REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 995 OF 2021
(@ SLP (CIVIL) No.665 of 2021)

GOVERNMENT OF MAHARASHTRA
(WATER RESOURCES DEPARTMENT)
REPRESENTED BY EXECUTIVE ENGINEER …APPELLANT

VERSUS

M/S BORSE BROTHERS ENGINEERS &
CONTRACTORS PVT. LTD. …RESPONDENT

WITH

CIVIL APPEAL NO. 999 OF 2021
(@ SLP (CIVIL) No.15278 of 2020)

AND

CIVIL APPEAL NO. 996-998 OF 2021
(@ SLP (CIVIL) No. 4872-4874 of 2021)
Diary No.18079 of 2020

J U D G M E N T

R.F. Nariman, J.

1. Leave granted. Delay condoned in SLP (C) Diary No.18079 of 2020.

2. The substantial question of law which arises in these appeals is as to

whether the judgment of a Division Bench of this Court in **N.V. International v. State of Assam, (2020) 2 SCC 109** ["**N.V. International**"] lays down the law correctly. This Court followed its earlier judgment in **Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111** ["**Varindera Constructions**"] and held as follows:

> "**3.** Having heard the learned counsel for both sides, we may observe that the matter is no longer res integra. In *Union of India* v. *Varindera Constructions Ltd.* [*Union of India* v. *Varindera Constructions Ltd.*, (2020) 2 SCC 111] , this Court, by its judgment and order dated 17-9-2018 [*Union of India* v. *Varindera Constructions Ltd.*, (2020) 2 SCC 111] held thus: (SCC p. 112, paras 1-5)
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> > "*1*. Heard the learned counsel appearing for the parties.
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> > *2*. By a judgment dated 19-4-2018 in *Union of India* v. *Varindera Constructions Ltd.* [*Union of India* v. *Varindera Constructions Ltd.*, (2018) 7 SCC 794], this Court has in near identical facts and circumstances allowed the appeal of the Union of India in a proceeding arising from an arbitral award.
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> > *3*. Ordinarily, we would have applied the said judgment to this case as well. However, we find that the impugned Division Bench judgment dated 10-4-2013 [*Union of India* v. *Varindera Constructions Ltd.*, 2013 SCC OnLine Del 6511] has dismissed the appeal filed by the Union of India on the ground of delay. The delay was found to be 142 days in filing the appeal and 103 days in refiling the appeal. One of the important points

made by the Division Bench is that, apart from the fact that there is no sufficient cause made out in the grounds of delay, since a Section 34 application has to be filed within a maximum period of 120 days including the grace period of 30 days, an appeal filed from the selfsame proceeding under Section 37 should be covered by the same drill.

4. Given the fact that an appellate proceeding is a continuation of the original proceeding, as has been held in *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* [*Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , and repeatedly followed by our judgments, we feel that any delay beyond 120 days in the filing of an appeal under Section 37 from an application being either dismissed or allowed under Section 34 of the Arbitration and Conciliation Act, 1996 should not be allowed as it will defeat the overall statutory purpose of arbitration proceedings being decided with utmost despatch.

5. In this view of the matter, since even the original appeal was filed with a delay period of 142 days, we are not inclined to entertain these special leave petitions on the facts of this particular case. The special leave petitions stand disposed of accordingly.

Pending applications, if any, also stand disposed of."

4. We may only add that what we have done in the aforesaid judgment is to add to the period of 90 days, which is provided by statute for filing of appeals under

> Section 37 of the Arbitration Act, a grace period of 30 days under Section 5 of the Limitation Act by following *Lachmeshwar Prasad Shukul* [*Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri*, 1940 SCC OnLine FC 10 : AIR 1941 FC 5] , as also having regard to the object of speedy resolution of all arbitral disputes which was uppermost in the minds of the framers of the 1996 Act, and which has been strengthened from time to time by amendments made thereto. The present delay being beyond 120 days is not liable, therefore, to be condoned."

3. In two of the three appeals before us, i.e., Civil Appeal arising out of SLP (C) No. 665 of 2021 and Civil Appeal arising out of SLP (C) Diary No.18079 of 2020, the High Courts of Bombay and Delhi vide judgments dated 17.12.2020 and 15.10.2019 respectively, dismissed the appeals filed by the Government of Maharashtra and by the Union of India respectively, refusing to condone the delay in the filing of the appeal under section 37 of the Arbitration and Conciliation Act, 1996 ["**Arbitration Act**"] beyond 120 days. So far as the Civil Appeal arising out of SLP (C) No.15278 of 2020 is concerned, the High Court of Madhya Pradesh refused to follow the judgment of this Court in **N.V. International** (supra) stating that there is a conflict between this judgment and the judgment of a larger Bench of this Court reported in **Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169** ["**Consolidated Engg.**"]**.** It was, therefore, held that it was open for the High Court to condone the delay applying section 5 of the

Limitation Act, 1963 ["**Limitation Act**"] and, as a matter of fact, a delay of what was stated to be 57 days was condoned.

4. Shri Sandeep Sudhakar Deshmukh, learned counsel appearing on behalf of the Government of Maharashtra (Water Resources Department) ["**Govt of Maharashtra**"], the appellant in Civil Appeal arising out of SLP (C) No. 665 of 2021, submitted that the Arbitration Act in its original avatar did not include the concept or idea of expeditious resolution of disputes. At best, the Arbitration Act can be treated as a mechanism providing for alternate dispute resolution. This original objective is continued by the Arbitration and Conciliation (Amendment) Act, 2015 ["**2015 Amendment**"] which provides a time limit for arbitral awards and for fast track procedure contained in sections 29A and 29B of the Arbitration Act. This being the case, the very foundation of **N.V. International** (supra) is erroneous in law. Shri Deshmukh also argued that section 37 of the Arbitration Act provides for appeals from several orders, including orders made under sections 8, 9, 16 and 17, apart from orders that may be made under section 34 of the Arbitration Act. According to him, the rationale or logic contained in **N.V. International** (supra) would perhaps apply only to appeals from section 34 orders, but not to orders that are passed under any of the other aforesaid sections, as there is no hard and fast application of

a 120-day limitation period when it comes to applications that have been filed under any of these sections.

5. Shri Deshmukh also argued that section 33 of the Arbitration Act contemplates correction and interpretation of an award, the arbitral tribunal being clothed with the power to extend time without there being any outer limit. He also stated that vide section 29(2) of the Limitation Act, the period of limitation for filing applications under the Arbitration Act would be governed by Article 137 of the Limitation Act, providing for a much longer limitation period of three years. He further argued that Articles 116 and 117 of the Limitation Act provide different periods of limitation, being 90 days and 30 days respectively. Since these different prescribed periods lead to arbitrary results, the concept of an “appeal” would have to be read into the definition of the term “application” so that the “appeal” provision under section 37 of the Arbitration Act is uniformly governed by Article 137 of the Limitation Act, which would lead to a uniform limitation period of three years. He also argued that to read the period of limitation contemplated under section 34(3) for an appeal filed under section 37 of the Arbitration Act, would amount to judicial legislation due to the absence of any period of limitation provided in section 37. He placed reliance on a large number of judgments citing cases where the Limitation Act had been

held to be applicable to arbitration proceedings and others in which it had not so been held. He also cited a large number of judgments on section 29(2) of the Limitation Act, relating to the meaning of "express exclusion" under the said section. He then cited judgments on the applicability of Article 137 of the Limitation Act and a judgment which eschews judicial legislation.

6. Ms. Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the Union of India, the appellant in the Civil Appeal arising out of SLP (C) Diary No. 18079 of 2020, read in detail the provisions of the Commercial Courts Act, 2015 ["**Commercial Courts Act**"] and referred to the two Law Commission Reports which led to its enactment, namely the 188th Law Commission Report and the 253rd Law Commission Report. She then referred to this Court's judgments in **Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715** ["**Kandla Export Corpn**"] and **BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234**, dealing with the interplay between section 13 of the Commercial Courts Act and section 37 of the Arbitration Act. She argued that a limitation period of 60 days was laid down by section 13(1A) of the Commercial Courts Act, and though section 14 thereof commands that an expeditious disposal of appeals take place within a period of six months from the date of filing such appeal, neither of the

two provisions bound appellate courts not to apply section 5 of the Limitation Act to relax the period of limitation in deserving cases. She also relied upon section 12A of the Commercial Courts Act, which speaks of the Limitation Act in the context of the Commercial Courts Act. She then referred to section 16 of the Commercial Courts Act read with the Schedule, and, in particular, the amendment made to Order VIII Rule 1 of the Code of Civil Procedure, 1908 ["**CPC**"] which closes the right of defence after a certain period of limitation is over, which is to be contrasted with section 13 of the Commercial Courts Act, which contains no such provision. She then referred to judgments under different statutes such as the Insolvency and Bankruptcy Code, 2016 ["**IBC**"] and the Electricity Act, 2003 in which section 5 of the Limitation Act becomes inapplicable by virtue of either the scheme of the statute in question or by virtue of an "express exclusion" spoken of in section 29(2) of the Limitation Act.

