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

Date of Decision:-17.06.2020

+ **I.A.613/2020, I.A. 3900/2020 IN O.M.P(COMM) 23/2020**

NHPC LIMITED

..... Petitioner.

Through: Ms.Maninder Acharya, ASG with
Mr.Puneet Taneja, Mr. Tarkeshwar
Nath and Mr.Viplav Acharya, Advs

Mr.Mukesh & Mr.Kamal, Law
Officers.

Versus

BGS-SGS-SOMA JV

.....Respondent.

Through: Mr.Arvind Nigam, Sr. Adv. with
Mr.Arunabh Chowdhury and
Mr.Vaibhav Tomar , Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

I.A.1672/2020

1. The present application under Section 14 of the Limitation Act, 1963 filed by NHPC Limited, the petitioner in the accompanying petition preferred under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act), though styled as one seeking condonation of delay, primarily seeks exclusion of the time spent by the petitioner in prosecuting its initial challenge to the arbitral Award before a Court without jurisdiction.

2. The subject dispute arises out of an agreement between the parties for construction of the largest hydroelectric project in the country, on the Subransi River in the states of Assam and Arunachal Pradesh. In the accompanying petition under Section 34 of the Act filed before this Court on 08.01.2020, the petitioner has assailed the award passed by a three-member Arbitral Tribunal on 26.08.2016, which was subsequently rectified on 04.10.2016 whereunder a sum of Rs.424,70,52,126.66/- along with interest at the rate of 14% per annum till the date of payment was awarded in favour of the respondent/claimant.

3. Soon after the passing of the Award, the petitioner had challenged the same by preferring an application under Section 34 of the Act before the learned District and Sessions Judge, Faridabad, Haryana which came to be filed on 03.01.2017 (hereinafter referred to as the 'original petition'). On being served, the respondent herein, on 28.04.2017 moved an application under Order VII Rule 10 of the Code of Civil Procedure, 1908 (CPC) r/w Section 2(1)(e)(i) of the Act before the Faridabad Court praying therein that the original petition be returned to the petitioner for presentation before the competent court at Delhi, on the ground that the Faridabad Court did not possess the requisite territorial jurisdiction to adjudicate the Section 34 challenge. Before any decision could be rendered by the Faridabad Court, the Commercial Court came to be constituted at Gurugram and the original petition was, therefore, transferred to the Commercial Court at Gurugram which, vide its order dated 21.12.2017, allowed the respondent's application by directing return of the original petition,

being Arb. Case 118/2017, for presentation before the competent court at Delhi.

4. On 15.02.2018, the petitioner challenged this order dated 21.12.2017 by way of an appeal under Section 37 of the Act before the High Court of Punjab and Haryana which came to be allowed by the High Court on 12.09.2018 with directions to the Gurugram Court to expeditiously decide the original petition on merits. Armed with this order, the petitioner preferred an application before the Gurugram Court seeking expeditious listing of the original petition. It is at this stage that the respondent approached the Hon'ble Supreme Court assailing the order of the High Court and the Supreme Court, vide its order dated 28.09.2018 issuing notice in the respondent's SLP(C) No.25618/2018, stayed operation of the High Court's judgment. As a consequence, the proceedings at the Gurugram Court came to a halt and the matter remained pending there till the Supreme Court, on 10.12.2019, allowed the respondent's special leave petition by setting aside the orders of the Punjab High Court and directing the petitioner to present the original petition before the competent courts in New Delhi, as had been previously directed by the Gurugram Court.

5. On the very next date, i.e., 11.12.2019, the petitioner applied for a certified copy of the Supreme Court's order dated 10.12.2019 and the day after that, i.e., 12.12.2019, applied to the Gurugram Court for a certified copy of the original petition and return of the record pertaining thereto, for presentation of the same before this Court. The petitioner received the original petition from the Gurugram Court on 21.12.2019, and took steps thereafter to engage a counsel to present a petition under Section 34 before this Court which it filed on 08.01.2020.

