



NC: 2026:KHC:18684-DB
COMAP No. 95 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF APRIL, 2026

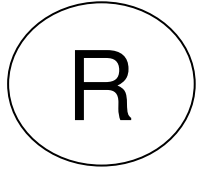
PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

COMMERCIAL APPEAL NO.95 OF 2023



BETWEEN:

SRI. L.VIVEKANANDA
AGED ABOUT 51 YEARS,
S/O LATE RAMAKRISHNAPPA,
R/AT NO.8, 13TH 'A' MAIN ROAD,
NEW THIPPASANDRA,
BENGALURU-560038.

...APPELLANT

(BY SRI. SAMPATH A.,ADVOCATE)

AND:

1. M/S. HANDY 101 SOLUTIONS
AND SERVICE PVT. LTD.,
NO 10, SHANTHI NILAYAM,
WIND TUNEEL ROAD,
MURUGESHPALYAM, HAL POST,
BENGLAURU-560017.
2. MR. PETER PUSHPARAJ
AGED ABOUT 62 YEARS,
S/O LATE MR. JOSHPH PUSHPARAJ,
R/AT NO - G-2, MEMPHIS, NO.7,
LONGFORD ROAD, BENGALURU-560025.

...RESPONDENTS

(BY SRI. VASANTH.V.FERNANDES, ADVOCATE)





THIS COMAP/COMMERCIAL APPEAL FILED UNDER SECTION 37 OF ARBITRATION AND CONCILIATION ACT R/W SECTION 13 (1-A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE JUDGMENT AND ORDER DATED 28.09.2022 IN COM.A.P.NO.41/2022 PASSED BY THE LEARNED LXXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-86) AND CONSEQUENTLY SET ASIDE THE AWARD DATED 31.01.2022 PASSED BY THE LEARNED SOLE ARBITRATOR IN A.C.NO.5/2020 AT ARBITRATION AND CONCILIATION CENTRE, BENGALURU (DOMESTIC AND INTERNATIONAL), SO AS TO MEET THE ENDS OF JUSTICE AND EQUITY. IA NO. 1/2023 FOR CD IN FILING IA NO.1/2023 IS FILED UNDER SECTION 5 OF THE LIMITATION ACT, PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO CONDONE THE DELAY OF 85 DAYS IN FILING THE ABOVE APPEAL, SO AS TO MEET THE ENDS OF JUSTICE AND EQUITY.

THIS APPEAL HAVING BEEN RESERVED FOR JUDGMENT ON **25.03.2026**, THIS DAY, COMING ON FOR PRONOUNCEMENT OF JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

CAV JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 [hereinafter referred to as the 'Act'] impugns the Judgment and Order dated 28.09.2022, passed in Com.A.P.No.41/2022 by the



learned LXXXV Additional City Civil And Sessions Judge, at Bengaluru (CCH-86), whereby the Commercial Court has dismissed a Petition filed under Section 34 of the Act (hereinafter referred to as the 'Impugned Judgment') thereby upholding an Award dated 31.01.2022 passed in A.C.No.5/2020, by a Sole Arbitrator appointed by this Court (hereinafter referred to as the 'Arbitral Award').

2. I.A. No.1/2023 has been filed seeking condonation of delay of 85 days to file the present appeal. The learned counsel for the appellant/claimant has contended that the appeal could not be filed within time, however, in terms of the judgment of the Supreme Court in the case of ***Government of Odisha, Department of Water Resources vs. Gayatri Projects Limited***¹, even a delay of 75 days has been condoned by the Supreme Court.

3. Although the respondents stand served, there is no presence on their behalf. However, in view of the pendency of this appeal for almost three years, and the

¹ 2025 SCC OnLine 2736



fact that this matter is listed for admission today, this Court deems it apposite to hear the appeal.

4. As stated above, I.A.No.1/2023 has been filed by the appellant/claimant, which sets out that the reason for the delay was because the appellant/claimant had a busy schedule and was travelling out of station and could not instruct his counsel. The relevant paragraphs of the Affidavit are set out below:

"2. I humbly submit that pursuant to the aforesaid order, I was not keeping well for some time and also due to busy schedule of the business work I was travelling out of station hence I could not instruct my counsel to prefer the above statutory appeal in time. Therefore, there is a delay.

