$~63

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

Date of decision: 14.05.2026

\+ O.M.P. (COMM) 397/2024

SAHAYOG MICROMANAGEMENT & ORS. ...Petitioners
Through: Mr. Aayush Agarwala, Ms. Mukti Heliwal & Mr. Gaurav Verma, Advs.

versus

NATIONAL SKILL DEVELOPMENT CORPORATION .....Respondent
Through: Mr. Sandeep Bajaj, Ms. Aakanksha Nehra, Ms. Himangi Arora & Mr. Shubham Jaiswal, Advs.

CORAM:
HON'BLE MR. JUSTICE AVNEESH JHINGAN

AVNEESH JHINGAN, J. (ORAL)

1. This petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for short 'the Act') seeking setting aside of the arbitral award dated 16.04.2024 (for brevity 'the award').

2. The brief facts as borne out from the record are that the petitioner no.1, a private limited company (hereinafter 'the petitioner') availed a loan facility of Rs.7,80,00,000/- (rupees seven crore and eighty lacs) from the respondent. A loan agreement (hereinafter 'the agreement') dated 21.01.2014 was executed between the parties to the *lis* whereunder the tenure of the loan was fixed as nine years and three months. The petitioner nos.2 and 3 were the personal guarantors and executed deeds of guarantee dated 21.01.2014.

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

2.1 The petitioner failed to adhere to the financial discipline as per the agreement and on 22.11.2016, a notice was issued intimating delay and default in repayment of the outstanding amount. Another notice dated 22.02.2017 was issued for the purported delay and default in payment of interest and outstanding dues. On failure of the petitioner to clear the dues on 26.06.2018, the respondent issued notice calling upon the petitioner to pay an outstanding amount of Rs.8,70,28,940/- (rupees eight crore seventy lacs twenty-eight thousand nine hundred and forty) within fifteen days from the date of receipt thereof. Vide notice dated 20.08.2018, the respondent invoked the personal guarantees furnished by petitioner nos.2 and 3. On 03.09.2021, a demand notice was issued calling upon the petitioner to repay an amount of Rs.10,53,27,597/- (rupees ten crores fifty-three lacs twenty-seven thousand five hundred and ninety-seven) within forty-five days. The petitioner failed to discharge the contractual obligations.

2.2 Notice dated 06.01.2022 was issued under Section 21 of the Act for invoking arbitration as per clause 10.2 of the agreement. The arbitral tribunal (for brevity 'the tribunal') passed the impugned award and hence, the present petition.

3. Learned counsel for the petitioner submits that default in repayment of loan occurred in November, 2016 and notice was issued on 22.11.2016 and the invocation of arbitration on 06.01.2022 is time barred. The argument is that on failure of the petitioner to cure the defects within forty-five days from 22.11.2016, the limitation started ticking.

3.1 It is contended that the law of limitation is from the accrual of the right to sue and not from the stage the right is sought to be exercised. The

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

decisions in ***Sundaram Finance v. Noorjahan Beevi***, (2016) 13 SCC 1, ***Amin Tharani v. Kotak Mahindra Prime Ltd.***, Manu/Mh.1538/2009, ***Shriram Transport v. V. Balanisamy and State Bank of India v. Ravindra***, 1999 SCC OnLine Kar 233 are relied to contend that the limitation commences from the date of occurrence of the default and is not dependent upon the subsequent exercise of right.

3.2 Learned counsel further assails the findings recorded by the tribunal that cause of action was recurring in nature. It is contended that the tribunal erred in holding that the notice dated 22.11.2016 was issued under clause 5.1 of the agreement. Reliance is placed upon the decisions of the Allahabad High Court in ***Mansab Ali v. Gulab Channd***, 1887 [ILR 10 All 85] and ***Bhagwant Singh v. Daryao Singh***, ILR 1889 11 AII 416 to argue that in case of default in repayment of loan, the cause of action is not recurring.

3.3 Lastly, it is argued a moratorium was operating *qua* petitioner no.2 and the tribunal erred in continuing the arbitral proceedings. Reliance is placed upon the decision in ***Tata Capital Ltd. v. Geeta Passi***, MANU/MH/3641/2024.