6. It is the petitioner's case that since this Court was closed for the winter break from 25.12.2019 till 05.01.2020, the petitioner was able to contact its newly appointed counsel only after the Court reopened on 05.01.2020 and could therefore file the petition under Section 34 of the Act only on 08.01.2020 after recasting the original petition in accordance with the Original Side Rules of this Court. The petition, as filed on 08.01.2020, first came to be listed for hearing before this Court on 17.01.2020, on which date the petitioner's counsel sought time to file an application under Section 14 of the Limitation Act, 1963 (hereinafter referred to as 'Limitation Act'), which is being disposed of by this order.

7. In its detailed reply dated 17.02.2020, the respondent has opposed this application on primarily two grounds; firstly, that Section 14 of the Limitation Act was not applicable to the facts of the present case as the petition filed before this Court has to be regarded as a fresh petition, not being a simpliciter re-presentation of the original petition, as returned by the Gurugram Court. Secondly, even if the benefit of Section 14 of the Limitation Act were to be extended to the petitioner to exclude the entire period during which proceedings remained pending before the Gurugram Court, Punjab and Haryana High Court and the Supreme Court, the petition was still barred by limitation as the period between the date of receipt of the rectified award and the filing of the petition before this Court was still 160 days; for this purpose, a chart setting out various dates has been produced in paragraph 17 of their reply. In response thereto, the petitioner has filed its rejoinder reiterating the averments in this application.

8. In support of the application, Ms.Maninder Acharya, learned ASG appearing on behalf of the petitioner submits at the outset, that once the present petition has been filed in accordance with the Supreme Court's specific direction that the petitioner's challenge to the award should be filed before this Court, the respondent cannot object to the same on the ground of limitation. By relying on paragraph 7 of the decision of the Supreme Court in ***Hindustan Construction Company Ltd. V. NHPC Ltd. &Anr.*** [Transfer Petition(C) No.7/2020 decided on 04.03.2020], she submits that once a petition has been preferred (i) in accordance with the directions of the Supreme Court and (ii) within a period of 30 days from the date on which such direction was issued, no objection on the ground of the alleged delay in filing ought to be entertained.

9. Ms. Acharya further submits that while the present petition is indeed a re-filing of the original petition, the respondent is right in law to say that it has to be treated as a fresh petition inasmuch as it is a settled legal position that in all cases where a plaint/petition/appeal, after being returned by the court lacking jurisdiction, is re-presented before the court clothed with appropriate jurisdiction, the re-presentation is considered as fresh filing. In this regard, she places reliance on the decision of the Supreme Court in ***Oil and Natural Gas Corporation Limited Vs. Modern Construction Company (2014) 1 SCC 648***. She contends that merely because the present petition is a re-presentation of the original petition with a few additional paragraphs inserted in the factual matrix to update it with the events that have transpired since the original filing before the Faridabad Court, in accordance with the provisions and format prescribed by the Original

Side Rules of this Court, would not have any bearing in deciding the petitioner's prayer to be extended the benefit of Section 14 of the Limitation Act. She submits that in any event, even if the petition is treated as an entirely new petition, this Court has to only adjudicate whether the petition was within the period of limitation or not, by granting the necessary exclusion under Section 14.

10. On the aspect of qualifying for the benefit extended under Section 14 of the Act, the learned ASG submits that as long as the applicant/petitioner was diligently and bonafidely pursuing a legal remedy before a Court which was ultimately held to be a court without jurisdiction, the period spent in pursuing the said remedy, including the appellate proceedings arising therefrom, ought to be excluded while calculating the delay, if any. In support of her contention that the applicant herein was not negligent in any manner but has diligently pursued legal remedy albeit before the incorrect forum, the learned ASG has made elaborate references to various dates right from the passing of the original award on 26.08.2016 to the filing of the present petition. By relying on paragraphs 47 to 52 of the decision of the Supreme Court in ***M.P. Steel Corporation v. Commissioner of Central Excise* (2015) 7 SCC 58**, she submits that Section 14 of the Limitation Act has to be applied in a manner which furthers the cause of justice, considering the settled legal position that the very purpose of the provision is to revert the applicant to the same position as it was at the time of instituting proceedings before the wrong forum.

