IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

RESERVED ON: 06.08.2026
DELIVERED ON: 07.09.2026

PRESENT:

THE HON'BLE MR. JUSTICE GAURANG KANTH

EC-COM 155 OF 2025

STEEL AUTHORITY OF INDIA LIMITED
VS
M/S EASTERN MINERALS AND TRADING AGENCY

Appearance: -

Mr. Rudraman Bhattacharya, Sr. Adv.
Ms. Supriya Dubey, Adv.
Mr. Akash Munshi, Adv.
..... for the petitioner

Mr. Jishnu Saha, Sr. Adv.
Mr. Chayan Gupta, Adv.
Mr. Tanay Agarwal, Adv.
Mr. Chitresh Saraogi, Adv. ***.....for the respondent***

JUDGMENT

Gaurang Kanth, J. :-

1. The present execution petition has been filed seeking implementation of the impugned award dated 29.02.2008 passed by the learned sole Arbitrator Shri. Shambhu Kumar, in the arbitration proceedings between Eastern Minerals & Trading Agency and Steel Authority of India.

2. The decree holder, Steel Authority of India Limited, had entered into a contract dated 06.04.1992 with the respondent for raising, seizing and transportation of limestone at the Kuteshwar Limestone Mines, Madhya Pradesh. On account of the respondent's failure to perform its obligations under the said contract, the contract was terminated with effect from 05.09.1997, giving rise to disputes between the parties, which were referred to arbitration. By the Award dated 29.02.2008 the learned

Arbitrator held the decree holder entitled to a sum of Rs. 5,51,98,684.13/-, together with interest @ 18% per annum, compounded monthly.

3. The award debtor had filed an application under Section 34 of the Arbitration and Conciliation Act, 1996, being A.P. No. 269 of 2008, for setting aside the said Award. The said application came to be dismissed for default on 28.8.2023, and a subsequent application for recall thereof was also dismissed for default on 19.12.2023. Upon a further application filed by the award debtor, A.P. No. 269 of 2008 has since been restored and is stated to be pending. However, no order staying the operation of the Award is presently in force.

4. In view thereof, the award holder preferred the present execution Petition for the implementation of the arbitral award dated 29.02.2008.

5. At the outset, Mr. Jishnu Saha, learned Senior Counsel appearing for the Award Debtor, challenged the maintainability of the present execution petition on the ground that the same is barred by limitation.

Submissions on behalf of the award holder, with respect to the maintainability of the present execution petition

6. Mr. Rudhaman Bhattacharya, learned counsel for the award holder submits that the present execution petition is not barred by limitation and is liable to be entertained.

7. Learned Senior counsel places reliance upon Section 36 of the Arbitration and Conciliation Act, 1996 as it stood prior to its amendment in 2015, and submits that under the said unamended provision, an arbitral award became enforceable, and could be put into execution as if it were a decree of the Court, only upon the expiry of the period prescribed for filing an application under Section 34 without such application having been made,

or, where such an application had been made, upon its rejection. Learned counsel submits that this position was recognised and given effect to by the Supreme Court in ***National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd.,*** reported as ***(2004) 1 SCC 540***, wherein it was held that the mere filing of an application under Section 34 operated as an automatic suspension of the execution of the award, leaving no discretion with the Court to pass any interlocutory order in that regard, and that this defeated the very object of the Act. Learned counsel submits that it was precisely this mischief, as noticed in ***National Aluminium*** *(supra)*, which led the 246th Report of the Law Commission of India (August, 2014) to recommend an amendment of Section 36, so that the mere filing of a Section 34 application would no longer render an award unenforceable.