3. I submit that there is no malafide intention in filing the appeal belatedly due to the aforesaid Bonafide reasons. If this application is not allowed, I would be put to great hardship and prejudice and on the other hand, no hardship of prejudice would be caused to the Respondent if this application is allowed."

[Emphasis Supplied]

5. The Supreme Court in the case of **State of Maharashtra Vs. Borse Bros. Engineers & Contractors (P) Ltd.**² has explained that in the case of commercial disputes, delay should be condoned merely by

² (2021) 6 SCC 460



way of an exception and not by way of a Rule. It has been explained that the expression 'sufficient cause' is not elastic enough to cover long delays, which are beyond the period provided for in the appeal. It has further been held that merely because the Government is involved, a different yardstick for condonation of delay cannot be made. The relevant extract is below:

"58. 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. LAO [Basawaraj v. LAO, (2013) 14 SCC 81] , has held : (SCC pp. 85-88, paras 9-15)

"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 view point 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 & Building Corpn. v. Bhutnath Banerjee* [*Manindra Land & Building Corpn. v. Bhutnath Banerjee*, AIR 1964 SC 1336], *Mata Din v. A. Narayanan* [*Mata Din v. A. Narayanan*, (1969) 2 SCC 770] *Parimal v. Veena* [*Parimal v. Veena*, (2011) 3 SCC 545 : (2011) 2 SCC (Civ) 1] and *Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai* [*Maniben Devraj Shah v. Municipal Corpn. of Brihan Mumbai*, (2012) 5 SCC 157 : (2012) 3 SCC (Civ) 24])...

59. **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.* [*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] [*"Postmaster General"*], as follows: (SCC pp. 573-74, paras 27-29)

"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."*

[Emphasis is supplied]

5.1 The Supreme Court has in ***Borse Brothers*** case further held that given the object of speedy disposal sought to be achieved by the Commercial Courts Act, 2015, for appeals filed under Section 37 of the Arbitration and Conciliation, 1996, that are governed by Articles 116



and 117 of the Limitation Act, 1963, the delay is to be condoned by way of an exception and not a Rule. The relevant extract is below:

"63. 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(1-A) 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."

[Emphasis Supplied]

6. A reading of the Affidavit annexed to I.A.No.1/2023 shows that the appellant has failed to furnish any cause whatsoever for condonation of delay, other than stating that the appellant was travelling out of station and was busy. It further states that the application must be allowed to meet the ends of justice.

6.1 As stated above, the Supreme Court in the **Borse Brothers** case has held that in a case where a party has



acted in a *bonafide* manner, a short delay may be condoned in exceptional circumstances. The contentions which are reproduced in paragraph No.4 do not make out any cause for condonation of delay much less sufficient cause. The party cannot be said to have acted in a *bonafide* manner.

7. The judgement in the ***Government of Odisha's*** case does not help the appellant either, inasmuch as the delay of 75 days therein was condoned only on the Supreme Court being satisfied that sufficient cause had been shown, in line with the principles laid down in ***Borse Brothers*** case.

8. In view of the settled law, this Court is not inclined to condone the delay in the present case. Accordingly, I.A. No.1/2023 is dismissed. However, this Court has briefly examined the contentions of the learned counsel for the appellant/claimant as well and found the same to be *sans* merit. The only contention that has been raised by the



learned counsel for the appellant/claimant before this Court on the merits of this case, is that the learned Arbitral Tribunal wrongly interpreted the clauses of the Share Purchase Agreement [hereinafter referred as the 'SPA'].

9. The appellant/claimant and respondent entered into a SPA dated 30.03.2020, whereby the appellant/claimant has agreed to purchase 20% of the shares of the respondent No.1/company for a sum of Rs.10,00,000/- (Rupees Ten Lakhs). It is the case of the appellant/claimant that there was a breach of clauses (c) and (d) of the SPA and based on the breach, he exercised his right to transfer the shares back to the Promoters by sending a Notice dated 01.08.2018. Since the Notice was not acted upon, a Claim Petition was filed seeking recovery of the sum of Rs.35,00,000/- (Rupees Thirty Five Lakhs) from the respondents.