11. She submits that at the time of institution of its initial challenge under Section 34, when faced with the question of which Court could exercise supervisory jurisdiction over the arbitration proceedings, the

petitioner was guided by the then prevailing legal position as laid down in ***Bharat Aluminium Co. Vs. Kaiser Aluminium Technical Services Inc.***, (2012) 9 SCC 552 or ***BALCO*** wherein the apex court had set down that such jurisdiction could be exercised by the (i) Court within whose jurisdiction the cause of action took place *and* the (ii) Court within whose jurisdiction the arbitration takes place. Keeping in view the facts that the contract between the parties was signed at Faridabad, Haryana for construction work which was to be executed in the states of Assam and Arunachal Pradesh, and that the relevant contractual terms between the parties, viz. Clause 67.3 of the Conditions of Particular Application, stipulated that arbitration was to take place either in Faridabad or Delhi, the petitioner was under the bonafide impression that it could approach either the courts in Faridabad, Assam or Arunachal Pradesh with its Section 34 challenge as the cause of action arose in all these jurisdictions or the courts in Delhi where the arbitration took place. She submits that while today the respondent can vehemently agitate that the previous proceedings before the Faridabad courts lacked jurisdiction, but the force of this argument is only derived from the decision of the Supreme Court on 10.12.2019 which clarified that it was only the Court at Delhi which had the necessary jurisdiction and there was no concurrent jurisdiction bestowed upon the Court at Faridabad. She, thus contends that the petitioner, was pursuing the legal remedy available to it strictly as per the then-prevailing legal position and it can therefore not be said that it was not acting bonafide or was acting without due diligence.

12. *Finally, the learned ASG submits that the actual delay caused by the petitioner in instituting the present petition, if any, is only 17*

days, for which purpose, she has produced a chart which is reproduced hereinbelow.

Calculation of days as per NHPC			
	Particular	No. of days	No. of days
A.	(i) Award dated 26.08.2016 r/w Rectified Award dated 04.10.2016 received by parties on 06.10.2016 (ii) Application under Section 34 filed before the Hon'ble Delhi High Court on 08.01.2020		
	Total no. of days (period between (i) and (ii))	=	1188
B.	Less: (i) Time taken in filing of Section 34 Application before Faridabad Court (from 06.10.2016 to 03.01.2017) (ii) Period between the date of filing Application under Section 34 of the Act in District Court, Faridabad on 03.01.2017 and date of judgment by the Commercial Court, Gurugram on 21.12.2017 for return of plaint (iii) Time taken in Appeal filed before Punjab & Haryana High Court on 15.02.2018 (including time from 22.12.2017 to 05.01.2018 for obtaining certified copy)	88 353 56	497
C.	Less: (i) Period between filing of appeal before High Court Punjab & Haryana and disposal thereof (w.e.f. 16.02.2018 to	209	

	12.09.2018)		
	(ii) Period taken by BGS SGS SOMA JV in filing SLP and the matter remained sub judice before Hon'ble Supreme Court (w.e.f. 13.09.2018 to 10.12.2019)	454	674
	(iii) Period taken for obtaining return of Original record from Gurugram Court (11.12.2019 to 21.12.2019)	11	
	Total No. Days		1171
	D. Total Days taken for the petitioner to approach this Court (1188-1171)	=	17

13. By relying on this chart, she urges that the period between the date of receipt of the rectified award, and the return of the original petition from the Gurugram Court, including the 88 days' taken to institute the original petition after receiving the award as also the 55 days' taken to approach the Punjab High Court to challenge the decision of the Gurugram Court, ought to be excluded in addition to the period of 1028 days when proceedings were *actually* pending before one Court or the other. She further submits that this 88 days' and 55 days' period are to be held on the same pedestal as both of them were utilized for prosecution inasmuch as the former was spent in preparing and instituting the original Section 34 proceedings before the Faridabad Court whereas the latter was spent in preparing and instituting the appeal before the Punjab High Court. By the same rationale, the period spent in pursuing the respondent's appeal before the Supreme Court as

also those spent in obtaining certified copies of the orders, are excluded while calculating the number of days which the petitioner took to finally approach this Court.