4. *Per contra*, the scope of interference under Section 34 of the Act is limited. The tribunal after due considering the clauses of the agreement and the judicial authorities recorded detailed findings holding the claim to be within limitation.

4.1 The argument is that the award cannot be interfered with merely because another view is possible. This court does not sit in appeal over the award. Reliance is placed upon clauses 5.1, 5.2, 5.4 and 5.5 of the agreement to submit that the cause of action arose on recalling of the loan and the

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

initial notices were issued to provide an opportunity to the petitioner to clear the outstanding.

4.2 The contention of the petitioners that the impugned award is vitiated for violation of the provisions of the Insolvency and Bankruptcy Code, 2016 (for short 'IBC') is refuted. Submission is that this fact was never brought to the notice of the tribunal and moratorium only suspends the coercive proceedings and does not extinguish or obliterate the right/ liabilities of the parties. Reliance is placed upon a decision of Gujarat High Court in ***Arun Kumar Jagatramka v. Ultrabulk A/S***, 2023 SCC OnLine Guj 3152 wherein despite the moratorium, the execution court was directed to expedite the execution proceedings.

5. Before proceeding further, it would be apposite to quote the following clauses:

> "(ix) "Due Date" shall mean, in respect of a Repayment installment or an interest payment, the date on which the same falls due as stipulated in Schedule II hereto;
>
> (x) "Event of Default" shall mean any or all of the events specified in Article V hereof;
>
> **ARTICLE V - EVENTS/CONSEQUENCES OF DEFAULT**
>
> 5.1 If one or more of the events specified in this Article (Events of Default) shall have happened, then the Lender may by a written notice to the Borrower, declare that the Assistance and the Secured Obligations have become payable forthwith by the Borrower to the Lender and upon such declaration, the same shall become due and payable forthwith and the security created under Facility Agreements or any other agreement in favour of the Lender for the Assistance as well as the Secured Obligations, shall become enforceable,
>
> (i) If the Borrower fails to pay any monies payable as

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

per Schedule II;

(ii) If the Borrower fails, defaults, omits or neglects to observe or perform or commits or al1ows to be committed a breach of any of the terms, conditions provisions or stipulations of this Agreement and/or Facility Agreement(s);

(iii) Any information given by the Borrower or the Confirming Party in the Project Proposal is incorrect or misleading, or a representation, warranty, undertaking or statement made hereunder or in connection with any other Facility Agreements by the Borrower is incorrect or misleading in any respect;

(iv) Any insurance contracted or taken by the Borrower is not, or ceases to be, in full force and effect.

(v) If the Borrower is unable to pay its debts within the meaning of Section 434 of the Companies Act, 1956 or a resolution for winding-up of the Borrower is passed or any petition for its winding up is filed or any order for winding-up is made against the Borrower or if a liquidator is appointed in respect of any property or estate of the Borrower.

(vi) Any person acting singularly or with any other (either directly or indirectly) acquires control of the Borrower either directly or indirectly, without the approval of the Lender;

5.2 On the happening of any of the Events of Default, the Lender shall give a written notice to Borrower to rectify the default within a period of 45 (forty five) days. In case the said Event of Default is not rectified within a period of 45 (forty five) days then the Lender shall have the right, by a notice in writing to the Borrower, without prejudice to the rights and claims under this Agreement, to terminate this Agreement and/or declare the principal of and all interest on and all other amounts in respect of the Assistance to become due and payable

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

forthwith and/or the security created in terms of this Agreement and /or the other Facility Agreements to become enforceable. The Lender or such other person in favour of whom such security or any part thereof is created shall have inter alia, the following rights (anything in this Agreement or the Facility Agreements to the contrary notwithstanding) namely;

(i) to enforce any/all security(ies), guarantees etc as provided to the Lender in terms and in the manner as provided under the Facility Agreements; and/or

(ii) to exercise and enforce all rights and remedies available to the Lender under this Agreement and/or the other Facility Agreements;

(iii) the Lender shall, without prejudice to any of the rights and remedies specified hereinabove, be entitled to review the management set-up or organization of the Borrower and to require the Borrower to restructure it as may be considered necessary by the Lender, including the formation of management committees with such powers and functions as may be considered suitable by the Lender.