10. The respondents contended that the exercise of power to transfer their shares back was not a valid



exercise and that a combined reading of clauses (l) and (m) of the SPA ousts the claim of the appellant/claimant. Thus, it was prayed that the claim petition be dismissed with costs.

11. The learned Arbitral Tribunal formulated three issues, below:

- "i. Whether the claimant proves that the respondents to pay a sum of Rs.35,00,000/- in terms clause (l) of the share purchase agreement dated 30.03.2010?*
- ii. Whether the claimant proves that the respondents are liable to pay a sum of Rs.8,92,500/- towards interest for the period from 01.08.2019 to 31.12.2019?*
- iii. Whether the respondents prove that the Arbitration proceedings is not maintainable / barred in view of the pendency of O.S.No.7201/2012 on the file of the Additional City Civil Judge Bengaluru (CCH-45)?"*

12. The learned Arbitral Tribunal after examining the SPA found that the 'option to exit' of the appellant/claimant is a qualified option and not an absolute option. It further found that in terms of the oral evidence of the appellant/claimant (PW1), as set out in his examination-



in-chief, there was an admission by the appellant/claimant that the option was only exercised on 01.08.2018 and not previously. The relevant extract is below:

"I state that, exercising my rights under clause (1) of the Share Purchase Agreement dated 30.03.2010, vide notice dated 01.08.2018, I intended to exit from the company and claimed a sum of Rs.35,00,000/- (Rupees Thirty-Five Lakhs Only) within fifteen days from the receipt of the said notice."

[Emphasis Supplied]

12.1. The learned Arbitral Tribunal further held that the option to exit was to be exercised after the expiry of the period prescribed under clause (l) of the SPA and it was required to be exercised after 30.03.2015 but was only exercised on 01.08.2018. The learned Arbitral Tribunal relied upon Clauses (l) and (m) of the SPA to hold that the appellant/claimant was required to exercise the exit option strictly at the end of the stipulated period of five years from the date of the agreement, i.e., on or before 30.03.2015. The learned Arbitral Tribunal interpreted the expression "at the end of the period of 5 years" as not permitting exercise of the option after the expiry of the said period. It was further held that the Notice dated



01.08.2018, being beyond the prescribed period, was not in compliance with Clause (l) of the SPA. The learned Arbitral Tribunal also relied upon Clause (m) to conclude that the agreement itself was valid only for a period of five years and, admittedly not having been renewed, the right to exercise the exit option did not subsist thereafter. Accordingly, the learned Arbitral Tribunal held that the appellant/claimant, having failed to act strictly in terms of the said clauses, was not entitled to seek payment of Rs.35,00,000/- or any other relief.

12.2 The learned Arbitral Tribunal also relied on the evidence of the appellant/claimant who deposed as PW1, who in his cross-examination stated that the SPA (Ex.P1) was not renewed at any point of time and neither was there an 'Addendum' or a 'Corrigendum' to the SPA to accept the contentions of the appellant/claimant. Thus, interpreting the SPA, the learned Arbitral Tribunal held that the claimant is not entitled for the relief sought in the claim petition and the claim was dismissed.



13. Aggrieved by the dismissal of its claim, the appellant/claimant filed a petition under Section 34 of the Act and contended that the learned Arbitral Tribunal lost sight of the contention of the parties and it wrongly interpreted the meaning of clause (I) of the SPA. It was further contended that the interpretation by the Arbitral Tribunal that the option must be exercised immediately after the expiry of 5 years was incorrect.

13.1 The respondents on the other hand contended that since there was only one interpretation possible to the clause of the SPA and since the learned Arbitral Tribunal interpreted the same, relying on the settled law in this behalf, under Section 34, the Court cannot interfere even if the Court has a different view.