7. Shri Amalpushp Shroti, learned counsel appearing for the respondents in the Civil Appeal arising out of SLP (C) No. 15278 of 2020, broadly supported the arguments of Shri Deshmukh and Ms. Bhati, while citing certain other judgments to buttress the same submissions.

8. Shri Vinay Navare, learned Senior Advocate appearing for M/s Borse Brothers Engineers and Contractors Pvt. Ltd ["**Borse Bros.**"], the

respondent in the Civil Appeal arising out of SLP (C) No. 665 of 2021, was at pains to point out the conduct of the Govt of Maharashtra and added that if a period of 60 days is to be reckoned under the Commercial Courts Act, the appeal filed by the Govt of Maharashtra would be delayed by a period of 131 days for which there is no explanation worthy of the name. He relied heavily on the impugned judgment of the High Court of Bombay which had also stated that though the certified copy of the judgment was applied for and was ready by 27.05.2019, the Govt of Maharashtra wrongly mentioned that it received such copy only on 24.07.2019, as a result of which the Govt of Maharashtra had not appeared before the High Court with clean hands.

9. Further, Shri Navare sought to answer Shri Deshmukh's submission that the rationale of **N.V. International** (supra) can and should apply to an appeal filed against a section 34 order, as several different appeal provisions were all bunched together in one section and could have been the subject matter of different appellate provisions contained in the very original proceeding that was sought to be appealed against. He, therefore, argued that the scheme contained in the Arbitration Act, insofar as appeals from section 8 applications are concerned, is that it is only if a section 8 application is refused that an

appeal lies and not otherwise, contrasting it with an appeal against a section 34 order, which lies whether or not the court allows the section 34 application. Hence, according to the learned Senior Advocate, each appellate provision would have its own rationale, appeals in the cases of section 8, 9, 16 and 17 of the Arbitration Act allowing for sufficient cause to be shown beyond the period of 30 days, as opposed to appeals filed under section 34, which ought to allow for sufficient cause being shown upto a period of 30 days, or else the whole object of section 34 would be destroyed. He referred to the Statement of Objects and Reasons of the Arbitration Act and judgments to show that Shri Deshmukh's submission that the Arbitration Act provided only alternate dispute resolution and not speedy disposal was wholly incorrect. He also pointed out that specific timelines are contained in several sections of the Arbitration Act such as sections 9(2), 11(4), 11(13), 13(2)-(5), 29A, 29B, 33(3)-(5) and 34(3), to indicate that the object of speedy disposal was at the heart of the Arbitration Act.

10. Shri Navare then relied upon the Commercial Courts Act and in particular, on sections 13(1A) and 14, to show that the whole object of speedy disposal of appeals contained in the Commercial Courts Act would be given a go-bye if long periods of delay beyond 30 days are to be condoned, since the appeal itself has to be decided within a

period of six months. He also cited a number of judgments and supported the judgment of this Court in **N.V. International** (supra) by arguing that a judge is not helpless when faced with a provision which, when literally read, would result in arbitrary and unjust orders being passed. He also referred to judgments where a *casus omissus* could be supplied, which is what was done in **N.V. International** (supra).

11. Shri Manoj Chouhan, learned counsel appearing on behalf of M/s Swastik Wires, the appellant in Civil Appeal arising out of SLP (C) No.15278 of 2020, supported the impugned judgment dated 27.01.2020 of the High Court of Madhya Pradesh and argued that this Court's judgment in **Consolidated Engg.** (supra), being a judgment of three learned judges, would prevail over the judgment of this Court in **N.V. International** (supra), which is only delivered by two learned judges and, therefore, delay can be condoned. He also added that once section 5 of the Limitation Act applies, the Court cannot impose any limits on the expression "sufficient cause" and even if there are long delays and sufficient cause is made out, such delays can be condoned. Further, he argued that this Court could use Article 142 of the Constitution, which is a veritable *brahmāstra* and panacea for all ills, to do justice in individual cases.

12. Dr. Amit George, learned counsel appearing for M/s Associated

Construction Co., the respondent in the Civil Appeal arising out of SLP (C) Diary No. 18079 of 2020, argued that section 13 of the Commercial Courts Act, having regard to the object of speedy disposal sought to be achieved, excludes the application of section 5 of the Limitation Act altogether. For this purpose, he relied heavily upon the judgment of this Court in **Kandla Export Corpn** (supra) and the judgment of this Court in **CCE & Customs v. Hongo India (P) Ltd., (2009) 5 SCC 791** ["**Hongo**"] which dealt with section 35-H(1) of the Central Excise Act, 1944 ["**Central Excise Act**"]. He also relied upon other judgments which interpreted section 29(2) of the Limitation Act to state that the scheme of a particular statute may make it clear that there is an "express exclusion" of section 5 of the Limitation Act, which is the case under the Commercial Courts Act. He then relied strongly upon the judgment in **N.V. International** (supra) by supporting its logic and citing judgments which would show that other sections of the Limitation Act were excluded in the context of section 34(3) of the Arbitration Act – such as sections 4 and 17 of the Limitation Act. In any case, he argued that on facts sufficient cause had not been made out, and that the judgment of the High Court of Delhi dated 15.10.2019 ought to be set aside on this ground also.

13. The arguments that have been made in these appeals and the

case law cited have gone way beyond the narrow question which arises before us. However, in dealing with these arguments, it is necessary to first set out the relevant statutory provisions contained in the three statutes that have been strongly relied upon by either side in these appeals.

14. First and foremost, the Arbitration Act has, in its Statement of Objects and Reasons, the following:

> "**4.** The main objectives of the Bill are as under:-
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> xxx xxx xxx
>
> (ii) to make provision for an arbitral procedure which is fair, efficient and capable of meeting the needs of the specific arbitration;
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> xxx xxx xxx
>
> (v) to minimise the supervisory role of courts in the arbitral process"

15. As has correctly been pointed out by Shri Navare, the requirement of an arbitral procedure which is efficient and the minimising of the supervisory role of courts in arbitral process would certainly show that one of the main objectives of the Arbitration Act is the speedy disposal of disputes through the arbitral process. Section 5 of the Arbitration Act is important and states :

> "**5. Extent of judicial intervention**.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

16. The other relevant provisions of the Arbitration Act provide as follows:

> "**8. Power to refer parties to arbitration where there is an arbitration agreement**.—
> (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.
>
> (2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof: 2 [Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.
>
> (3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made."

"**9. Interim measures, etc., by Court.—**

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(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine."

"**11. Appointment of arbitrators.—**

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(4) If the appointment procedure in sub-section (3) applies and—

(a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or

(b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,

the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court;

xxx xxx xxx

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case maybe, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party"

"**13. Challenge procedure**.—
(1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.

(2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section(3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.

(3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(4) If a challenge under any procedure agreed upon by the parties or under the procedure under subsection (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.

(5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.

(6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees."

"**16. Competence of arbitral tribunal to rule on its jurisdiction.—**

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(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator."

"**29A. Time limit for arbitral award.—**
(1)The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavor may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s)appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and

endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party"

"**29B. Fast track procedure.—**
(1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):—

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;
(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;
(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of subsections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties."

"**33. Correction and interpretation of award; additional award.—**

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(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request."

"**34. Application for setting aside arbitral award.—**

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(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral

award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

"37. Appealable orders.—
(1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court."

"**43. Limitations.—**

(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.

(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963),an arbitration shall be deemed to have commenced on the date referred to in section 21.

(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963),for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."

17. So far as the Limitation Act is concerned, sections 5 and 29(2) read as follows:

"**5. Extension of prescribed period in certain cases.—** Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such

period. Explanation.—The fact that the appellant or the applicant was missed by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section."

"**29. Savings.—**

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(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law."

18. Further, the relevant Articles of the Schedule provide as follows:

"**THE SCHEDULE**
(PERIODS OF LIMITATION)

xxx xxx xxx

Description of suit	**Period of limitation**	**Time from which period begins to run**
116. Under the Code of Civil Procedure, 1908 (5 of 1908)—		

(a) to a High Court from any decree or order. (b) to any other court from any decree or order.	Ninety days. Thirty days.	The date of the decree or order. The date of the decree or order.
117. From a decree or order of any High Court to the same Court	Thirty days.	The date of the decree or order.
137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues.

