IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO. 526 OF 2015

Shyam Narayan and Bros. ...Petitioner

Versus

P N. Writer and Company Pvt. Ltd. ...Respondent

Mr. Madhuranjan Shetty, *for Petitioner.*

Mr. Hasmit Trivedi *a/w. Mr. Neeraj Salodkar i/b. Praxis Legal, for Respondent.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : MARCH 23, 2026.

JUDGEMENT :

Context and Factual Background:

1. This is a Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (***"the Act"***), challenging an Arbitral Award dated January 07, 2013, passed by the Arbitral Tribunal (***"Impugned Award"***). The core issue that arises in this matter is whether the rejection of the claims on the ground that it was barred by limitation, deserves interference.

2. The Impugned Award relates to certain excavation work carried out by the Petitioner, Shyam Narayan and Brothers (***"Shyam"***), upon being engaged by the Respondent, P N. Writer and Company Pvt. Ltd. (***"Writer"***), pursuant to a Work Order.

3. The Work Order was for a value of Rs.49,61,100/- with a stipulated commencement date of October 27, 2005, with the work having to be completed within a period of 45 days, i.e. by December 11, 2005. Eventually, additional work was assigned and the cost of the work was enhanced to Rs.65,28,565/-. It is common ground that the work could not be completed by December 11, 2005, and was instead completed on March 15, 2006. The conflict between the parties relates to the reasons for the delay and the allocation of accountability for what caused such delay.

4. According to Shyam, once the work was certified by consultants appointed by Writer, payment was to be released for the work done. The specifications and instructions for the work were also issued by such consultants. After completion of the work on March 15, 2006, the final bill dated March 18, 2006 was raised, and the consultants are said to have certified the final bill for an amount of Rs.65,28,565/-. This is also said to have been confirmed by the consultants in their letter dated November 15, 2008.

5. Writer, however, disputed the bill, which led to arbitration. Writer had made part payments in the sum of Rs.4,84,997/- on October 11, 2005, and another payment of Rs.24,71,828/- on December 28, 2005, pursuant to two running bills raised by Shyam on Writer. A TDS Certificate dated March 07, 2006, was issued by Writer indicating that an amount of Rs. 11,52,256/- was paid by Writer to Shyam on February 8, 2006, but it is Shyam's contention that such an amount was actually not released by Writer.

6. Therefore, the total amount received by Shyam from Writer was to the tune of Rs. 30,50,387/- and the balance amount of Rs. 34,78,178/- pursuant to the final bill was the subject matter of the dispute. Shyam also claimed a refund of the earnest money deposited in the sum of Rs.1,50,000/- and the retention amount of Rs.5,92,929/- along with interest.

7. On March 06, 2009, Shyam is said to have been approached by Writer and it is contended that upon the request of an officer of Writer, a copy of the final bill dated November 10, 2006, was handed over to Writer. Thereafter, correspondence followed between the parties, and Shyam wrote several letters to Writer, including letters dated July 8, 2010 and September 18, 2010, demanding the balance payment. In response, Shyam contends that Writer's officers invited

Shyam for discussions for settlement of claims on October 1, 2010, and at that meeting, certain calculations were scribbled, which, Shyam contends, amounted to an admission of liability of Rs.23,95,618/- towards the balance payment payable to Shyam.

8. This meeting is said to have been recorded by Shyam in a letter dated October 4, 2010, objecting to the calculations made, protesting against the wrongful recovery of Rs.7,50,000/- towards liquidated damages and other deductions of Rs.4,82,560/-. Shyam is said to have threatened legal action, which led to Writer issuing a denial in a letter dated January 28, 2011.

9. A notice for winding up was issued by Shyam, and Company Petition No. 359 of 2011 was filed in this Court on July 15, 2011, seeking the winding up of Writer. Writer, thereafter, wrote a letter dated September 22, 2011, indicating liquidated damages to the tune of Rs.~47.50 lakhs and alluding to the existence of an arbitration clause in the tender conditions. The certified balance amount of Rs.~23.95 lakhs as stated to have been certified by the consultants was not disputed, but Writer also raised a claim for liquidated damages of Rs.~47.50 lakhs.