14. The learned Commercial Court, relied on the judgments in the cases of ***SAIL vs. Gupta Brother Steel Tubes Limited***³ and ***Sumitomo Heavy Industries***

³2009 (10) SCC 63



Limited vs. ONGC Limited⁴ to hold that since the Court cannot sit in an appeal over the Award of the learned Arbitral Tribunal nor can it go into the reasonableness of the contents of the award, the Court cannot substitute its view with that of the Arbitrator or Arbitral Tribunal. Thus, the challenge to the Award came to be dismissed by the Commercial Court.

15. It is settled law that an Arbitrator examines the quality of evidence placed before him when he delivers his Award and a view which is possible on the facts as set forth by the Arbitrator must be relied upon. This Court while sitting in a Coordinate Bench in the Delhi High Court, relying on the judgments of the Supreme Court in the case of **Delhi Airport Metro Express (P) Ltd. v. DMRC**⁵ and **Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum**⁶, has in the case of **Deputy Commissioner**

⁴2010 (11) SCC 296

⁵(2022) 1 SCC 131

⁶(2022) 4 SCC 463



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of Police versus Score Information Technologies⁷

held as follows:

"20. The Arbitrator examines the quality and quantity of evidence placed before him when he delivers his Arbitral Award and a view, which is possible on the facts as set forth by the Arbitrator must be relied upon. In Delhi Airport Metro Express (P) Ltd. v. DMRC, the Supreme Court has held that the very object of the Act is that there should be minimal judicial interference with an Award. It is further held that the Arbitral Tribunal holds the final authority in both facts and law and contravention of law not linked to public policy is beyond the scope of judicial interference under "patent illegality":

"28. This Court has in several other judgments interpreted Section 34 of the 1996 Act to stress on the restraint to be shown by Courts while examining the validity of the arbitral awards. The limited grounds available to Courts for annulment of arbitral awards are well known to legally trained minds. However, the difficulty arises in applying the well-established principles for interference to the facts of each case that come up before the Courts. There is a disturbing tendency of Courts setting aside arbitral awards, after dissecting and reassessing factual aspects of the cases to come to a conclusion that the award needs intervention and thereafter, dubbing the award to be vitiated by either perversity or patent illegality, apart from the other grounds available for annulment of the award. This approach would lead to corrosion of the object of the 1996 Act and the endeavours made to preserve this object, which is minimal judicial interference with arbitral awards. That apart, several judicial pronouncements of this Court would become a dead letter if arbitral awards are set aside by categorising them as perverse or patently illegal

⁷2024 SCC OnLine Del 4555



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without appreciating the contours of the said expressions.

29. **Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappraise evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them.** An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".

[Emphasis is ours]

21. **Interpretation of a contract is a matter for an Arbitrator to determine. Even if such interpretation gives rise to an erroneous application of law, the Courts will generally not interfere, unless the error is palpably perverse or illegal and goes to the root of the matter.** It is therefore to be seen whether the interpretation given by the Arbitral Tribunal is such that a



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fair minded or reasonable person could conclude as well, or if the interpretation by the Arbitral Tribunal is patently illegal.

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23. The Arbitral Tribunal examined and interpreted the provisions of the Contract and found the termination of the Contract to be illegal and awarded damages to the respondent. **The learned Single Judge upheld all the findings of the Arbitral Tribunal after examining the same. The findings of the Arbitral Tribunal are not patently illegal or against public policy.**

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25. **The Supreme Court in Indian Oil Corporation Ltd. v. Shree Ganesh Petroleum, had held that where the terms of a contract are capable of more than one interpretation, the Court cannot interfere with the Award only if the Court is of the opinion that another interpretation would have been a better one.** Reliance is placed on the following extract of the Indian Oil case:

"45. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. **Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.**"

[Emphasis is ours]

16. An examination of the SPA reflects that it is in the nature of an agreement for investment with the



appellant/claimant investing into the respondent No.1/
Company, who stands represented by respondent No.2.

17. At this stage, it is apposite to extract the relevant
clauses of the SPA, which are set out below:

"Clause (b): The parties hereby agree that Handy 101, the Company has been valued at Rs.50,00,000/- (Rupees fifty lakh only) based on the present assets such as furniture, computers, software and resources cost which are brought in to the Company by Mr.Peter Pushparaj from his old establishment.

