clearly contemplates that suits, appeals, applications or other proceedings which are to be filed on the re-opening day may also be instituted / preferred or made in regular course between 10:00 AM and 4:00 PM from Monday, June 27, 2022 to Saturday, July 2, 2022 as per the convenience of the parties, though for the purpose of limitation, the Court re-opens only on July 4, 2022. In other words, the petitioner could have filed the appeal on or before June 30, 2022, as he was within the extended period of 30 days as permissible under Section 34 (3) of the Act of 1996. So, it is not a case where the petitioner could not have filed the petition before the expiry of the extended period.

64. One of the submissions of Mr. Nayar was that the Supreme Court in case of **Sagufa Ahmed and Ors. (supra)**, has only referred to Section 10 (1) of the Act of 1897 and has not discussed the applicability of the said section in a situation where Section 4 of the Act of 1963 is inapplicable.

65. I am not in agreement with the said submission of Mr. Nayar in view of paragraph 19 of the judgment in **Sagufa Ahmed and Ors. (supra)**, wherein, the Supreme Court has clearly held that forming the basis of Section 10 (1) of the Act of 1897 also finds a place in Section 4 of the Act of 1963. In that perspective, the Supreme Court in

paragraph 21 has held that the expression appearing in Section 4 cannot be construed to mean anything other than the period of limitation. Any period beyond the '*prescribed period*' during which the Court or Tribunal has discretion to allow a person to institute the proceedings cannot be taken to be a '*prescribed period*'.

66. I must clarify here that much reliance has been placed by Mr. Nayar on the judgment of the Supreme Court in *Sridevi Datla (supra)*. In the said case the Supreme Court has not considered the issue from the perspective whether the extended period of 30 days can be construed as a '*prescribed period*' so as to make Section 10 of the Act of 1897 applicable. Section 10 would only come into play during / within the '*prescribed period*', which is 30 days under the NGT Act to file an appeal.

67. In view of my discussion above, I am of the view that the application for condonation of delay cannot be accepted. The same is dismissed. Consequently, the petition is also rejected.

IA 11690/2022 (for stay)

In view of the order passed in the petition, the present application has become infructuous and is dismissed as such.

V. KAMESWAR RAO, J

FEBRUARY 07, 2023/aky