8. Learned Senior counsel submits that, pursuant to the said Report, Section 36 of the Act was amended with effect from 23.10.2015, doing away with the automatic stay of an award upon filing of a Section 34 application, and requiring the award debtor to make a separate application for stay of the award, on such terms as the Court may impose. Learned counsel submits that the amended Section 36, and its applicability even to Section 34 applications filed and pending prior to 23.10.2015, was considered and upheld by the Supreme Court in ***BCCI v. Kochi Cricket (P) Ltd.,*** reported as ***(2018) 6 SCC 287,*** wherein it was held that Section 36, being procedural in nature, would apply to all court proceedings initiated after 23.10.2015, regardless of when the underlying arbitral or Section 34 proceedings had commenced.

9. Learned Senior counsel for the award holder further submits that thereafter, by the Arbitration and Conciliation (Amendment) Act, 2019,

Section 87 was introduced into the Act, seeking to restrict the applicability of the 2015 Amendment only to arbitral and court proceedings commenced on or after 23.10.2015, thereby seeking to restore, for all earlier proceedings, the very automatic-stay regime that the 2015 Amendment and ***Kochi Cricket*** *(supra)* had done away with. Learned counsel submits that Section 87, together with the deletion of Section 26 of the 2015 Amendment Act, came to be struck down as unconstitutional and manifestly arbitrary by the Supreme Court in ***Hindustan Construction Co. Ltd. v. Union of India,*** reported as ***(2020) 17 SCC 339***. Learned counsel draws attention to the finding of the Supreme Court therein that the automatic-stay doctrine, as laid down in ***National Aluminium*** *(supra)* and the decisions following it, was rendered *per incuriam* for not having noticed Sections 9, 35 and the second part of Section 36 of the Act, and did not state the law correctly; and that the amended Section 36, being clarificatory in nature, merely restated the true position, namely, that the unamended Section 36 never stood in the way of the law relating to the grant of stay of a money decree under the Code of Civil Procedure.

10. In view of the aforesaid, learned counsel for the award holder submits that, upon the striking down of Section 87 and the automatic-stay doctrine by the Supreme Court in ***Hindustan Construction Co. Ltd.*** *(supra)*, the position brought about by the 2015 Amendment stands restored and is applicable to the present proceedings, and the award became enforceable, and the period of limitation of twelve years for its execution under Article 136 of the Limitation Act, 1963 began to run, with effect from 23.10.2015, being the date on which the 2015 Amendment to Section 36 came into force. Learned counsel submits that, computed from the said date, the

present execution petition, having been filed well within twelve years therefrom, is not barred by limitation.

Submissions on behalf of the Award Debtor w.r.t maintainability of the present execution petition.

11. Mr. Jishnu Saha, learned Senior Counsel for the award debtor submits that the present execution petition is barred by limitation and is liable to be dismissed on that ground alone.

12. Learned Senior Counsel submits that the Award in question was made and published on 29.02.2008, and that the present execution petition has been filed after a gap of approximately seventeen years therefrom. Learned Senior counsel submits that, under Article 136 of the Limitation Act, 1963, the period of limitation for execution of a decree is twelve years, and that even allowing for the pendency of the application under Section 34 of the Arbitration and Conciliation Act, 1996, the said period stands long expired.

13. Learned counsel places reliance upon the judgment of this Court in ***Goutam Paul v. Union of India, AO-COM/60/2025***, decided on 12.02.2026, wherein, on materially identical facts, an award of 2009, a Section 34 application filed shortly thereafter, and an execution petition filed after a gap exceeding twelve years from the date of the award, Division Bench of this Court has authoritatively held that the execution petition was barred by limitation, computed from the date of the award itself. Learned counsel submits that the Division Bench, after considering the very submissions now sought to be advanced by the award holder, and after extracting paragraphs 38 and 41 of ***Hindustan Construction Co. Ltd.*** *(Supra)* , held in terms that the doctrine of automatic stay, as laid down in ***National Aluminium Co. Ltd.*** *(supra)* and the decisions following

it, was *per incuriam* and did not state the law correctly, and that this position obtained even under Section 36 as originally enacted, and was not a consequence introduced only by the 2015 Amendment. Learned counsel submits that it necessarily follows, and was so held by the Division Bench, that an award holder was never, at any point of time, prevented by operation of law from putting the award into execution merely on account of the pendency of a Section 34 application, and that the plea of automatic stay is accordingly no answer to the running of limitation.