19. The Commercial Courts Act states, in its Statement of Objects and Reasons, the following:

> "**STATEMENT OF OBJECTS AND REASONS**
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> The proposal to provide for speedy disposal of high value commercial disputes has been under consideration of the Government for quite some time. The high vlaue commercial disputes involve complex facts and question of law. Therefore, there is a need to provide for an independent mechanism for their early resolution. Early resolution of commercial disputes shall create a positive image to the investor world about the independent and responsive Indian legal system."
>
> "**6.** It is proposed to introduced the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 to replace the Commercial Courts, Commercial Division and Commercial Appellate Division of

> High Courts Ordinance, 2015 which inter alia, provides for the following namely:—
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> xxx xxx xxx
>
> (v) to amend the Code of Civil Procedure, 1908 as applicable to the Commercial Courts and Commercial Divisions which shall prevail over the existing High Courts Rules and other provisions of the Code of Civil Procedure, 1908 so as to improve the efficiency and reduce delays in disposal of commercial cases.
>
> **7.** The proposed Bill shall accelerate economic growth, improve the international image of the Indian Justice delivery system, and the faith of the investor world in the legal culture of the nation."

20. Section 2(1)(i) of the Commercial Courts Act defines "specified value" as follows:

> "**2. Definitions.—**(1) In this Act, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (i) "Specified Value", in relation to a commercial dispute, shall mean the value of the subject-matter in respect of a suit as determined in accordance with section 12 which shall not be less than three lakh rupees or such higher value, as may be notified by the Central Government."

21. Chapter II of the Commercial Courts Act sets up commercial courts, commercial appellate courts, commercial divisions and commercial appellate divisions. So far as arbitration is concerned,

section 10 is important and states as follows:

> "**10. Jurisdiction in respect of arbitration matters.—** Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and—
>
> (1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.
>
> (3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

22. The other relevant provisions of the Commercial Courts Act are set out as follows:

"**13. Appeals from decrees of Commercial Courts and Commercial Divisions.—**
(1) Any person aggrieved by the judgment or order of a Commercial Court below the level of a District Judge may appeal to the Commercial Appellate Court within a period of sixty days from the date of judgment or order.

(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

14. Expeditious disposal of appeals.—The Commercial Appellate Court and the Commercial Appellate Division shall endeavour to dispose of appeals filed before it within a period of six months from the date of filing of such appeal."

"**16. Amendments to the Code of Civil Procedure, 1908 in its application to commercial disputes**.—
(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a

commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any Rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail."

"**21. Act to have overriding effect**.—Save as otherwise provided, the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law for the time being in force other than this Act."

"*SCHEDULE*

4. Amendment of First Schedule.—In the First Schedule to the Code,—

xxx xxx xxx

(D) in Order VIII,— (i) in Rule 1, for the proviso, the following proviso shall be substituted, namely:—

"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be

> recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.";"

23. Section 37 of the Arbitration Act, when read with section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under section 37. This takes us to Articles 116 and 117 of the Limitation Act, which provide for a limitation period of 90 days and 30 days, depending upon whether the appeal is from any other court to a High Court or an intra-High Court appeal. There can be no doubt whatsoever that section 5 of the Limitation Act will apply to the aforesaid appeals, both by virtue of section 43 of the Arbitration Act and by virtue of section 29(2) of the Limitation Act. This aspect of the matter has been set out in the concurring judgment of Raveendran, J. in **Consolidated Engg.** (supra), as follows:

> "**40.** Let me next refer to the relevant provisions of the Limitation Act. Section 3 of the Limitation Act provides for the bar of limitation. It provides that subject to the provisions contained in Sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the *prescribed period* shall be dismissed although limitation has not been set up as a defence. "*Prescribed period*" means that *period of limitation* computed in accordance

with the provisions of the Limitation Act. "*Period of limitation*" means the period of limitation prescribed for any suit, appeal or application by the Schedule to the Limitation Act [vide Section 2(*j*) of the said Act]. Section 29 of the Limitation Act relates to savings. Sub-section (2) thereof which is relevant is extracted below:

> "29. (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

41. Article 116 of the Schedule prescribes the period of limitation for appeals to the High Court (90 days) and appeals to any other court (30 days) under the Code of Civil Procedure, 1908. It is now well settled that the words "appeals under the Code of Civil Procedure, 1908" occurring in Article 116 refer not only to appeals preferred under the Code of Civil Procedure, 1908, but also to appeals, where the procedure for filing of such appeals and powers of the court for dealing with such appeals are governed by the Code of Civil Procedure. (See decision of the Constitution Bench in *Vidyacharan Shukla* v. *Khubchand Baghel* [AIR 1964 SC 1099] .) Article 119(*b*) of the Schedule prescribes the period of limitation for filing an application (under the Arbitration Act, 1940), for setting aside an award, as thirty days from the date of service of notice of filing of the award.

42. The AC Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The AC Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings—both in court and in arbitration—under the AC Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the AC Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the AC Act.

43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure

> that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions."

24. When the Commercial Courts Act is applied to the aforesaid appeals, given the definition of "specified value" and the provisions contained in sections 10 and 13 thereof, it is clear that it is only when the specified value is for a sum less than three lakh rupees that the appellate provision contained in section 37 of the Arbitration Act will be governed, for the purposes of limitation, by Articles 116 and 117 of the Limitation Act. Shri Deshmukh's argument that depending upon which court decides a matter, a limitation period of either 30 or 90 days is provided, which leads to arbitrary results, and that, therefore, the uniform period provided by Article 137 of the Limitation Act should govern appeals as well, is rejected. It is settled that periods of limitation must always to some extent be arbitrary and may result in some hardship, but this is no reason as to why they should not be strictly followed. In **Boota Mal v. Union of India, (1963) 1 SCR 70**, this Court referred to this aspect of the case, as follows:

> "Ordinarily, the words of a statute have to be given their strict grammatical meaning and equitable considerations are out of place, particularly in provisions of law limiting the

> period of limitation for filing suits or legal proceedings. This was laid down by the Privy Council in two decisions in *Nagendranath* v. *Suresh* [AIR(1932) PC 165] and *General Accident Fire and Life Assurance Corporation Limited* v. *Janmahomed Abdul Rahim* [AIR (1941) PC 6] . In the first case the Privy Council observed that "the fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide". In the latter case it was observed that "a limitation Act ought to receive such a construction as the language in its plain meaning imports … Great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights, yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases"."
> (pages 74-75)

25. Shri Deshmukh's other argument that since no period of limitation has been provided in section 37 of the Arbitration Act, as a result of which the neat division contained in the Limitation Act of different matters contained in suits, appeals and applications will somehow have to be destroyed, the word "appeals" has to be read into "applications" so that Article 137 of the Limitation Act could apply, is also rejected.

26. Even in the rare situation in which an appeal under section 37 of the Arbitration Act would be of a specified value less than three lakh rupees, resulting in Article 116 or 117 of the Limitation Act applying, the main object of the Arbitration Act requiring speedy resolution of

disputes would be the most important principle to be applied when applications under section 5 of the Limitation Act are filed to condone delay beyond 90 days and/or 30 days depending upon whether Article 116(a) or 116(b) or 117 applies. As a matter of fact, given the timelines contained in sections 8, 9(2), 11(4), 11(13), 13(2)-(5), 29A, 29B, 33(3)-(5) and 34(3) of the Arbitration Act, and the observations made in some of this Court's judgments, the object of speedy resolution of disputes would govern appeals covered by Articles 116 and 117 of the Limitation Act.

27. This Court in **Union of India v. Popular Construction Co., (2001) 8 SCC 470**, put it thus:

> "**14.** Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendible by court under Section 5 of the Limitation Act. The Arbitration and Conciliation Bill, 1995 which preceded the 1996 Act stated as one of its main objectives the need "to minimise the supervisory role of courts in the arbitral process" [Para 4(v) of the Statement of Objects and Reasons of the Arbitration and Conciliation Act, 1996] . This objective has found expression in Section 5 of the Act which prescribes the extent of judicial intervention in no uncertain terms:
>
> > "5. *Extent of judicial intervention*.— Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part."

> **15.** The "Part" referred to in Section 5 is Part I of the 1996 Act which deals with domestic arbitrations. Section 34 is contained in Part I and is therefore subject to the sweep of the prohibition contained in Section 5 of the 1996 Act."