14. The learned ASG, thus, contends that since the petitioner was well within the limitation period throughout, except while approaching this Court with the present petition as per the directions of the Supreme Court which took 17 extra days, the present petition is well within the statutorily prescribed limitation period of 90 days and a further 30 days as prescribed under Section 34(3) of the Act. In these circumstances, she prays that this Court be pleased to dismiss the respondent's objections on the ground of limitation and hold that the present petition has been instituted within the period of limitation.

15. Per contra, Mr.Arvind Nigam, learned Senior Counsel for the respondent vehemently opposes the application by stating that the present petition is an instance of fresh filing and not a continuation of the proceedings instituted before the Faridabad Court. He submits that a perusal of the contents of the present petition reveals that it is not the same as the original petition and cannot, therefore, be treated as re-presenting /filing the original petition dated 03.01.2017 as returned by the Gurugram Court. Evidently the petitioner, contrary to the specific directions of the Hon'ble Supreme Court, has chosen to file a *fresh* petition before this Court by incorporating averments relating to events that transpired until 08.01.2020, instead of presenting the petition in its original form as returned by the Gurugram Court. He, thus, contends that once the petitioner chose to file a fresh petition, it has to once again meet the threshold of limitation, irrespective of whether the original petition is within limitation or not. For this purpose, he relies on the

decisions of the Supreme Court in ***Amar Chand Inani Vs. Union of India*** (1973) 1 SCC 115, the decision of the Madras High Court in ***Chandrayya Vs. Seethanna*** AIR 1940 Madras 689 and the decision of the Patna High Court in ***Ram Kishan Rai Vs. Ashibbad Rai*** AIR 1950 Patna 473. He also places reliance on the decision of a coordinate Bench of this Court in ***Vogel Media International GMBH & Anr. Vs. Jasu Shah & Ors.*** [ILR (2004) II DELHI 560] to submit that a suit returned by a court lacking jurisdiction, in order for the same to be re-presented before a competent court, is governed by the provisions of Order VII Rule 10A of the Code of Civil Procedure, 1908 which sets out the procedure for re-presentation of the plaint in such cases. In fact, to even seek the benefit of Section 14, the petitioner has to satisfy this Court that the petition is a *re-presentation* of the original petition as envisaged under Order VII Rule 10A. It is his case that the petitioner's decision to include additional facts in the original filing is in violation of this provision and thus disqualifies it from being called a re-presentation. Furthermore, by altering the original petition in this manner, the petitioner has lost the right to claim that it has re-presented the petition in accordance with the directions of the Supreme Court. In these circumstances, the petitioner cannot seek benefit of Section 14 of the Limitation Act. In support of his aforesaid contention, Mr. Nigam places reliance on a decision of the Supreme Court in ***Hanamanthappa & Anr. Vs. Chandrashekharappa & Ors.*** (1997) 9 SCC 688 and, therefore, urges that when the present petition is subjected to the scrutiny under the de novo rigor of limitation, it is grossly barred by limitation and, therefore, deserves to be dismissed at the outset.