14. Learned Senior counsel further submits that the Division Bench, at paragraph 16 of ***Goutam Paul*** *(supra)*, rejected the very contention that is sought to be raised in the present proceedings, holding the same to be foreclosed by the binding precedent of ***Hindustan Construction Co. Ltd.*** *(supra)*, and further observing that no explanation had been furnished for the delay in initiating execution even after the said judgment was rendered in the year 2020. Learned counsel submits that this Court is similarly placed in the present case, inasmuch as the award holder has offered no explanation for its failure to initiate execution proceedings at any time between the date of the Award and the filing of the present petition.

15. Learned Senior counsel submits that the reasoning in ***Goutam Paul*** *(supra)* constitutes a considered pronouncement of a Division Bench of this Hon'ble Court, rendered after full consideration of ***National Aluminium Co. Ltd., National Buildings Construction Corp. Ltd., Fiza Developers & Inter-Trade (P) Ltd., BCCI v. Kochi Cricket (P) Ltd., and Hindustan Construction Co. Ltd.*** *(all supra)*, and is directly applicable to, and dispositive of, the question of limitation arising in the present proceedings. Learned counsel accordingly submits that the present execution petition,

having been filed more than twelve years after the date of the Award, is barred by limitation under Article 136 of the Limitation Act, 1963, and is liable to be dismissed as such.

Legal Analysis

16. This Court has heard learned counsel for the parties and considered the submission of the parties the precedents cited and the provisions placed on record.

17. The question for determination is the point from which the period of twelve years prescribed under Article 136 of the Limitation Act, 1963 begins to run for the execution of an award made in 2008, where the application under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the award was filed prior to the Arbitration and Conciliation (Amendment) Act, 2015 and remains pending.

18. To answer this question, it is necessary, at the outset, for this Court to trace the legal history surrounding the issue in some detail.

19. Section 36 of the Act of 1996, as it originally stood, read as follows:

> *"36.* Enforcement: -*Where the time for making an application to set aside the arbitral award under Section 34 has expired, or such application having been made, it has been refused, the award shall be enforced under the Code of Civil Procedure, 1908 (5 of 1908) in the same manner as if it were a decree of the Court."*

20. On a plain reading, this provision creates a two limb conditionality: an award becomes enforceable, and executable as a decree, only upon (i) an expiry of the time prescribed for filing an (Section 34) application under Section 34 without such application having been made, or (ii) where such application is made, upon its refusal.

21. This provision was construed by the Supreme Court in ***National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd.,*** reported as

(2004) 1 SCC 540 as producing an automatic suspension of the award upon the mere filing of a Section 34 application, without reference to its merits and without any discretion in the Court to order otherwise. This construction was followed in ***National Buildings Construction Corpn. Ltd. v. Lloyds Insulation (India) Ltd.*****,** reported as **(2005) 2 SCC 367** and ***Fiza Developers and Inter-Trade (P) Ltd. v. AMCI (India) Pvt. Ltd.*****,** reported as ***(2009) 17 SCC 796***, and remained binding law throughout the period with which this Court is presently concerned.

22. This position was noticed by the 246th Report of the Law Commission of India (August, 2014), which observed that the automatic suspension of an award upon the mere filing of a Section 34 application *"virtually paralyses the process for the winning party/award creditor*," and recommended amendment of Section 36 so that the award would not become unenforceable merely upon the making of an application under Section 34.

23. Pursuant to the said recommendation, Section 36 was substituted by the Arbitration and Conciliation (Amendment) Act, 2015, with effect from 23.10.2015, to read as follows:

> *"36. Enforcement. -(1) Where the time for making an application to set aside the arbitral award under Section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.*
>
> *(2) Where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.*
>
> *(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing..."*

24. Section 26 of the 2015 Amendment Act, being the transitional provision, provided that nothing contained in the Amendment Act would apply to "arbitral proceedings" commenced before 23.10.2015, unless the parties otherwise agreed, but that the Amendment Act would apply to arbitral proceedings commenced on or after that date. It is to be noted that Section 26 speaks only of arbitral proceedings, and is silent as to court proceedings, namely, applications under Section 34 and Section 36, arising from such arbitral proceedings.