(iv) the Lender shall, have an unhindered and unqualified right to disclose and/or publish the name of the Borrower and/or its directors/ partners/proprietors as defaulters in such manner and through such medium as the Lender or CIBIL in their absolute discretion, may think fit.

5.3 All expenses incurred by the Lender after an Event of Default occurs, including expense in connection with the preservation of, or enforcement action against the hypothecated assets (whether then or thereafter existing); and/or collection of amounts due under this Agreement and/or the other Facility Agreements, shall be to the Borrowers' account and payable by the Borrower.

5.4 If any Event of Default has occurred or is continuing, the Lender may, by notice in writing to the Borrower terminate or suspend the Agreement and/or take such necessary action as may deem fit.

> 5.5 Notwithstanding any suspension or termination of this Agreement as specified hereinabove, all the provisions of this Agreement or Facility Agreement(s) for the benefit or protection of the Lender and its interests shall continue to remain in full force and effect as specifically provided in this Agreement.
>
> 6.2 The Lender may terminate or suspend this Agreement in whole or in part for any material breach committed by the Borrower and/or non-achievement of the Milestones under this Agreement or under Article V hereinabove."

6. The undisputed facts are that the petitioner availed financial facilities from the respondent. The loan was for a period of nine years and three months. The respondent is a non-profit public limited company wherein 49% shareholding is held by the Ministry of Skill Development and Entrepreneurship (MSDE). The respondent is engaged in disbursing financial assistance to entrepreneurs for promoting skill development. After disbursal of the loan facility, the petitioner only paid a sum of Rs.66,68,520/- and the loan was recalled on 26.06.2018. Prior thereto two notices dated 22.11.2016 and 22.02.2017 were issued to the petitioner for clearing the outstanding defaulted amount along with accrued interest.

7. The pin-pointed issue canvassed by learned counsel for the petitioner is that the limitation for invocation of arbitration commenced upon expiry of forty-five days from the issuance of notice dated 22.11.2026.

8. Clause 1.1(ix) of the agreement defines 'due date' to mean the date on which the repayment of installments and interest is due as per Schedule II of the agreement. The expression 'event of default' is any or all events enumerated under Article V which deals with events and consequences of

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

default under clause 5.1 of the agreement. Various eventualities have been stipulated under the clause and on occurrence of any one or more contingencies there shall be an event of default. Six eventualities include failure of the borrower to make payment as per the Schedule II and breach of the terms and conditions of the agreement.

9. Clause 5 of the agreement deals with events/consequences of default. As per clause 5.1 of the agreement, the lender on an event of default by written notice to the borrower declare that the assistance has become payable forthwith and upon such declaration, the amount due is payable and the security shall become enforceable.

9.1 Clause 5.2 of the agreement provides that in event of default, the borrower is to be issued written notice to rectify the default within forty-five days and on failure to rectify the event of default, the lender by written notice to the borrower declare the principal amount, interest and all other dues payable forthwith and securities enforceable. This action is without prejudice to the rights and claims under the loan agreement.

9.2 Clause 5.4 of the agreement empowers the lender in the eventuality of occurring or continuing default to terminate or suspend the loan agreement by notice in writing or to take other necessary action.

9.3 Clause 5.5 of the agreement starts with a non-obstante clause provides that despite suspension or termination of the agreement, the provisions for benefit and protection of the lender shall continue to remain in force.

10. Clause 6.2 of the agreement gives discretion to the lender to terminate or suspend the agreement in whole or in part in case of material breach, non-

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

achievement of milestones or upon occurrence of an event under Article V of the agreement.