28. Likewise, in **State of Goa v. Western Builders, (2006) 6 SCC 239**, this Court, while stating that the provisions of section 14 of the Limitation Act would apply to applications filed under section 34 of the Arbitration Act, held:

> "**25.** … It is true that the Arbitration and Conciliation Act, 1996 intended to expedite commercial issues expeditiously. It is also clear in the Statement of Objects and Reasons that in order to recognise economic reforms the settlement of both domestic and international commercial disputes should be disposed of quickly so that the country's economic progress be expedited…"

29. The judgment in **Kandla Export Corpn** (supra) also observed:

> "**27.** The matter can be looked at from a slightly different angle. Given the objects of both the statutes, it is clear that arbitration itself is meant to be a speedy resolution of disputes between parties. Equally, enforcement of foreign awards should take place as soon as possible if India is to remain as an equal partner, commercially speaking, in the international community. In point of fact, the raison d'être for the enactment of the Commercial Courts Act is that commercial disputes involving high amounts of money should be speedily decided. Given the objects of both the enactments, if we were to provide an additional appeal, when Section 50 does away with an appeal so as to speedily enforce foreign awards, we would be turning the

> Arbitration Act and the Commercial Courts Act on their heads. Admittedly, if the amount contained in a foreign award to be enforced in India were less than Rs 1 crore, and a Single Judge of a High Court were to enforce such award, no appeal would lie, in keeping with the object of speedy enforcement of foreign awards. However, if, in the same fact circumstance, a foreign award were to be for Rs 1 crore or more, if the appellants are correct, enforcement of such award would be further delayed by providing an appeal under Section 13(1) of the Commercial Courts Act. Any such interpretation would lead to absurdity, and would be directly contrary to the object sought to be achieved by the Commercial Courts Act viz. speedy resolution of disputes of a commercial nature involving a sum of Rs 1 crore and over. For this reason also, we feel that Section 13(1) of the Commercial Courts Act must be construed in accordance with the object sought to be achieved by the Act. Any construction of Section 13 of the Commercial Courts Act, which would lead to further delay, instead of an expeditious enforcement of a foreign award must, therefore, be eschewed. Even on applying the doctrine of harmonious construction of both statutes, it is clear that they are best harmonised by giving effect to the special statute i.e. the Arbitration Act, vis-à-vis the more general statute, namely, the Commercial Courts Act, being left to operate in spheres other than arbitration."

30. A recent judgment of this Court in **ICOMM Tele Ltd. v. Punjab State Water Supply and Sewerage Board, (2019) 4 SCC 401**, states:

> **25.** Several judgments of this Court have also reiterated that the primary object of arbitration is to reach a final disposal of disputes in a speedy, effective, inexpensive and expeditious manner. Thus, in *Centrotrade Minerals & Metal Inc.* v. *Hindustan Copper Ltd.* [*Centrotrade Minerals & Metal Inc.* v. *Hindustan Copper Ltd.*, (2017) 2 SCC 228 :

(2017) 1 SCC (Civ) 593] , this Court held: (SCC p. 250, para 39)

> "*39*. In *Union of India* v. *U.P. State Bridge Corpn. Ltd.* [*Union of India* v. *U.P. State Bridge Corpn. Ltd.*, (2015) 2 SCC 52 : (2015) 1 SCC (Civ) 732] this Court accepted the view [Indu Malhotra, *O.P. Malhotra on the Law and Practice of Arbitration and Conciliation* (3rd Edn., Thomson Reuters, 2014).] that the A&C Act has four foundational pillars and then observed in para 16 of the Report that: (SCC p. 64)
>
> > '*16*. First and paramount principle of the first pillar is 'fair, speedy and inexpensive trial by an Arbitral Tribunal'. Unnecessary delay or expense would frustrate the very purpose of arbitration.""

31. Thus, from the scheme of the Arbitration Act as well as the aforesaid judgments, condonation of delay under section 5 of the Limitation Act has to be seen in the context of the object of speedy resolution of disputes.

32. The bulk of appeals, however, to the appellate court under section 37 of the Arbitration Act, are governed by section 13 of the Commercial Courts Act. Sub-section (1A) of section 13 of the Commercial Courts Act provides the forum for appeals as well as the limitation period to be followed, section 13 of the Commercial Courts Act being a special law as compared with the Limitation Act which is a

general law, which follows from a reading of section 29(2) of the Limitation Act. Section 13(1A) of the Commercial Courts Act lays down a period of limitation of 60 days uniformly for all appeals that are preferred under section 37 of the Arbitration Act.[1]

33. The vexed question which faces us is whether, first and foremost, the application of section 5 of the Limitation Act is excluded by the scheme of the Commercial Courts Act, as has been argued by Dr. George. The first important thing to note is that section 13(1A) of the Commercial Courts Act does not contain any provision akin to section 34(3) of the Arbitration Act. Section 13(1A) of the Commercial Courts Act only provides for a limitation period of 60 days from the date of the judgment or order appealed against, without further going into whether delay beyond this period can or cannot be condoned.

34. It may also be pointed out that though the object of expeditious disposal of appeals is laid down in section 14 of the Commercial Courts Act, the language of section 14 makes it clear that the period of six months spoken of is directory and not mandatory. By way of contrast, section 16 of the Commercial Courts Act read with the Schedule thereof and the amendment made to Order VIII Rule 1 of the

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1 As held in **BGS SGS SOMA JV v. NHPC, (2020) 4 SCC 234**, whereas section 37 of the Arbitration Act provides the substantive right to appeal, section 13 of the Commercial Courts Act provides the forum and procedure governing the appeal (*see* paragraph 13).

CPC, would make it clear that the defendant in a suit is given 30 days to file a written statement, which period cannot be extended beyond 120 days from the date of service of the summons; and on expiry of the said period, the defendant forfeits the right to file the written statement and the court cannot allow the written statement to be taken on record. This provision was enacted as a result of the judgment of this Court in **Salem Advocate Bar Assn. (II) v. Union of India, (2005) 6 SCC 344**.

35. In a recent judgment of this Court namely, **SCG Contracts (India) (P) Ltd. v. K.S. Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210**, a Division Bench of this Court referred to the aforesaid amendment and its hard and fast nature as follows:

> "**8.** The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 came into force on 23-10-2015 bringing in their wake certain amendments to the Code of Civil Procedure. In Order 5 Rule 1, sub-rule (1), for the second proviso, the following proviso was substituted:
>
> > "Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred and twenty days

> from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

Equally, in Order 8 Rule 1, a new proviso was substituted as follows:

> "Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the court, for reasons to be recorded in writing and on payment of such costs as the court deems fit, but which shall not be later than one hundred and twenty days from the date of service of summons and on expiry of one hundred and twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the court shall not allow the written statement to be taken on record."

This was re-emphasised by re-inserting yet another proviso in Order 8 Rule 10 CPC, which reads as under:

> "**10. *Procedure when party fails to present written statement called for by court***.—Where any party from whom a written statement is required under Rule 1 or Rule 9 fails to present the same within the time permitted or fixed by the court, as the case may be, the court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:

> Provided further that no court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."

A perusal of these provisions would show that ordinarily a written statement is to be filed within a period of 30 days. However, grace period of a further 90 days is granted which the Court may employ for reasons to be recorded in writing and payment of such costs as it deems fit to allow such written statement to come on record. What is of great importance is the fact that beyond 120 days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record. This is further buttressed by the proviso in Order 8 Rule 10 also adding that the court has no further power to extend the time beyond this period of 120 days.

9. In *Bihar Rajya Bhumi Vikas Bank Samiti* [*State of Bihar* v. *Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472 : (2018) 4 SCC (Civ) 387] , a question was raised as to whether Section 34(5) of the Arbitration and Conciliation Act, 1996, inserted by Amending Act 3 of 2016 is mandatory or directory. In para 11 of the said judgment, this Court referred to *Kailash* v. *Nanhku* [*Kailash* v. *Nanhku*, (2005) 4 SCC 480] , referring to the text of Order 8 Rule 1 as it stood pre the amendment made by the Commercial Courts Act. It also referred (in para 12) to *Salem Advocate Bar Assn. (2)* v. *Union of India* [*Salem Advocate Bar Assn. (2)* v. *Union of India*, (2005) 6 SCC 344] , which, like the *Kailash* [*Kailash* v. *Nanhku*, (2005) 4 SCC 480] judgment, held that the mere expression "shall" in Order 8 Rule 1 would not make the provision mandatory. This Court then went on to discuss in para 17 of *State* v. *N.S. Gnaneswaran* [*State* v. *N.S. Gnaneswaran*, (2013) 3 SCC 594 : (2013) 3 SCC (Cri) 235 : (2013) 1 SCC (L&S) 688] , in which Section 154(2) of the Code of Criminal Procedure

was held to be directory inasmuch as no consequence was provided if the section was breached. In para 22 by way of contrast to Section 34, Section 29-A of the Arbitration Act was set out. This Court then noted in para 23 as under: (*Bihar Rajya Bhumi Vikas Bank Samiti case* [*State of Bihar* v. *Bihar Rajya Bhumi Vikas Bank Samiti*, (2018) 9 SCC 472 : (2018) 4 SCC (Civ) 387] , SCC p. 489)

> "*23*. It will be seen from this provision that, unlike Sections 34(5) and (6), if an award is made beyond the stipulated or extended period contained in the section, the consequence of the mandate of the arbitrator being terminated is expressly provided. This provision is in stark contrast to Sections 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences."

10. Several High Court judgments on the amended Order 8 Rule 1 have now held that given the consequence of non-filing of written statement, the amended provisions of the CPC will have to be held to be mandatory. See *Oku Tech (P) Ltd.* v. *Sangeet Agarwal* [*Oku Tech (P) Ltd.* v. *Sangeet Agarwal*, 2016 SCC OnLine Del 6601] by a learned Single Judge of the Delhi High Court dated 11-8-2016 in CS (OS) No. 3390 of 2015 as followed by several other judgments including a judgment of the Delhi High Court in *Maja Cosmetics* v. *Oasis Commercial (P) Ltd.* [*Maja Cosmetics* v. *Oasis Commercial (P) Ltd.*, 2018 SCC OnLine Del 6698]

11. We are of the view that the view taken by the Delhi High Court in these judgments is correct in view of the fact that the consequence of forfeiting a right to file the written

> statement; non-extension of any further time; and the fact that the Court shall not allow the written statement to be taken on record all points to the fact that the earlier law on Order 8 Rule 1 on the filing of written statement under Order 8 Rule 1 has now been set at naught."