25. The question whether amended Section 36 would apply to Section 34 applications filed and pending before 23.10.2015, came to be authoritatively settled by the Supreme Court in ***Kochi Cricket*** *(supra)*. The Supreme Court held that Section 26 bifurcates proceedings into two categories, arbitral proceedings themselves, and court proceedings in relation thereto, and that the bar contained in the first part of Section 26 applies only to arbitral proceedings and not to court proceedings. The Supreme Court held:

> *" Section 26, therefore, bifurcates proceedings, as has been stated above, with a great degree of clarity, into two sets of proceedings, arbitral proceedings themselves, and court proceedings in relation thereto. The scheme of Section 26 is thus clear: that the Amendment Act is prospective in nature, and will apply to those arbitral proceedings that are commenced, as understood by Section 21 of the principal Act, on or after the Amendment Act, and to court proceedings which have commenced on or after the Amendment Act came into force."*

26. Since amended Section 36 governs the manner and conditions of enforcement of an award before a court, since a matter of procedure, and not a substantive right of parties *inter se* in the arbitration, the Hon'ble Supreme Court held that it would apply to all court proceedings, including Section 34 applications, pending as on 23.10.2015, irrespective of whether

the underlying arbitral proceedings or the Section 34 application itself had commenced before that date. This is what may be termed the retroactive operation given to amended Section 36 by judicial construction, it is not a retrospectivity created by the text of the 2015 Amendment Act itself, which nowhere states that Section 36 shall apply to pending court proceedings; it is a construction placed upon Section 26's silence regarding court proceedings, holding that a procedural amendment, absent an express restriction, applies to all proceedings pending before a court from the date it comes into force.

27. By the Arbitration and Conciliation (Amendment) Act, 2019, Section 87 was introduced into the Act with effect from the date of assent, reading as follows:

> *"87. Effect of arbitral and related court proceedings commenced prior to 23.10.2015, Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) shall—*
>
> *(a) not apply to—*
>
> *(i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);*
>
> *(ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016);*
>
> *(b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and to court proceedings arising out of or in relation to such arbitral proceedings."*

28. Section 15 of the 2019 Amendment Act simultaneously omitted Section 26 of the 2015 Amendment Act, with retrospective effect from 23.10.2015. The combined effect of Section 87(a)(ii) was to expressly extend the pre-2015 automatic-stay regime to all court proceedings arising from pre-2015

arbitral proceedings, irrespective of when such court proceedings were themselves filed, thereby legislatively reversing the position settled in ***Kochi Cricket*** *(supra)*, and reviving, for such proceedings, the very automatic stay doctrine that the 2015 Amendment had been enacted to remove.

29. Section 87, together with the deletion of Section 26, came to be challenged, and were struck down as unconstitutional and manifestly arbitrary under Article 14 of the Constitution, by the Supreme Court in ***Hindustan Construction Co. Ltd.*** *(supra)*. The Hon'ble Supreme Court held, at para 38 thereof, that the automatic stay doctrine as laid down in ***National Aluminium*** *(supra)* and the decisions following it was per in curiam and did not correctly state the law even under the unamended Act:

> *"38. Thus, the reasoning of the judgments in NALCOS, and Fiza Developers & Inter-Trade (P) Ltd. being per incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly... Thus, it is clear that the automatic stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36 even as originally enacted is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court."*
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> *And further, at para 41:*
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> *"41. Given the fact that we have declared that the judgments in NALCO, National Buildings Construction Corpn. Ltd. and Fiza Developers have laid down the law incorrectly, it is also clear that the amended Section 36, being clarificatory in nature, merely restates the position that the unamended Section 36 does not stand in the way of the law as to grant of stay of a money decree under the provisions of the CPC."*