10. This standoff led to invocation of arbitration by Shyam on October 24, 2011, pursuant to which a three-member Arbitral Tribunal was constituted to deal with the proceedings.

11. At the threshold, Writer took up a defence that the claims were hopelessly barred by limitation and called upon the Learned Arbitral Tribunal to rule on its own jurisdiction in terms of Section 16 of the Act. The Learned Arbitral Tribunal allowed the parties to lead evidence in relation to certain disputed documents, and thereafter placed the matter for arguments. According to Shyam, only the Section 16 Application ought to have been considered, but the Learned Arbitral Tribunal went on to deal with the matter in its entirety and passed the Impugned Award on merits without rendering a separate decision on the Application made under Section 16 of the Act. This course of action was challenged under Section 37 of the Act; however, the challenge was rejected on the premise that it ought to be filed under Section 34 of the Act, leading to the present proceedings.

Contentions of the Parties:

12. I have heard Mr. Madhuranjan Shetty, Learned Advocate for Shyam and Mr. Hasmit Trivedi, Learned Advocate for Writer.

13. Shyam would contend that the Impugned Award is wholly illegal since the Learned Arbitral Tribunal did not deal with the jurisdictional question under Section 16 first, and instead went on to pass the Impugned Award. According to him, the Tribunal was under a legal obligation to decide the preliminary issue of jurisdiction first, and only then proceed to pass the Award on merits in the matter. This, as contended, would constitute an absence of a judicial approach.

14. According to Mr. Shetty, the first unequivocal rejection of Shyam's claims took place only on January 28, 2011, because this is the first time that Writer used express language indicating its unwillingness to pay even the amount certified by the consultants and earlier admitted, and instead, offered a sum of Rs.~23.95 lakhs after discussions with Shyam. He would submit that the right to sue accrued only when such a complete repudiation took place, but the Learned Arbitral Tribunal has erroneously taken a view that the right to sue had accrued when the final bill was defaulted upon.

15. It is also contended that Article 18 of the Limitation Act, 1963 (***"Limitation Act"***) would have no application to the facts of the case, since the tender conditions themselves provided a timeline for payment by insisting on certification by the consultants upon completion, and the appropriate Article would be Article 113 of the Limitation Act, and the

Learned Arbitral Tribunal was in error in not accepting this principle as well. The starting point, according to Mr. Shetty, was wrongly held to be the date of certification of the bill (November 10, 2006) rather than the date of unequivocal denial of the bill (January 28, 2011). Mr. Shetty would submit that the Learned Arbitral Tribunal, by not considering the fact that the bills were not finalised, ought to have held that the claim made by Shyam on July 8, 2010 was the date on which the cause of action accrued, and therefore, it is from this date that the question of limitation would have to be computed.

Analysis and Findings:

16. The Impugned Award is a short one, running into six pages, essentially holding against Shyam, primarily, on the ground of extraordinary delay. The Learned Arbitral Tribunal noted that the certification of the final bill by the consultants had been effected on November 10, 2006, which was said to have been reaffirmed subsequently on November 15, 2008. The Learned Arbitral Tribunal noticed the contention on behalf of Writer that when one counts the limitation of three years from November 10, 2006, the invocation of arbitration took place only on October 24, 2011, which is nearly five years after the certification of the final bill by the Consultants.

17. The Learned Arbitral Tribunal noticed the affidavit of one Mr. Kaustubh Raikar, Executive Director of the Consultants, which confirmed that he had issued a second certification on November 15, 2008. However, the said affidavit clearly asserted that Mr. Raikar would not make himself available for cross-examination. Therefore, the Learned Arbitral Tribunal specifically gave another opportunity to Shyam to enable Mr. Raikar to attend, regardless of his earlier position of not being willing to be subjected to cross-examination, but this was not availed of by Shyam.