11. Clauses of the agreement have been rightly held by the tribunal to provide dual remedies to the lender. Under clause 5.1 of the agreement, the events of default are stipulated and the lender may by written notice declare the assistance having become payable but this cannot be read in isolation as under clause 5.2 of the agreement forty-five days notice is to be given to the borrower to rectify the default and on failure to do the needful, the lender acquires a right to declare the principal and interest thereon to have become due and payable. At the same time, clause 5.4 of the agreement empowers the lender to terminate or suspend the agreement in case of happening of default or continuation of default. Clause 6.2 of the agreement gives discretion to the lender whether to suspend or terminate the entire agreement or a part of it.

12. The aforesaid clauses gains importance in the backdrop that the respondent, a non-profit organization in which 49% shareholding is held by MSDE providing financial assistance for skill development. The intent of the clauses is that though the lender has the power to terminate but may not like to exercise the power on the first or every event of default.

13. The contention of learned counsel for the petitioner that the limitation commenced from expiry of forty-five days from notice dated 22.11.2016 was rightly rejected by the tribunal. The cause of action arose when the respondent issued legal notice dated 26.06.2018 to the petitioner to clear the outstanding amount of Rs.8,70,28,940/- within fifteen days failing which the loan agreement shall be terminated. The notice invoking the arbitration was

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

issued on 06.01.2022.

14. In view of the Covid-19 pandemic, the Supreme Court in Suo Motu Writ Petition(C) Petition No.3/2020 tiled as ***In Re:Congnizance for Extension of Time*** by order dated 10.01.2022 extend the limitation period for the cases in which the limitation was expiring between 15.03.2020 and 28.02.2022. The claim was permitted to file within ninety days from 01.03.2022 and hence, the claim was filed within limitation.

15. The contention of learned counsel for the petitioner that the tribunal erred in holding that the notice dated 22.11.2016 was issued under clause 5.1 of the agreement and that no notice could have been issued under clause 5.1 of the agreement, lacks merit. The further contention that the limitation started running from expiry of forty-five days of 22.11.2016 is noted to be rejected. Clause 5.1 deals with the events of default and six eventualities are given therein. The lender upon occurrence of one or more events of default may issue notice to the borrower, however, clause 5.2 of the agreement obligates forty-five days notice to the borrower to rectify the default.

16. It would be pertinent to note that no timeline is prescribed under clause 5.2 of the agreement for recall of the loan agreement. Notice issued on 22.11.2016 was to provide an opportunity to the petitioner to clear the default. Recall of the loan under clauses 5.4 and 6.2 of the agreement was initiated by issuance of a legal notice on 26.06.2018. The distinction being that by notice of 22.11.2016, the defaulted amount was sought to be recovered whereas the claim before the tribunal was for the entire financial assistance recalled pursuant to notice dated 26.06.2018. The tribunal by a reasoned and legally sound award held the claim to be within limitation by

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

calculating the limitation from 26.06.2018.

17. The second limb of the argument of learned counsel for the petitioner that there was no recurring cause of action in cases of default in repayment of loan need not be dilated upon in view of the reasoning recorded above. Suffice to say that on reading the agreement as a whole, the lender could have pressed for recovery of the defaulted amount and in an appropriate case recall the loan agreement. At the cost of repetition, under clause 5.2 of the agreement a forty-five days notice for rectification of default was to be given, consequently, every default in repayment of loan gives a cause of action to the lender to press for clearance of default but that would not be the case after the loan has been recalled. The findings recorded by the tribunal that it was recurring loss and a recurring cause of action needs no interference in view of the language of the loan agreement and the facts of the case in hand. The decision in ***Mansab Ali*** (supra) and ***Bhagwant Singh*** (supra) is of no avail to the petitioner.

18. The decisions relied upon by learned counsel for the petitioner in ***Sundaram Finance*** (supra), ***Amin Tharani*** (supra), ***Shriram Transport*** (supra) and ***State Bank of India*** (supra) are not applicable to the facts of the present case in view of the clauses of the agreement providing dual remedies to the lender which was not the case in the cited authorities. In ***Sundaram Finance*** (supra), it was held that right to sue accrued when the borrower committed breaches of the hire purchase agreement and there was no condition of seizure or sale of assets for initiation of limitation.