36. By way of contrast, there is no such provision contained in section 13 of the Commercial Courts Act. The judgment in **Hongo** (supra), strongly relied upon by Dr. George, is clearly distinguishable. In **Hongo** (supra), section 35-H of the Central Excise Act provided for a period of 180 days for filing a reference application to the High Court. The scheme of the Central Excise Act was adverted to in paragraph 15 of the judgment, which reads as follows:

> "**15.** We have already pointed out that in the case of appeal to the Commissioner, Section 35 provides 60 days' time and in addition to the same, the Commissioner has power to condone the delay up to 30 days, if sufficient cause is shown. Likewise, Section 35-B provides 90 days' time for filing appeal to the Appellate Tribunal and sub-section (5) therein enables the Appellate Tribunal to condone the delay irrespective of the number of days, if sufficient cause is shown. Likewise, Section 35-EE which provides 90 days' time for filing revision by the Central Government and, proviso to the same enables the revisional authority to condone the delay for a further period of 90 days, if sufficient cause is shown, whereas in the case of appeal to the High Court under Section 35-G and reference to the High Court under Section 35-H of the Act, total period of 180 days has been provided for availing the remedy of appeal and the reference. However, there is no further clause empowering the High Court to condone the delay after the period of 180 days."

37. The Court then went on to observe:

> "**33.** Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.
>
> **34.** Though, an argument was raised based on Section 29 of the Limitation Act, even assuming that Section 29(2) would be attracted, what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to the High Court.
>
> **35.** It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law which here in this case is the Central Excise Act. The nature of the remedy provided therein is such that the legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express

> reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, is to be judged not from the terms of the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court.
>
> **36.** The scheme of the Central Excise Act, 1944 supports the conclusion that the time-limit prescribed under Section 35-H(1) to make a reference to the High Court is absolute and unextendable by a court under Section 5 of the Limitation Act. It is well-settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Limitation Act."

38. Unlike the scheme of the Central Excise Act relied upon in **Hongo** (supra), there are no other provisions in the Commercial Courts Act which provide for a period of limitation coupled with a condonation of delay provision which is either open-ended or capped. Also, the period of 180 days provided was one *indicia* which led the Court to exclude the application of section 5 of the Limitation Act, as it was double and triple the period provided for appeals under the other provisions of the same Act. Section 13(1A) of the Commercial Courts Act, by way of contrast, applies an intermediate period of 60 days for filing an appeal, that is, a period that is halfway between 30 days and 90 days provided by Articles 116 and 117 of the Limitation Act.

39. The other judgments relied upon by Dr. George are all distinguishable in that they are judgments which deal with provisions that provide for a period of limitation and a period of condonation of delay beyond which delay cannot be condoned, such as section 125 of the Electricity Act. (*See* **Suryachakra Power Corpn. Ltd. v. Electricity Deptt., (2016) 16 SCC 152** at paragraph 10; **ONGC v. Gujarat Energy Transmission Corpn. Ltd., (2017) 5 SCC 42** at paragraphs 5-10).

40. Section 21 of the Commercial Courts Act was also pressed into service stating that the *non-obstante* clause contained in the Commercial Courts Act would override other Acts, including the Limitation Act, as a result of which, the applicability of section 5 thereof would be excluded. This argument has been addressed in the context of the IBC in **B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633**, as follows:

> "**41.** Shri Dholakia argued that the Code being complete in itself, an intruder such as the Limitation Act must be shut out also by application of Section 238 of the Code which provides that, "notwithstanding anything inconsistent therewith contained in any other law for the time being in force", the provisions of the Code would override such laws. In fact, Section 60(6) of the Code specifically states as follows:

> "**60.** ***Adjudicating authority for corporate persons***.—(1)-(5) * * *
> (6) Notwithstanding anything contained in the Limitation Act, 1963 (36 of 1963) or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded."

> This provision would have been wholly unnecessary if the Limitation Act was otherwise excluded either by reason of the Code being complete in itself or by virtue of Section 238 of the Code. Both, Section 433 of the Companies Act as well as Section 238-A of the Code, apply the provisions of the Limitation Act "as far as may be". Obviously, therefore, where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater. This argument, therefore, must also be rejected."

41. For all these reasons we reject the argument made by Shri George that the application of section 5 of the Limitation Act is excluded given the scheme of Commercial Courts Act.

42. The next important argument that needs to be addressed is as to whether the hard and fast rule applied by this Court in **N.V. International** (supra) is correct in law. *Firstly*, as has correctly been argued by Shri Shroti, **N.V. International** (supra) does not notice the

provisions of the Commercial Courts Act at all and can be said to be *per incuriam* on this count. *Secondly*, it is also correct to note that the period of 90 days plus 30 days and not thereafter mentioned in section 34(3) of the Arbitration Act cannot now apply, the limitation period for filing of appeals under the Commercial Courts Act being 60 days and not 90 days. *Thirdly*, the argument that absent a provision curtailing the condonation of delay beyond the period provided in section 13 of the Commercial Courts Act would also make it clear that any such bodily lifting of the last part of section 34(3) into section 37 of the Arbitration Act would also be unwarranted. We cannot accept Shri Navare's argument that this is a mere *casus omissus* which can be filled in by the Court.

43. The difference between interpretation and legislation is sometimes a fine one, as it has repeatedly been held that judges do not merely interpret the law but also create law. In **Eera v. State (NCT of Delhi), (2017) 15 SCC 133**, this Court was faced with the interpretation of section 2(1)(d) of the Protection of Children from Sexual Offences Act, 2012. This provision reads as follows:

> "(2)(1)(d) "child" means any person below the age of eighteen years;"

44. The argument made before the Court was that the age of 18 years did not only refer to physical age, but could also refer to the mental age of the "child" as defined. This Court was therefore faced with the difficulty between interpreting the law as it stands, and legislating. The concurring judgment of Nariman, J. put it thus:

> "**103.** Having read the erudite judgment of my learned Brother, and agreeing fully with him on the conclusion reached, given the importance of the Montesquiean separation of powers doctrine where the judiciary should not transgress from the field of judicial law-making into the field of legislative law-making, I have felt it necessary to add a few words of my own.
>
> **104.** Mr Sanjay R. Hegde, the learned Amicus Curiae, has argued before us that the interpretation of Section 2(1)(*d*) of the Protection of Children from Sexual Offences Act, 2012 cannot include "mental" age as such an interpretation would be beyond the "*Lakshman Rekha*" — that is, it is no part of this Court's function to add to or amend the law as it stands. This Court's function is limited to *interpreting* the law as it stands, and this being the case, he has exhorted us not to go against the plain literal meaning of the statute.
>
> **105.** Since Mr Hegde's argument raises the constitutional spectre of separation of powers, let it first be admitted that under our constitutional scheme, Judges only *declare* the law; it is for the legislatures to *make* the law. This much at least is clear on a conjoint reading of Articles 141 and 245 of the Constitution of India, which are set out hereinbelow:
>
> > "**141. *Law declared by Supreme Court to be binding on all courts***.—The law *declared* by the

> Supreme Court shall be binding on all courts within the territory of India.
>
> ***
>
> **245. *Extent of laws made by Parliament and by the legislatures of States***.—(1) Subject to the provisions of this Constitution, Parliament may *make* laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the State.
>
> (2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

(emphasis supplied)

> **106.** That the legislature cannot "declare" law is embedded in Anglo-Saxon jurisprudence. Bills of attainder, which used to be passed by Parliament in England, have never been passed from the 18th century onwards. A legislative judgment is anathema. As early as 1789, the US Constitution expressly outlawed bills of attainder vide Article I Section 9(3). This being the case with the legislature, the counter-argument is that the Judiciary equally cannot "make" but can only "declare" law. While declaring the law, can Judges make law as well?..."

45. The concurring judgment went on to state:

> "**127.** It is thus clear on a reading of English, US, Australian and our own Supreme Court judgments that the "*Lakshman Rekha*" has in fact been extended to move away from the strictly literal rule of interpretation back to the rule of the old English case of *Heydon* [*Heydon case*, (1584) 3 Co Rep 7a : 76 ER 637] , where the Court must have recourse to the purpose, object, text and context of a particular provision before arriving at a judicial result. In fact, the wheel has turned full circle. It started out by the rule as stated in 1584 in *Heydon case* [*Heydon case*,

(1584) 3 Co Rep 7a : 76 ER 637] , which was then waylaid by the literal interpretation rule laid down by the Privy Council and the House of Lords in the mid-1800s, and has come back to restate the rule somewhat in terms of what was most felicitously put over 400 years ago in *Heydon case* [*Heydon case*, (1584) 3 Co Rep 7a : 76 ER 637] ."