30. The Hon'ble Supreme Court further held that Section 87 was manifestly arbitrary precisely because it reintroduced the mischief of automatic stay that the 2015 Amendment, following the 246th Law Commission Report,

had been specifically designed to remove, without any rational justification for doing so, and struck down Section 87 and the deletion of Section 26 in their entirety, holding at para 66 that *"Kochi Cricket judgment will therefore continue to apply so as to make applicable the salutary amendments made by the 2015 Amendment Act to all court proceedings initiated after 23-10-2015.*"

31. The effect of the striking down of Section 87 is that the field reverts to the position as settled by ***Kochi Cricket*** *(supra),* namely, that the amended Section 36 governs all court proceedings, including Section 34 applications and Section 36 execution petitions, pending or instituted on or after 23.10.2015, irrespective of whether the underlying arbitral proceedings, the award, or the Section 34 application itself, predate that date. It is only arbitral proceedings properly so called, the reference, pleadings and hearing before, and the making of the award by, the arbitrator, that continue, under the unstruck first part of Section 26, to be governed by the law as it stood at their commencement, where such commencement predates 23.10.2015.

32. This being the legal history surrounding the issue in hand, two distinct questions arise on this record, and it is necessary to keep them apart. The first is whether the mere filing of the Section 34 application operated, in law, as an automatic stay of the Award. The first question stands conclusively answered in the negative by ***Hindustan Construction*** (*supra*), and this Court respectfully proceeds on that footing, as did the Division Bench of this Court in ***Goutam Paul*** *(supra).* The second, and analytically separate, question is when the Award *"became enforceable"* within the meaning of Article 136, that is, the date from which the Award-holder could,

in fact and in law, have sought and obtained execution. The first question asks what the law, correctly understood with the benefit of ***Hindustan Construction*** *(supra)*, has always been. The second asks what remedy was actually and practically available to a litigant standing in 2008, in 2012, or in 2015, before ***Hindustan Construction*** *(supra)* was decided in 2020. These are not the same inquiry, and an answer to the first does not, without more, supply the answer to the second.

33. The period from 23.10.2015 the position follows directly from **Kochi Cricket** *(supra)* and requires no reliance on the retrospective effect of ***Hindustan Construction*** *(supra)*. The substituted Section 36(2) applies to the present proceeding, which was pending on 23.10.2015. It expressly provides that the pendency of the Section 34 application does not, by itself, render the Award unenforceable, and that enforcement could be resisted only upon a specific order of stay obtained on a separate application. No such order has been shown to have been sought or granted at any stage. Applying Section 36(2), as construed in ***Kochi Cricket*** *(supra)***,** on its own terms, the Award was capable of enforcement, in the sense relevant to Article 136, with effect from 23.10.2015.

34. During the period 29.02.2008 to 22.10.2015, ***National Aluminium*** (*supra*) and the decisions following it were binding on every court in India by virtue of Article 141 of the Constitution. An execution petition filed by the Award-holder at any point during this period would, applying the law as it then bound every court to apply it, have been met with the automatic bar recognised in that line of authority. That ***Hindustan Construction*** *(supra)* subsequently held this line of authority to be *per incuriam* does not alter what relief any court in the country would, as a matter of fact, have granted

or withheld from this Award-holder had it approached the court between 2008 and 2015. A declaration of *per incuriam* corrects the law for the future and for pending matters; it does not retrospectively revive a remedy that was already foreclosed at the relevant time.