18. The Learned Arbitral Tribunal took a view that under Section 18 of the Limitation Act, intermittent letters dated October 13, 2008, and November 15, 2008, the receipt of which was denied by Writer, in any case, would not lead to an acknowledgment of liability on the part of Writer. The Learned Arbitral Tribunal, upon appreciation of evidence, came to the view that it was not convinced of these letters actually having been served upon Writer. Yet, looking into their contents, the Learned Arbitral Tribunal came to a view that the letters do not entail any acknowledgment of liability and, therefore, the provisions of Section 18 would not have any application, for extending the date from which the clock of limitation must start ticking.

19. The Learned Arbitral Tribunal also examined the contention that the entitlement to payment would commence only after the Consultants certify the bill. This is precisely why the Learned Arbitral Tribunal took the view that limitation must be computed from the date on which the Consultants certified the final bill, namely November 10, 2006, and therefore held that the limitation period of three years expired on November 10, 2009.

20. According to Shyam, Article 113 of the Limitation Act must apply, and towards the same, certain decisions were cited. However, the Learned Arbitral Tribunal took the view that the period of limitation for arbitration would start only when the dispute regarding arbitration is first raised by the parties. Applying Article 113, the right to sue accrued when Writer disputed and denied payment even after the certification by the consultants on November 10, 2006, and the finding that the claim was hopelessly barred by limitation cannot be faulted.

21. Even if the reference to arbitration proceedings may not be barred by limitation with reference to the invocation, whether the underlying claims are barred by limitation would have reference to the accrual of the underlying cause of action, and this was held against Shyam. This approach cannot be faulted.

22. The Learned Arbitral Tribunal took the view, rightly in my view, that the right to sue accrued right after the Consultants certified the final bill and despite such certification, Writer was denying its obligation to pay; therefore, the cause of action accrued from that point of time. Arbitration was admittedly invoked only on October 24, 2011. This was five years after the cause of action for recovery of the final bill had accrued on November 10, 2006.

23. Having examined the material on record with the assistance of Learned Advocates for the parties, it is also apparent that on the face of it, the contentions raised by Shyam before the Learned Arbitral Tribunal have been squarely examined and exhaustively dealt with, with particular regard to the facet of limitation. Necessarily, limitation was a mixed question of fact and law for the Learned Arbitral Tribunal, and on the basis of the evidence available before the Arbitral Tribunal, the Tribunal, being the master of the evidence, has examined the relevant contents of the evidence and returned a finding.

24. The test for this Court, in exercise of jurisdiction under Section 34 of the Act, is to see whether in doing so, the Tribunal has ignored any vital evidence or whether the Tribunal has taken into account any extraneous facet as relevant for consideration. The Tribunal has indeed tested the communications claimed to have been issued in

the interregnum. The said letters dated October 13, 2008, and November 15, 2008, have been rightly held not to constitute any acknowledgment of liability on Writer's part. Such a finding is quite logical and reasonable, and it could not be possible for this Court to second guess and interpret the same on the basis of its own assessment of how such correspondence should be read.

25. That apart, when it is claimed that the consultants issued another certification on November 15, 2008, it ought to have been necessary for Shyam to produce the Consultant for cross-examination. In any case, the basis for a second certification of the same work done would not result in the accrual clock being reset, unless the parties had agreed to have some facet re-examined and that led to the second certification. Even if Mr. Kaustubh Raikar was unwilling to come for cross-examination, recourse could have been had to Section 27 of the Act, to have a witness summons issued to Mr. Raikar, particularly when the affidavit filed by him was sought to be pressed into service by Shyam in the arbitration proceedings. When Shyam, of its own accord, was unwilling to have its witness, i.e., Mr. Raikar, step into the box to defend his affidavit and have the same tested in the course of the arbitration proceedings, the view taken by the Learned Arbitral Tribunal in relation

to resetting the date to November 15, 2008 cannot be lightly interfered with.

26. As regards the refund of the earnest money deposit, the same, having fallen due on May 07, 2005, was held to be barred by limitation by 2011 when the claim was made. The Learned Arbitral Tribunal went on to deal with the return of the retention amount. Shyam's pleadings indicated that these amounts were due from September 15, 2006.