Clause (c): It is hereby agreed that liability if any beyond Rs.5 lakhs towards the company from the date of incorporation till march 31st 2010 will be paid by the Mr.Peter Pushparaj and not by the company.

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Clause (h) The parties hereto agree to increase the authorized capital of the Company (Handy 101) to Rs.50,00,000/- consisting of 5000 equity shares of Rs. 100/- each to be subscribed by the promoters group and investor in the following ratios:-

<i>Promoter Group</i>	<i>80%</i>
<i>Mr.L.Vivekananda/Nominee</i>	<i>20%</i>

Further capital if any required by Handy 101 in addition to the said issued equity share capital shall be decided from time to time by mutual consent between the parties hereto in writing. Further issue of Equity Shares, if any, shall be in the same proportion as stated hereinabove unless otherwise mutually agreed between the parties hereto in writing and in case any of these parties not taking their share of additional capital, option



*to take the same is available to Mr.Peter Pushparaj
/ Handy 101 Employees.*

Clause (i) The third party (Investor) hereby agrees to bring in his portion of equity in consideration of his appointment as a Director in Handy 101 and he will remain as a Director of the Company as long as his investment by way of shareholdings of 20% remain. Any change in constitution of the Board will be done in consultation with the Third party.

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Clause (k) Neither party (promoter and Third part) sell, transfer or otherwise encumber equity share held by them for a minimum period of 3 years from the date of allotment. Each shareholder shall undertake not to sell, assign or transfer any shares of the Company without first obtaining the prior return consent of the other shareholder.

Clause (l): At the end of the period of 5 years from the date of this agreement, the Third party shall have an option to exit by transferring his shares to Promoters group represented by Mr.Peter Pushparaj at an agreed value of Rs. 35 Lacs for equity investment of Rs. 10 Lacs (three and half times the value of investment).

Clause (m): this SPA is valid for a period of five years from the date hereof unless renewed for further period/s as may be mutually agreed to in writing between the parties hereto"

[Emphasis Supplied]

17.1 These clauses reflect that the appellant/claimant is investing into the respondent No.1/Company and in return for 20% of shareholding in the Company. The investment



has a lock-in period of three (3) years. It reflects that the SPA is valid for 5 years and at the end of 5 years, the appellant/claimant would have the option to transfer his shareholding at three and half times the value of his investment of Rs.10,00,000/-, for a value of Rs.35,00,000/.

18. Undisputably, the SPA was neither extended nor renewed. It thus came to an end of 5 years, i.e., on 30.03.2015. At that time, the appellant/claimant did not exercise his option to exit. He waited for another three years and then exercised his option belatedly and after the SPA had expired.

19. An examination of the Arbitral Award shows that the learned Arbitral Tribunal has examined the clauses of the SPA, as well as the evidence produced by the parties and has given a finding based thereon including, with reference to the admissions made by the appellant/claimant (PW1)



during his examination/cross-examination. The relevant extract is set out below:

"14. A careful reading of the **clause (1) above makes it clear that the claimant has an option to exit from the company, but such an option is not an absolute one.** On the other hand, the same is a qualified one. The qualifications are:

- i. that the option shall be exercised at the end of the period of 5 years from the date of the agreement i.e., at the end of 5 years from 30.03.2010.
- ii. the option can be exercised only by way of transferring his shares to promoters group.
- iii. such a promoter group shall be represented by Mr.Peter Pushparaj, i.e., the respondent No.2 herein.

15. If the option to exit is exercised by fulfilling all the above qualification, then the claimant is entitled for 35 Lakhs being the agreed value of equity investment of Rs.10 Lakhs. It is the specific case of the claimant that he has exercised the option to exit by way of the letter/notice dated 01.08.2018 vide Ex-P4.

Therefore, it is necessary to refer to the **contents of Ex-P4 and the oral evidence of the claimant who was examined as PW-1 to ascertain the fact as to whether the option was exercised by him strictly in terms of the said clause (1).**

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...Admittedly, the date of exercising the option as per the admission of claimant himself is 01.02.2018. The period of 5 years from 30.03.2010 ends on 30.03.2015 whereas, the



letter/notice by which the option is said to have been exercised is dated 01.08.2018. Therefore, there can be no doubt that the option was exercised after the expiry of the period prescribed under clause (1) of the share purchase agreement vide Ex-P1.

