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

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Date of Decision: 24.04.2024+ **FAO (COMM) 71/2024 & CM APPL. 23692-93/2024****SMALL FARMERS AGRI-BUSINESS
CONSORTIUM (SFAC)**

..... Appellant

Through: Mr. Yogesh Pachauri, Adv. with Mr.
Sushil Kumar, Adv.

versus

**M/S K.D. AGRO INDUSTRIES THROUGH
ITS PROPRIETOR KAILASH AGGARWAL**

..... Respondent

Through:

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE TARA VITASTA GANJU****VIBHU BAKHRU, J. (Oral)**

1. The appellant has filed the present appeal under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 (hereafter the *A&C Act*) impugning a judgment dated 29.11.2023 (hereafter the *impugned judgment*) passed by the learned Commercial Court in O.M.P.(COMM) 28/2022 captioned *Small Farmers Agri Business Consortium v. M/s KD Agro Industries & Anr.*

2. The appellant had filed the said petition under Section 34 of the A&C Act assailing an Arbitral Award dated 10.02.2022 (hereafter the *impugned award*). The impugned award was rendered in the context of the disputes that had arisen between the parties in connection with an agreement dated



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05.03.2008 (hereafter the *Agreement*). The appellant's claim for recovery of venture capital loan advanced to the respondent was rejected by the Arbitral Tribunal as barred by limitation. The appellant's application under Section 34 of the A&C Act to set aside the impugned award was also rejected.

3. Thus, the principal controversy is whether the Arbitral Tribunal's conclusion that the appellant's claim was barred by limitation vitiates the impugned award on the ground of patent illegality.

4. The appellant is a society registered under the Societies Registration Act, 1860 and is engaged in lending financial assistance to small farmers for agricultural business. The respondent is carrying on the business related to agriculture under the name of his sole proprietorship concern named KD Agro Industries.

5. In terms of the Agreement, the appellant had extended a venture capital loan to the respondent. The venture capital loan was an interest free loan, to supplement the proprietor's contribution including for the purposes of availing loan from banks. In terms of the Agreement, the venture capital loan would be deemed to be a loan from the dates the lending bank (State Bank of India) actually recovers the term loan or on the end date of the term loan, whichever is earlier.

6. It is not disputed that in terms of the said Agreement, the scheduled date for repayment was 01.04.2014. The appellant claims that it lent a sum of ₹35,00,000/- to the respondent and the same was repayable on 01.04.2014 in terms of the Agreement. The respondent failed to repay the said amount within time. In these circumstances, the appellant commenced the arbitral proceedings and filed his claim on 02.06.2017 for an amount of ₹51,08,125/-



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(being ₹35,00,000/- as principal and ₹16,08,125/- being the interest amount) at the rate of 14.05% per annum. The Arbitral Tribunal rejected the claim on the ground that it is barred by limitation.

7. It is the appellant's case that the Arbitral Tribunal grossly erred in assuming that the cause of action had arisen on 01.04.2014. He claims that the State Bank of India (hereafter *SBI*) had recovered the loan on 01.06.2018, pursuant to the proceedings instituted before the Debts Recovery Tribunal, Guwahati. Thus, the period of limitation would commence on 01.06.2018. Since the claim was made prior to the said date, it was not barred by limitation.

8. As stated above, the Agreement entered into between the parties is essentially to supplement financial assistance availed by the respondent from SBI. The appellant had extended the interest free loan to the respondent so as to not add to the respondent's interest burden as the loan availed from SBI would necessarily carry interest. However, the venture capital loan was repayable on a defined date. Since the venture capital loan was granted free from interest for the reasons as stated above, the Agreement also provided that in the event the loan availed from the lending bank was repaid before the scheduled date (being the date on which venture capital loan was to be returned), the amount of venture capital would bear the interest and would be treated as an interest bearing loan.

9. Clause 3 of the said Agreement is relevant and set out below:

'3. That the Venture Capital amount will automatically deemed to be a loan from the date the Lending Bank has actually recovered its term loan or on the schedule end date of term loan, whichever is earlier. It may, however, be clarified that in the event of re-schedulement of the bank's term loan, the entrepreneur is, however, required to refund the



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venture capital amount as per the original prescribed schedule because venture capital amount of SFAC is interest free and financial assistance is to be given to other eligible entrepreneurs for setting up of agribusiness projects.’

10. Undisputedly, the venture capital loan was to be refunded by the respondent to the appellant on or before 01.04.2014. It is also stated that the respondent had, in fact, issued a cheque for a sum of ₹35,00,000/- (Cheque no. 000260 dated 01.04.2014). However, the same was dishonoured on presentation on 09.04.2014. Thereafter, the appellant had issued a demand notice dated 28.04.2014 calling upon the respondent to repay the amount due. Thereafter, the appellant had invoked the Arbitration by a letter dated 31.05.2017, which was received by the arbitral institution (ICA) on 02.06.2017.

11. Thus, the arbitral proceedings commenced on 02.06.2017 in terms of Section 21 of the A&C Act. The respondent resisted the claim on the ground that it was barred by limitation. In view of the disputes, the Arbitral Tribunal framed an issue whether the claim was barred by the limitation, which was decided against the appellant.

12. The Arbitral Tribunal noted that the cause of action for recovery of loan would have arisen on 01.04.2014 as the loan was repayable on or before the said date and the respondent had allegedly defaulted in repayment of the loan. The proceedings were required to have been initiated within a period of three years from the said date, that is, on or before 31.03.2017. However, the appellant had filed the said claim on 31.05.2017. As noted above, the respondent had also issued a cheque for repayment of loan which was dishonoured on 09.04.2014. Thus, in any event, the time period



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available for instituting recovery proceedings would expire on 09.04.2017. Since, the arbitral proceedings commenced on 02.06.2017, the Arbitral Tribunal found that the same was beyond the period of limitation.

13. The learned Commercial Court had also examined the appellant's contention in this regard and found no infirmity with the impugned award.

14. The learned counsel appearing for the appellant contends that the appellant had extended the venture capital loan only for the purpose of assisting the respondent. The appellant is a non-profit organisation and, therefore, it is essential that its funds are available for assisting other persons in need of such assistance. He also submits that since, SBI had recovered the loan from the respondent on 01.06.2018, the cause of action would commence on the said date.

15. We are unable to accept the said contention. First of all, the date on which SBI had recovered the loan is not relevant for determining the date on which the cause of action had arisen for the appellant to institute the proceedings to recover the assistance lent by it. Reliance on Clause 3 of the Agreement is clearly misplaced as the venture capital loan would be deemed to be a loan from the date the lending bank (in this case SBI) actually recovered its term loan or on the schedule end date of the term loan, whichever is earlier. The said Clause also provides that the respondent would be required to refund the venture capital amount as per the prescribed schedule. Thus, there is no dispute as to the date on which the respondent was obliged to return the venture capital loan provided by the appellant. Therefore, cause of action would arise on the said date. It is also material to note that, in its statement of claims, the appellant had not claimed that the



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cause of action would arise from the date of recovery of loan by SBI as is now sought to be raised by the appellant.

16. It is also not disputed that the appellant had issued demand notice dated 28.04.2014, *inter alia*, stating that the loan had become due and payable on 01.04.2014.

17. In view of the above, we are unable to accept that the impugned award warrants interference under Section 34 of the A&C Act. The impugned award is neither in conflict with the Public Policy of India nor is vitiated by patent illegality. The appeal is unmerited and is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

APRIL 24, 2024
SA