35. This distinction is material because Article 136 does not run from the bare date of the decree or award, but from the date the decree or order *"becomes enforceable*." The Supreme Court's construction of this expression in **Deep Chand v. Mohan Lal,** reported as ***(2000) 6 SCC 259,*** **Akkayanaicker v. A.A.A. Kotchadainaidu,** reported as ***(2004) 12 SCC 469,*** and ***Hameed Joharan v. Abdul Salam,*** reported as ***(2001) 7 SCC 573*** establishes that the starting point of limitation is the date on which the decree holder could, in fact and in law, act upon the decree to enforce it, and not invariably the date of the decree itself. Those cases concerned impediments arising from the terms of the decree; the impediment here arose from a binding and uniformly applied rule of law external to the Award. Its practical effect, however, the complete unavailability of execution, was, if anything, more absolute, since no court retained any discretion to entertain execution during this period. The principle that *lex non cogit ad impossibilia* (the law does not exact the impossible) applies with corresponding force: a period during which the remedy of execution stood judicially foreclosed to every litigant similarly placed cannot be counted against this Award-holder in computing when the Award became enforceable.

36. The same conclusion also finds support, by analogy, in Section 15(1) of the Limitation Act, 1963, which provides for exclusion of the period during which execution of a decree is stayed by an injunction or order. The underlying principle is that a period during which enforcement of an

adjudicated right is legally unavailable ought not to operate to the prejudice of the person seeking execution. In the present case, the Award-holder was, during the period from 29.02.2008 to 22.10.2015, confronted with a binding judicial regime under which execution upon the pendency of a Section 34 proceeding was not available in practice. Although ***Hindustan Construction*** (*supra*) subsequently declared that such automatic stay was not the correct interpretation of the unamended Section 36, that subsequent declaration cannot retrospectively convert a remedy which was judicially foreclosed during the said period into one which was then practically available. The period during which execution was so foreclosed must, therefore, be excluded in determining when the Award became enforceable for the purposes of Article 136.

37. This construction is reinforced by the purpose the 2015 Amendment was enacted to serve. The 246th Report of the Law Commission of India (August 2014) recorded that the automatic-stay position then prevailing *"virtually paralyzed the process for the winning party/award creditor."* To hold that limitation ran uninterrupted through the very period in which the award-holder's remedy stood paralysed by binding authority would allow the mischief the Amendment was designed to cure to operate as an independent and permanent bar to the Award, notwithstanding the cure. It would further mean that a Section 34 application, whatever its ultimate merit, could be used to defeat an Award by mere attrition, an incentive to prolong rather than resolve challenges under Section 34 that this Court declines to read into Article 136 where its language does not compel it.

38. The consequences of declining to adopt this construction merit specific notice. If limitation under Article 136 were held to run from the date of the

Award itself, an Award made in 2008 would stand time-barred, irrespective of outcome, from 2020 onward, that is, five years before the very statutory regime under which the present proceeding is being adjudicated came into force, and while the challenge to the Award under Section 34 was itself still pending and undecided. On such a construction, even if the Section 34 application were today to be dismissed and the Award upheld in its entirety, attaining finality on merits, the Award-holder would nonetheless be left without any means of enforcing it, not because of any infirmity in the Award, not because of any default or delay on the Award-holder's part in prosecuting execution once the remedy became available, but solely because the challenge to the Award took longer than twelve years to be finally decided, a circumstance ordinarily outside the Award-holder's control and, on the facts of this case, substantially attributable to defaults on the part of the Award Debtor itself. Such a result would mean that the more completely an Award is vindicated on a belated Section 34 challenge, the less capable it becomes of being given effect to. That cannot have been intended either by Parliament, which conceived of Sections 34 and 36 as a coherent scheme for testing and thereafter enforcing an award, or by the Supreme Court in any of the decisions considered above, none of which contemplated or sanctioned an outcome where a challenge under Section 34 could be used, regardless of its merit, to defeat the Award through the mere passage of time.