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18. ... The claimant having not exercised the option to exist from the company in terms of the time limit prescribed under the said clause (1) remains to be an ordinary shareholder of the company and as such his entitlement is only on the share held by him in the company and is not entitled for the agreed value of Rs.35 Lakhs.

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20. Though there exists no pleading to the effect that the claimant has transferred the shares to the said promoters group in terms of clause (1) of the Ex.P4, with a view to find out as to whether he has spoken anything in his evidence about the transfer of his shares to the said promoters group, **I have carefully perused the deposition of PW1. In the process I find that the affidavit of PW1 in lieu of examination-in-chief is nothing but the repetition of the Claim petition. On the other hand, in his cross-examination he categorically admits as "It is true to state that, I have not issued any notice prior to the date mentioned at Ex.P4".** Therefore, I find considerable force in the argument of Sri. Vasanth V Fernandes that apart from expressing his intention to exit from the company by issuing the said letter/notice dated 01.08.2018 vide Ex.P4 nothing has been done in furtherance of the same for fixing the liability on the respondents to pay a sum of Rs.35 Lakhs to the claimant. **The claimant having failed to act strictly in terms of clause (1) of the said share purchase agreement, which is the foundation of the claim, in my opinion he is**



not entitled to seek a direction to the respondents to pay a sum of Rs.35 Lakhs at the hands of this Tribunal on the strength of the said clause (1) at Ex.P1 and the notice/letter dated 01.08.2018 at Ex.P4.

21. Sri. Vasanth V Fernandes further by referring to **clause (m) of Ex.P1 argued that in view of the period prescribed therein and that the same was not renewed for further period by mutual concert in writing, the right to exercise the option to exit from the company conferred on the claimant ceases to be in force.** As such, I have perused the said clause (m) of Ex.P1. It reads as under:

"(m) This SPA is valid for a period of five years from the date hereof unless renewed for further period/s as may be mutually agreed to in writing between the parties hereto".

22. The above clause makes it clear that the original period of 5 years prescribed for the validity of the agreement can be renewed for further periods by mutual consent, but such renewal shall be necessarily by writing between the parties. In order to find out as to whether there is a renewal of the said SPA, I have carefully perused the evidence of the claimant i.e., PW1, who in his **cross-examination categorically admits as "The share purchase agreement at Ex.P1 was not renewed at any point of time. There is no addendum to Ex.P1. Similarly, there is no corrigendum to Ex.P1".** Therefore, the argument of Sri. Vasanth V Fernandes that the claimant cannot enforce his right under clause (1) of the SPA at Ex.P1 on account to the fact that the validity of the agreement is only for a period of 5 years from 30.03.2010 which come to an end on 30.03.2015 and that the same was not renewed at any point of time as admitted by the



claimant himself requires to be sustained and resultantly on this ground also the claim against the respondents is liable to be rejected. Accordingly, Issue No.1 is answered in the negative."

[Emphasis Supplied]

19.1 In addition, the learned Arbitral Tribunal has examined the evidence and found an admission by the appellant/claimant (PW1) during his examination/cross-examination in the following terms:

"The share purchase agreement at Ex.P1 was not renewed at any point of time. There is no addendum to Ex.P1. Similarly, there is no corrigendum to Ex.P1"

[Emphasis Supplied]

20. The learned Counsel for the appellant/claimant has been unable to show to the Court as to how the interpretation given by the learned Arbitral Tribunal suffers from any illegality.

21. The interpretation given by the learned Arbitral Tribunal in its interpretation of the SPA is neither patently illegal nor ignores the evidence produced by the parties



before the Arbitral Tribunal. In view of the settled law as discussed above, merely because another interpretation is possible, it is not a ground to set aside the award.

22. In any event and as stated above, this appeal is barred by limitation. Thus, the appeal is ***dismissed*** both on the ground of being barred by limitation, as well as on merits. All pending applications stand closed.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

JJ/YN
List 4 Sl.No.1