"**139.** A reading of the Act as a whole in the light of the Statement of Objects and Reasons thus makes it clear that the intention of the legislator was to focus on children, as commonly understood i.e. persons who are physically under the age of 18 years. The golden rule in determining whether the judiciary has crossed the *Lakshman Rekha* in the guise of interpreting a statute is really whether a Judge has only ironed out the creases that he found in a statute in the light of its object, or whether he has altered the material of which the Act is woven. In short, the difference is the well-known philosophical difference between "is" and "ought". Does the Judge put himself in the place of the legislator and ask himself whether the legislator intended a certain result, or does he state that this must have been the intent of the legislator and infuse what he thinks should have been done had he been the legislator. If the latter, it is clear that the Judge then would add something more than what there is in the statute by way of a supposed intention of the legislator and would go beyond creative interpretation of legislation to legislating itself. It is at this point that the Judge crosses the *Lakshman Rekha* and becomes a legislator, stating what the law ought to be instead of what the law is."

46. Ultimately, the judgment concluded:

"**146.** A reading of the Objects and Reasons of the aforesaid Act together with the provisions contained therein would show that whatever is the physical age of the person affected, such person would be a "person with disability"

> who would be governed by the provisions of the said Act. Conspicuous by its absence is the reference to any age when it comes to protecting persons with disabilities under the said Act.
>
> **147.** Thus, it is clear that viewed with the lens of the legislator, we would be doing violence both to the intent and the language of Parliament if we were to read the word "mental" into Section 2(1)(*d*) of the 2012 Act. Given the fact that it is a beneficial/penal legislation, we as Judges can extend it only as far as Parliament intended and no further. I am in agreement, therefore, with the judgment of my learned Brother, including the directions given by him."

47. Given the '*lakshman rekha'* laid down in this judgment, it is a little difficult to appreciate how a cap can be judicially engrafted onto a statutory provision which then bars condonation of delay by even one day beyond the cap so engrafted.

48. Shri George, however, relied upon the judgments of this Court in **Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724** (at paragraph 22) and **D. Purushotama Reddy v. K. Sateesh, (2008) 8 SCC 505** (at paragraph 11), to support the reasoning contained in **Varindera Constructions** (supra) and **N.V. International** (supra). He relied strongly upon paragraph 11 of the judgment in **D. Purushotama Reddy v. K. Sateesh, (2008) 8 SCC 505**, which reads as follows:

> "**11.** We have noticed hereinbefore that whereas the judgment of conviction and sentence was passed on 15-12-2005, the suit was decreed by the civil court on 23-1-

> 2006. Deposit of a sum of Rs 2,00,000 by the appellants in favour of the respondent herein, was directed by the criminal court. Such an order should have been taken into consideration by the trial court. An appeal from a decree, furthermore, is a continuation of suit. The limitation of power on a civil court should also be borne in mind by the appellate court. Was any duty cast upon the civil court to consider the amount of compensation deposited in terms of Section 357 of the Code is the question."

49. From this paragraph, what was sought to be argued was that the limitation of power on a civil court at the initial stage can be read as a limitation onto the appellate court, as was done in the aforesaid judgments. We are afraid that we are unable to agree. This sentence was in the context of a decree passed in a civil suit for a sum of rupees 3.09 lakh with interest, without taking into consideration the fact that an amount of rupees 2.10 lakh had already been deposited by the appellant in criminal proceedings. The Court relied upon section 357(5) of the Code of Criminal Procedure, 1973 to hold that "the court" shall take into account any sum paid or recovered as compensation at the time of awarding compensation in any subsequent civil suit relating to the same matter. "The court" would obviously include an appellate court as well. It was only in this context that the aforesaid observation of limitation of power on a civil court being "borne in mind" by the appellate court, was made.

50. Shri George's reliance upon the judgment of this Court in **P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445** (at paragraphs 36.2-36.3) on the doctrine of unbreakability when applied to section 34(3) of the Arbitration Act, also does not carry the matter much further, as the question is whether this doctrine can be bodily lifted and engrafted onto an appeal provision that has no cut-off point beyond which delay cannot be condoned.

For all these reasons, given the illuminating arguments made in these appeals, we are of the view that **N.V. International** (supra) has been wrongly decided and is therefore overruled.

51. However, the matter does not end here. The question still arises as to the application of section 5 of the Limitation Act to appeals which are governed by a uniform 60-day period of limitation. At one extreme, we have the judgment in **N.V. International** (supra) which does not allow condonation of delay beyond 30 days, and at the other extreme, we have an open-ended provision in which any amount of delay can be condoned, provided sufficient cause is shown. It is between these two extremes that we have to steer a middle course.

52. One judicial tool with which to steer this course is contained in the latin maxim *ut res magis valeat quam pereat*. This maxim was fleshed out in **CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57** as follows:[2]

> "**14.** A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See *Broom's Legal Maxims* (10th Edn.), p. 361, *Craies on Statutes* (7th Edn.), p. 95 and *Maxwell on Statutes* (11th Edn.), p. 221.]
>
> **15.** A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable. (See *Whitney* v. *IRC* [1926 AC 37 : 10 Tax Cas 88 : 95 LJKB 165 : 134 LT 98 (HL)] , AC at p. 52 referred to in *CIT* v. *S. Teja Singh* [AIR 1959 SC 352 : (1959) 35 ITR 408] and *Gursahai Saigal* v. *CIT* [AIR 1963 SC 1062 : (1963) 48 ITR 1] .)
>
> **16.** The courts will have to reject that construction which will defeat the plain intention of the legislature even though there may be some inexactitude in the language used. (See *Salmon* v. *Duncombe* [(1886) 11 AC 627 : 55 LJPC 69 : 55 LT 446 (PC)] AC at p. 634, *Curtis* v. *Stovin* [(1889) 22 QBD 513 : 58 LJQB 174 : 60 LT 772 (CA)] referred to in *S. Teja Singh case* [AIR 1959 SC 352 : (1959) 35 ITR 408].)

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2 Followed in the separate opinion delivered by Pasayat, J. in **Ashoka Kumar Thakur v. Union of India, (2008) 6 SCC 1** (*see* paragraphs 333-334).

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. (See *Nokes* v. *Doncaster Amalgamated Collieries* [(1940) 3 All ER 549 : 1940 AC 1014 : 109 LJKB 865 : 163 LT 343 (HL)] referred to in *Pye* v. *Minister for Lands for NSW* [(1954) 3 All ER 514 : (1954) 1 WLR 1410 (PC)] .) The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania* v. *Union of India* [1992 Supp (1) SCC 594 : 1992 SCC (L&S) 455 : (1992) 19 ATC 881 : AIR 1992 SC 1] .

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. (See *R.S. Raghunath* v. *State of Karnataka* [(1992) 1 SCC 335 : 1992 SCC (L&S) 286 : (1992) 19 ATC 507 : AIR 1992 SC 81] .) Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act. (See *Sultana Begum* v. *Prem Chand Jain* [(1997) 1 SCC 373 : AIR 1997 SC 1006] .)

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that

> Parliament had given with one hand what it took away with the other.
>
> **21.** The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy."

53. Reading the Arbitration Act and the Commercial Courts Act as a whole, it is clear that when section 37 of the Arbitration Act is read with either Article 116 or 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, the object and context provided by the aforesaid statutes, read as a whole, is the speedy disposal of appeals filed under section 37 of the Arbitration Act. To read section 5 of the Limitation Act consistently with the aforesaid object, it is necessary to discover as to what the expression "sufficient cause" means in the context of condoning delay in filing appeals under section 37 of the Arbitration Act.

54. The expression "sufficient cause" contained in section 5 of the Limitation Act is elastic enough to yield different results depending upon the object and context of a statute. Thus, in **Ajmer Kaur v. State of Punjab, (2004) 7 SCC 381**, this Court, in the context of section 11(5) of the Punjab Land Reforms Act, 1972, held as follows:

"**10.** Permitting an application under Section 11(5) to be moved at any time would have disastrous consequences. The State Government in which the land vests on being declared as surplus, will not be able to utilise the same. The State Government cannot be made to wait indefinitely before putting the land to use. Where the land is utilised by the State Government, a consequence of the order passed subsequently could be of divesting it of the land. Taking the facts of the present case by way of an illustration, it would mean that the land which stood mutated in the State Government in 1982 and which was allotted by the State Government to third parties in 1983, would as a result of reopening the settled position, lead to third parties being asked to restore back the land to the State Government and the State Government in turn would have to be divested of the land. The land will in turn be restored to the landowner. This will be the result of the land being declared by the Collector as not surplus with the landowner. The effect of permitting such a situation will be that the land will remain in a situation of flux. There will be no finality. The very purpose of the legislation will be defeated. The allottee will not be able to utilise the land for fear of being divested in the event of deaths and births in the family of the landowners. Deaths and births are events which are bound to occur. Therefore, it is reasonable to read a time-limit in sub-section (5) of Section 11. The concept of reasonable time in the given facts would be most appropriate. An application must be moved within a reasonable time. The facts of the present case demonstrate that redetermination under sub-section (5) of Section 11 almost 5 years after the death of Kartar Kaur and more than 6 years after the order of the Collector declaring the land as surplus had become final, has resulted in grave injustice besides defeating the object of the legislation which was envisaged as a socially beneficial piece of legislation. Thus we hold that the application for redetermination filed by Daya Singh under sub-section (5) of Section 11 of the Act on 21-6-1985 was

liable to be dismissed on the ground of inordinate delay and the Collector was wrong in reopening the issue declaring the land as not surplus in the hands of Daya Singh and Kartar Kaur.