19. The challenge to the impugned award on the ground that it was passed in spite of moratorium operating *qua* petitioner no.2 lacks merit. Petitioner

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

no.2 was represented by learned counsel in the arbitral proceeding and had filed statement of defence. The factum of moratorium operating was for the reasons best known to petitioner no.2 were not brought to notice of the tribunal. Petitioner no.2 participated in proceedings, awaited the outcome and in case of failure before the tribunal raised the issue for the first time in proceedings under Section 34 of the Act. It would be relevant to note that it is not the case set up that the moratorium continues to operate as on date. Reliance place upon the decision in ***Tata Capital Ltd.*** (supra) does not enhance the case of the petitioner. In that case the challenge before the Bombay High Court was to an order passed by the arbitrator keeping the proceedings in abeyance so long as moratorium under Section 95 of IBC was operating. In the present case, this fact was withheld from the arbitrator. The proceedings were allowed to conclude and the issue is now being raised for the first time in the present proceedings to bring entire proceedings to naught which petitioner no.2 permitted to continue withholding the relevant fact.

20. The scope of interference under Section 34 of the Act is well defined. The court can interfere only on the grounds mentioned therein. Reference in this regard be made to the following judgments of the Supreme Court-

20.1 In ***Ramesh Kumar Jain v. Bharat Aluminium Company Limited (BALCO)***, 2025 INSC 1457 it was held as under:-

> "28. The bare perusal of section 34 mandates a narrow lens of supervisory jurisdiction to set aside the arbitral award strictly on the grounds and parameters enumerated in sub-section (2) & (3) thereof. The interference is permitted where the award is found to be in contravention

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

to public policy of India; is contrary to the fundamental policy of Indian Law; or offends the most basic notions of morality or justice. Hence, a plain and purposive reading of the section 34 makes it abundantly clear that the scope of interference by a judicial body is extremely narrow. It is a settled proposition of law as has been constantly observed by this court and we reiterate, the courts exercising jurisdiction under section 34 do not sit in appeal over the arbitral award hence they are not expected to examine the legality, reasonableness or correctness of findings on facts or law unless they come under any of grounds mandated in the said provision. In ONGC Limited. v. Saw Pipes Limited[14], this court held that an award can be set aside under Section 34 on the following grounds: "(a) contravention of fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal."

20.2 In ***Consolidated Construction Consortium Limited v. Software Technology Parks of India,*** (2025) 7 SCC 757 it was held as under:

> "46. Scope of Section 34 of the 1996 Act is now well crystallized by a plethora of judgments of this Court. Section 34 is not in the nature of an appellate provision. It provides for setting aside an arbitral award that too only on very limited grounds i.e. as those contained in Sub-sections (2) and (2-A) of Section 34. It is the only remedy for setting aside an arbitral award. An arbitral award is not liable to be interfered with only on the ground that the award is illegal or is erroneous in law which would require re-appraisal of the evidence adduced before the arbitral tribunal. If two views are possible, there is no scope for the court to re-appraise the evidence and to take the view other than the one taken by the arbitrator. The view taken by the arbitral tribunal is ordinarily to be accepted and allowed to prevail. Thus, the scope of interference in arbitral matters is only confined to the extent envisaged Under

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25

Section 34 of the Act. The court exercising powers Under Section 34 has perforce to limit its jurisdiction within the four corners of Section 34. It cannot travel beyond Section 34. Thus, proceedings Under Section 34 are summary in nature and not like a full-fledged civil suit or a civil appeal. The award as such cannot be touched unless it is contrary to the substantive provisions of law or Section 34 of the 1996 Act or the terms of the agreement."

(Emphasis supplied)

21. The view taken by the arbitrator is a possible one, is not vitiated by patent legality, perversity or conflict in public policy of India and no case is made out for interference by this Court under Section 34 of the Act.

22. The petition is dismissed.

AVNEESH JHINGAN, J

MAY 14, 2026
Ch

Reportable:- Yes

Signature Not Verified
Signed By:CHANCHAL
Signing Date:18.05.2026
10:44:25