39. Such a construction would also sit uneasily with the underlying purpose of the law of limitation itself. Limitation statutes are intended to compel diligence and to bar stale claims, not to extinguish rights that a party has been actively, and ultimately successfully, pursuing through the very forum

the statute contemplates. Where a party has kept its dispute alive by prosecuting a live judicial proceeding, the law of limitation is not ordinarily construed to visit that party with forfeiture of the fruits of that very proceeding. It is well settled that where two constructions of a statutory provision are reasonably open, a court will lean against the one which produces a result that is unjust, anomalous, or defeats the object that the statute, read as a whole, seeks to achieve; a construction that leaves a wholly successful litigant without a remedy, through no fault of its own, falls squarely within this principle. Law exists as an instrument to secure justice between parties, and not merely to be applied mechanically to defeat it; a reading of Article 136 that permits limitation to run out silently while the very adjudication on which enforcement depends remains *sub judice*, and that penalises the ultimately successful party for delay caused by the conduct of the other side, would subordinate that end to a rigid and formalistic application of the provision. For the reasons set out above, such a construction is not the only one open on the language of Article 136, and this Court declines to adopt it.

40. Learned Senior Counsel for the Award Debtor relied upon ***Goutam Paul*** (*supra*), in which a Division Bench of this Court, on facts stated to be materially similar, held that limitation ran from the date of the award. On the submissions recorded before this Court, the Division Bench in ***Goutam Paul*** *(supra)* was addressed on, and rejected, the contention that the pendency of a Section 34 application operated as an automatic stay, a contention squarely foreclosed by ***Hindustan Construction*** *(supra)* and also had regard to the Award-holder's own conduct in that case, including the absence of any explanation for delay in initiating execution even after

Hindustan Construction (*supra*) was decided in 2020. Nothing in the record of ***Goutam Paul*** *(supra)* as placed before this Court indicates that the Division Bench was addressed on, or decided, the distinct contention advanced in the present proceeding: that the functional unavailability of execution during 2008–2015, by reason of binding contrary authority subsequently found to be *per incuriam*, itself postpones the date on which the Award *"became enforceable"* for the purposes of Article 136, independently of whether an automatic stay existed in strict law. It is well settled that a judgment is not authority for a proposition it was not called upon to decide (***Municipal Corporation of Delhi v. Gurnam Kaur***, reported as ***(1989) 1 SCC 101***). This Court, accordingly, respectfully finds itself not bound by ***Goutam Paul*** *(supra)* on the specific question presented here, without expressing any view of disagreement with what the Division Bench in fact decided on the submissions before it. This Court is not unmindful that ***Goutam Paul*** *(supra)* is stated to be under challenge before the Hon'ble Supreme Court in Special Leave Petition (C) No. 13785/2026.

41. This Court is conscious that considerations of hardship do not ordinarily override the plain language of a limitation statute, which is intended to secure repose and finality. That principle, however, presupposes that the party against whom limitation is invoked had, throughout the relevant period, an effective remedy available to it, but failed to pursue the same. Where, as here, the remedy itself stood foreclosed by binding judicial authority for the greater part of the period sought to be counted, this is not a case of the Award-holder having slept over its rights; it is a case of the law, as it then stood, having closed the door. To fault the Award-holder for

not executing the Award between 2008 and 2015 is to fault it for not defying binding precedent.

42. For the aforesaid reasons with effect from 23.10.2015, the Award was enforceable under Section 36(2) as construed in ***Kochi Cricket*** *(supra). T*he period from 29.02.2008 to 22.10.2015 stands excluded in computing when the Award *"became enforceable"* for the purposes of Article 136, on the ground that execution stood judicially foreclosed to the Award-holder throughout that period by binding authority later held to be *per incuriam*. The Award is accordingly to be treated, for the purposes of Article 136, as having become enforceable on 23.10.2015. The twelve-year period prescribed under Article 136 accordingly commenced on 23.10.2015 and would ordinarily expire on 23.10.2027. The present execution petition, having been filed before expiry of the said period, is not barred by limitation. The objection raised on behalf of the Award Debtor is accordingly rejected.

43. Since EC (Com)/155/2025 is maintainable the Award debtor is directed to file its affidavit of asset with in a period of four weeks.

44. List the EC (Com)/155/2025 after five weeks.

(GAURANG KANTH, J.)

SAKIL AMED (P.A)