11. The above reasoning is in consonance with the provision in sub-section (7) of Section 11 of the Act. Sub-section (7) uses the words "where succession has opened after the surplus area or any part thereof has been determined by the Collector …". The words "determined by the Collector" would mean that the order of the Collector has attained finality. The provisions regarding appeals, etc. contained in Sections 80-82 of the Punjab Tenancy Act, 1887, as made applicable to proceedings under the Punjab Land Reforms Act, 1972, show that the maximum period of limitation in case of appeal or review is ninety days. The appeal against the final order of the Collector dated 30-9-1976 whereby 3.12 hectares of land had been declared as surplus was dismissed on 27-3-1979. The order was allowed to become final as it was not challenged any further. Thus the determination by the Collector became final on 27-3-1979. The same could not be reopened after a lapse of more than 6 years by order dated 23-7-1985. The subsequent proceedings before the Revenue Authorities did not lie. The order dated 23-7-1985 is non est. All the subsequent proceedings therefore fall through. The issue could not have been reopened."
(emphasis supplied)

55. Nearer home, in **Brahampal v. National Insurance Company, 2020 SCC OnLine SC 1053**, this Court specifically referred to the difference between a delay in filing commercial claims under the Arbitration Act or the Commercial Courts Act and claims under the Motor Vehicles Act, 1988, as follows:

"**16.** This Court has *firstly* held that purpose of conferment of such power must be examined for the determination of the scope of such discretion conferred upon the court. [refer to *Bhaiya Punjalal Bhagwandin* v. *Dave Bhagwatprasad Prabhuprasad*, AIR 1963 SC 120; *Shri Prakash Chand Agarwal* v. *Hindustan Steel Ltd.*, (1970) 2 SCC 806]. Our analysis of the purpose of the Act suggests that such discretionary power is conferred upon the Courts, to enforce the rights of the victims and their dependents. The legislature intended that Courts must have such power so as to ensure that substantive justice is not trumped by technicalities.
(emphasis supplied)

"**22.** Therefore, the aforesaid provision being a beneficial legislation, must be given liberal interpretation to serve its object. Keeping in view the substantive rights of the parties, undue emphasis should not be given to technicalities. In such cases delay in filing and refiling cannot be viewed strictly, as compared to commercial claims under the Arbitration and Concilliation Act, 1996 or the Commercial Courts Act, 2015. In *P. Radha Bai* v. *P. Ashok Kumar*, (2019) 13 SCC 445, wherein this Court while interpreting Section 34 of the Arbitration Act, held that the right to object to an award itself is substantively bound with the limitation period prescribed therein and the same cannot merely a procedural prescription. In effect the Court held that a complete petition, has to be filed within the time prescribed under Section 34 of the Arbitration Act and '*not thereafter*'. The Court while coming to the aforesaid conclusion, reasoned as under:

> **"36.1** First, the purpose of the Arbitration Act was to provide for a speedy dispute resolution process. The Statement of Objects and Reasons reveal that the legislative intent of enacting the Arbitration Act was to provide parties with an

> efficient alternative dispute resolution system which gives litigants an expedited resolution of disputes while reducing the burden on the courts. Article 34(3) reflects this intent when it defines the commencement and concluding period for challenging an award. **This Court in** Popular Construction case [Union of India *v.* Popular Construction Co., **(2001) 8 SCC 470] highlighted the importance of the fixed periods under the Arbitration Act. We may also add that the finality is a fundamental principle enshrined under the Arbitration Act and a definitive time-limit for challenging an award is necessary for ensuring finality**. If Section 17 were to be applied, an award can be challenged even after 120 days. This would defeat the Arbitration Act's objective of speedy resolution of disputes. The finality of award would also be in a limbo as a party can challenge an award even after the 120 day period."

(emphasis in original)

> "**23.** Coming back to the Motor Vehicles Act, the legislative intent is to provide appropriate compensation for the victims and to protect their substantive rights, in pursuit of the same, the interpretation should not be as strict as commercial claims as elucidated above.
>
> **24.** Undoubtedly, the statute has granted the Courts with discretionary powers to condone the delay, however at the same time it also places an obligation upon the party to justify that he was prevented from abiding by the same due to the existence of "sufficient cause". Although there exists no strait jacket formula for the Courts to condone delay, but the Courts must not only take into consideration the entire facts and circumstances of case but also the conduct of the parties. The concept of reasonableness dictates that, the

> Courts even while taking a liberal approach must weigh in the rights and obligations of both the parties. When a right has accrued in favour of one party due to gross negligence and lackadaisical attitude of the other, this Court shall refrain from exercising the aforesaid discretionary relief.
>
> **25.** Taking into consideration the facts and circumstances of the present case, we are of the opinion that the delay of 45 days has been properly explained by the appellants, which was on account of illness of the wife of Appellant No. 1. It was not appropriate on the part of the High Court to dismiss the appeal merely on the ground of delay of short duration, particularly in matters involving death in motor accident claims. Moreover, in the present case no *mala fide* can be imputable against the appellants for filing the appeal after the expiry of ninety days. Therefore, we are of the opinion that the strict approach taken in the impugned order is hyper-technical and cannot be sustained in the eyes of law."

(emphasis supplied)

56. Given the object sought to be achieved under both the Arbitration Act and the Commercial Courts Act, that is, the speedy resolution of disputes, the expression "sufficient cause" is not elastic enough to cover long delays beyond the period provided by the appeal provision itself. Besides, the expression "sufficient cause" is not itself a loose panacea for the ill of pressing negligent and stale claims. This Court, in **Basawaraj v. Land Acquisition Officer, (2013) 14 SCC 81**, has held:

> "**9.** Sufficient cause is the cause for which the defendant could not be blamed for his absence. The meaning of the

word “sufficient” is “adequate” or “enough”, inasmuch as may be necessary to answer the purpose intended. Therefore, the word “sufficient” embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, “sufficient cause” means that the party should not have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has “not acted diligently” or “remained inactive”. However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the court that he was prevented by any “sufficient cause” from prosecuting his case, and unless a satisfactory explanation is furnished, the court should not allow the application for condonation of delay. The court has to examine whether the mistake is bona fide or was merely a device to cover an ulterior purpose. (See *Manindra Land and Building Corpn. Ltd.* v. *Bhutnath Banerjee* [AIR 1964 SC 1336] , *Mata Din* v. *A. Narayanan* [(1969) 2 SCC 770 : AIR 1970 SC 1953] , *Parimal* v. *Veena* [(2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1 : AIR 2011 SC 1150] and *Maniben Devraj Shah* v. *Municipal Corpn. of Brihan Mumbai* [(2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24 : AIR 2012 SC 1629] .)

10. In *Arjun Singh* v. *Mohindra Kumar* [AIR 1964 SC 993] this Court explained the difference between a “good cause” and a “sufficient cause” and observed that every “sufficient cause” is a good cause and vice versa. However, if any difference exists it can only be that the requirement of good cause is complied with on a lesser degree of proof than that of “sufficient cause”.

11. The expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only *so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned*, whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible. (Vide *Madanlal* v. *Shyamlal* [(2002) 1 SCC 535 : AIR 2002 SC 100] and *Ram Nath Sao* v. *Gobardhan Sao* [(2002) 3 SCC 195 : AIR 2002 SC 1201] .)

12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute.

13. The statute of limitation is founded on public policy, its aim being to secure peace in the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. It seeks to bury all acts of the past which have not been agitated unexplainably and have from lapse of time become stale. According to *Halsbury's Laws of England*, Vol. 28, p. 266:

> "605. *Policy of the Limitation Acts*.—The courts have expressed at least three differing reasons supporting the existence of statutes of limitations

> namely, (*1*) that long dormant claims have more of cruelty than justice in them, (*2*) that a defendant might have lost the evidence to disprove a stale claim, and (*3*) that persons with good causes of actions should pursue them with reasonable diligence."