27. The issue of retention money also came up for consideration. It was contended that 50% was to be released along with the final bill and the balance 50% was to be released after the defect liability period of one year from the issue of the final completion certificate. Relying on the second purported certification claimed by Shyam, it was contended that the claim for at least 50% of the retention amount was not barred by limitation. However, having examined the work order that was actually issued by Writer to Shyam, the Arbitral Tribunal noted that the work order provided for 10% of the retention amount having to be given against a bank guarantee for six months after completion and handover. The Arbitral Tribunal returned a finding that the refund of the retention amount is covered by the work order and that it was due after six months from the completion of the contract, which indeed is consistent with the pleadings made by Shyam in the arbitration proceedings.

28. Even if the tender conditions were applied (ignoring the work order), considering that the work had been completed by March 15, 2006, which is a stated date of completion asserted by Shyam, the period for computing the deadline for refund of retention money ought to be computed from that date, and one year from such date would lead to the deadline being March 15, 2007. The claim, therefore, applying a period of three years, was held to be alive until March 15, 2010, but the arbitration was invoked only in October 2011, thereby resulting in this claim being barred by limitation.

29. Finally, the Learned Arbitral Tribunal held that claims in relation to loss suffered by Shyam because of a delay occasioned by Writer constituted a claim for compensation for breach of contract, and in this regard, it was held that Article 55 of the Limitation Act would apply. As the contract had been completed on March 15, 2006, any claim for compensation on account of delay ought to be computed from March 15, 2006, and on this ground too, the claim for compensation in view of delay was dismissed as being barred by limitation.

30. As a result, it was stated that the claim for costs too would not survive, since each of the claims made in the matter stood dismissed on the ground of limitation.

31. Having examined the record and the notes of the settlement meeting pressed into service by Mr. Shetty, it is apparent that the unanimous decision of the three-member Learned Arbitral Tribunal does not call for interference. The findings on limitation, even as a mixed question of fact and law, are logical and reasoned. The interpretation of evidence does not lend itself to a finding that any vital evidence was ignored. The interpretation of law is in line with the declared position in law.

Scope of Review:

32. It is now well settled in the law, and repeatedly iterated by the Supreme Court, that the Section 34 Court must not lightly interfere with arbitral awards. The scope of review by the Section 34 Court is also well covered in multiple judgements of the Supreme Court including ***Dyna Technologies***[1], ***Associate Builders***[2], ***Ssyangyong***[3], ***Konkan Railway***[4] and ***OPG Power***[5]. To avoid prolixity, I do not think it necessary to burden this judgement with quotations from these judgements. Suffice it to say (to extract from just one of the foregoing), in ***Dyna Technologies***, the Supreme Court held thus:

1 *Dyna Technologies Private Limited v. Crompton Greaves Ltd – (2019) 20 SCC 1*
2 *Associate Builders vs. Delhi Development Authority – (2015) 3 SCC 49*
3 *Ssangyong Engineering & Construction Co. Ltd. v. National Highways Authority of India – (2019) 15 SCC 131*
4 *Konkan Railways v. Chenab Bridge Project Undertaking – 2023 INSC 742*
5 *OPG Power vs. Enoxio – (2025) 2 SCC 417*

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various courts.* ***We need to be cognizant of the fact that arbitral awards should not be interfered with*** *in a casual and cavalier manner,* ***unless the court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award****. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction.* ***The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated.***
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> *25. Moreover, umpteen number of judgments of this Court have categorically held that the courts should not interfere with an award merely because an alternative view on facts and interpretation of contract exists.* ***The courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act****."*
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> ***[Emphasis Supplied]***

33. In the facts of this case, having examined the record and for the reasons set out above, in my view, it would not be appropriate for this Court to interfere with an eminently reasonable and logical view taken by the Arbitral Tribunal and replace it with a competing view

canvassed on behalf of Shyam. Considering the findings of fact based on appreciation of evidence, regardless of the dispute sought to be raised on the applicable Article in the Limitation Act, the distinction sought to be pointed out would not make a difference in the facts of the case.

34. In the result, the Section 34 Petition is ***finally disposed of*** without any interference with the Impugned Award.

35. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]