An unlimited limitation would lead to a sense of insecurity and uncertainty, and therefore, limitation prevents disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by a party's own inaction, negligence or laches. (See *Popat and Kotecha Property* v. *SBI Staff Assn.* [(2005) 7 SCC 510] , *Rajender Singh* v. *Santa Singh* [(1973) 2 SCC 705 : AIR 1973 SC 2537] and *Pundlik Jalam Patil* v. *Jalgaon Medium Project* [(2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907] .)

14. In *P. Ramachandra Rao* v. *State of Karnataka* [(2002) 4 SCC 578 : 2002 SCC (Cri) 830 : AIR 2002 SC 1856] this Court held that judicially engrafting principles of limitation amounts to legislating and would fly in the face of law laid down by the Constitution Bench in *Abdul Rehman Antulay* v. *R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93 : AIR 1992 SC 1701] .

15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. No court could be justified in condoning such an inordinate delay by imposing any

> condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."
> (emphasis supplied)

57. Likewise, merely because the government is involved, a different yardstick for condonation of delay cannot be laid down. This was felicitously stated in **Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563** ["**Postmaster General**"], as follows:

> "**27.** It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.
>
> **28.** Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fides, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic

> methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody, including the Government.
>
> **29.** In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

58. The decision in **Postmaster General** (supra) has been followed in the following subsequent judgments of this Court:

i) **State of Rajasthan v. Bal Kishan Mathur, (2014) 1 SCC 592** at paragraphs 8-8.2;

ii) **State of U.P. v. Amar Nath Yadav, (2014) 2 SCC 422** at paragraphs 2-3;

iii) **State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709** at paragraphs 11-13; and

iv) **State of M.P. v. Bherulal, (2020) 10 SCC 654** at paragraphs 3-4.

59. In a recent judgment, namely, **State of M.P. v. Chaitram Maywade, (2020) 10 SCC 667**, this Court referred to **Postmaster General** (supra), and held as follows:

> "**1.** The State of Madhya Pradesh continues to do the same thing again and again and the conduct seems to be incorrigible. The special leave petition has been filed after a delay of 588 days. We had an occasion to deal with such inordinately delayed filing of the appeal by the State of Madhya Pradesh in *State of M.P.* v. *Bherulal* [*State of M.P.* v. *Bherulal*, (2020) 10 SCC 654] in terms of our order dated 15-10-2020.
>
> **2.** We have penned down a detailed order in that case and we see no purpose in repeating the same reasoning again except to record what are stated to be the facts on which the delay is sought to be condoned. On 5-1-2019, it is stated that the Government Advocate was approached in respect of the judgment delivered on 13-11-2018 [*Chaitram Maywade* v. *State of M.P.*, 2018 SCC OnLine HP 1632] and the Law Department permitted filing of the SLP against the impugned order on 26-5-2020. Thus, the Law Department took almost about 17 months' time to decide whether the SLP had to be filed or not. What greater certificate of incompetence would there be for the Legal Department!
>
> **3.** We consider it appropriate to direct the Chief Secretary of the State of Madhya Pradesh to look into the aspect of revamping the Legal Department as it appears that the Department is unable to file appeals within any reasonable period of time much less within limitation. These kinds of excuses, as already recorded in the aforesaid order, are no more admissible in view of the judgment in *Postmaster General* v. *Living Media (India) Ltd.* [*Postmaster General* v. *Living Media (India) Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC

(Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649]

4. We have also expressed our concern that these kinds of the cases are only "certificate cases" to obtain a certificate of dismissal from the Supreme Court to put a quietus to the issue. The object is to save the skin of officers who may be in default. We have also recorded the irony of the situation where no action is taken against the officers who sit on these files and do nothing.

5. Looking to the period of delay and the casual manner in which the application has been worded, the wastage of judicial time involved, we impose costs on the petitioner State of Rs 35,000 to be deposited with the Mediation and Conciliation Project Committee. The amount be deposited within four weeks. The amount be recovered from the officer(s) responsible for the delay in filing and sitting on the files and certificate of recovery of the said amount be also filed in this Court within the said period of time. We have put to Deputy Advocate General to caution that for any successive matters of this kind the costs will keep on going up."

60. Also, it must be remembered that merely because sufficient cause has been made out in the facts of a given case, there is no right in the appellant to have delay condoned. This was felicitously put in **Ramlal v. Rewa Coalfields Ltd., (1962) 2 SCR 762** as follows:

"It is, however, necessary to emphasise that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court by s. 5. If sufficient cause is not proved nothing

> further has to be done; the application for condoning delay has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its *bona fides* may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. It cannot justify an enquiry as to why the party was sitting idle during all the time available to it. In this connection we may point out that considerations of *bona fides* or due diligence are always material and relevant when the Court is dealing with applications made under s. 14 of the Limitation Act. In dealing with such applications the Court is called upon to consider the effect of the combined provisions of ss. 5 and 14. Therefore, in our opinion, considerations which have been expressly made material and relevant by the provisions of s. 14 cannot to the same extent and in the same manner be invoked in dealing with applications which fall to be decided only under s. 5 without reference to s. 14."
> (page 771)

61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise

acted *bona fide* and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches.

62. Coming to the facts of the appeals before us, in the Civil Appeal arising out of SLP (C) No. 665 of 2021, the impugned judgment of the High Court of Bombay, dated 17.12.2020, has found that the Govt of Maharashtra had not approached the court *bona fide*, as follows:

> "**7.** I have carefully gone through the papers. There can be no doubt in view of the documentary evidence in the form of copy of the application tendered by the Advocate representing the applicant for obtaining a certified copy (Exhibit-R1) that in fact, after pronouncement of the judgment and order in the proceeding under Section 34 of the Act, the concerned Advocate had applied for certified copy on 14.05.2019. The endorsement further reads that it was to be handed over to Mr. A.D. Patil of the Irrigation Department, Dhule, who is a staff from the office of the applicant. The further endorsements also clearly show that the certified copy was ready and was to be delivered on 27.05.2019. [In spite] of such a stand and document, the applicant has not controverted this or has not come up with any other stand touching this aspect. It is therefore apparent that the applicant is not coming to the Court with clean hands even while seeking the discretionary relief of condonation of delay"

63. Apart from this, there is a long delay of 131 days beyond the 60-day period provided for filing an appeal under section 13(1A) of the Commercial Courts Act. There is no explanation worth the name contained in the condonation of delay application, beyond the usual file-pushing and administrative exigency. This appeal is therefore dismissed.

64. In the Civil Appeal arising out of SLP (C) No. 15278 of 2020, the impugned judgment of the High Court of Madhya Pradesh dated 27.01.2020 relies upon **Consolidated Engg.** (supra) and thereby states that the judgment of this Court in **N.V. International** (supra) would not apply. The judgment of the High Court is wholly incorrect inasmuch as **Consolidated Engg.** (supra) was a judgment which applied the provisions of section 14 of the Limitation Act and had nothing to do with the application of section 5 of the Limitation Act. **N.V. International** (supra) was a direct judgment which applied the provisions of section 5 of the Limitation Act and then held that no condonation of delay could take place beyond 120 days. The High Court was bound to follow **N.V. International** (supra), as on the date of the judgment of the High Court, **N.V. International** (supra) was a judgment of two learned judges of the Supreme Court binding upon the High Court by virtue of Article 141 of the Constitution. On this

score, the impugned judgment of the High Court deserves to be set aside.

65. That apart, on the facts of this appeal, there is a long delay of 75 days beyond the period of 60 days provided by the Commercial Courts Act. Despite the fact that a certified copy of the District Court's judgment was obtained by the respondent on 27.04.2019, the appeal was filed only on 09.09.2019, the explanation for delay being:

> "**2.** That, the certified copy of the order dated 01/04/2013 was received by the appellant on 27/04/2019. Thereafter the matter was placed before the CGM purchase MPPKVVCL for the compliance of the order. The same was then sent to the law officer, MPPKVVCL for opinion.
>
> **3.** That after taking opinion for appeal, and approval of the concerned authorities, the officer-in-charge was appointed vide order dated 23/07/2019.
>
> **4.** That, thereafter due to bulky records of the case and for procurement of the necessary documents some delay has been caused however, the appeal has been prepared and filed to pursuant to the same and further delay.
>
> **5.** That due to the aforesaid procedural approval and since the appellant is a public entity formed under the Energy department of the State Government, the delay caused in filing the appeal is bonafide and which deserve[s] to be condoned."

66. This explanation falls woefully short of making out any sufficient cause. This appeal is therefore allowed and the condonation of delay is set aside on this score also.

67. In the Civil Appeal arising out of SLP (C) Diary No. 18079 of 2020, there is a huge delay of 227 days in filing the appeal, and a 200-day delay in refiling. The facts of this case also show that there was no sufficient cause whatsoever to condone such a long delay. The impugned judgment of the High Court of Delhi dated 15.10.2019 cannot be faulted on this score and this appeal is consequently dismissed.

68. Appeals disposed of accordingly.

……J.
(R. F. Nariman)

……J.
(B.R. Gavai)

……J.
(Hrishikesh Roy)

New Delhi.
March 19, 2021.