16. Without prejudice to his aforesaid plea that the petitioner is not entitled to the benefit of Section 14 as it has chosen to file a fresh petition and not re-present the original petition, Mr. Nigam contends that in any event, the petitioner has failed to satisfy the mandatory twin test laid down by the Supreme Court for claiming benefit under this provision. As per settled law, the benefit of exclusion of time under Section 14 while calculating limitation period is only applicable in a case where the plaintiff is found to have been bonafidely prosecuting his claim with due diligence before a Court which, owing to want of jurisdiction, was not competent to entertain the same. For this purpose, by relying on the decision in ***Suryachakra Power Corporation Ltd. Vs. Electricity Department*** (2016) 16 SCC 152, he submits that it was necessary for the petitioner to demonstrate that it had exercised due diligence and was prosecuting its petition before the Gurugram Court in good faith. On the contrary, at the very first instance, despite the respondent's application before the Gurugram Court that the jurisdiction to entertain the challenge to the subject award did not vest there, the petitioner not only opposed the same before the Gurugram Court, but it also instituted misconceived appellate proceedings before the High Court. When the fact remained that all the 71 hearings of the Arbitral Tribunal were held at Delhi, the petitioner cannot plead ignorance of the territorial jurisdiction vesting in the Delhi courts in any challenge laid upon the award passed by the Tribunal. Yet, the petitioner proceeded undeterred and willfully in filing its challenge to the award under Section 34 before courts without jurisdiction. He submits that this obvious position was only affirmed by the Supreme Court in its order dated 10.12.2019 while allowing the respondent's

appeal and holding that only the courts in Delhi were competent to entertain a challenge to the award dated 26.08.2016. He submits that even earlier when the Supreme Court had, on 28.09.2019 while issuing notice in the respondent's appeal, stayed the judgment of the High Court, it was implicit that the order dated 21.12.2017 of the Gurugram Court stood revived, yet the petitioner failed to take any steps for seeking return of its petition from the Gurugram Court. He submits that there were sufficient opportunities granted subsequently to the petitioner to amend its decision to approach the incorrect court. By drawing my attention to the order dated 06.11.2019 passed by this Court in the enforcement proceedings instituted by the respondent for this very arbitral award, he submits that even on this date, when this Court attempted to facilitate progress in this dispute by proposing that the petitioner re-file its objections to the award dated 26.08.2016 before this Court within four weeks, provided the respondent did not raise any objection qua limitation, the respondent had fairly agreed to abide. Yet, the petitioner, for reasons best known to it, did not avail of this opportunity. Instead, the petitioner continued to oppose the respondent's appeal in the Supreme Court, which came to be finally allowed on 10.12.2019. By relying on the decision of the Punjab and Haryana High Court in ***Pawan Goel vs. KMG Milkfood Limited & Ors.*** 2008 (142) Company Cases 441 (P & H), he submits that once the petitioner willfully failed to avail all these opportunities to correct its mistake by filing the petition in a court of competent jurisdiction by praying for its return from the court lacking territorial jurisdiction, it is evident that the petitioner was callous, negligent and lacked good faith and due diligence while pursuing the previous proceedings. He, thus,

submits that the petitioner has failed to qualify the twin test laid down under Section 14 of the Limitation Act and ought not to receive the benefit of exclusion thereunder.

17. Mr. Nigam further finally contends that without prejudice to his aforesaid submission, even if the benefit of Section 14 of the Limitation Act were to be extended to the petitioner by excluding the entire period during which proceedings remained pending before the Gurugram Court, Punjab High Court and Supreme Court as also the five days' time spent in obtaining certified copies in December 2019, the present petition would still be barred by limitation. By referring to the chart as set out in paragraph 17 of the Respondent's reply to the present application, he submits that the petitioner is wrongfully trying to seek exclusion of the entire period falling between 03.01.2017 and 10.12.2019, when this period contains 160 days' which remain unaccounted for, *as there were no proceedings pending in any court*. Under Section 14 the petitioner can, at the most, seek exclusion of only that period during which proceedings were actually pending before a court lacking jurisdiction. The chart in support of this contention which he produced, detailing the events that have transpired and the resulting delay caused by the petitioner, reads thus:

	Particulars	No. of Days	No. of Days
A.	<p>(i) Award dated 26.08.2016 r/w Rectification Award dated 04.10.2016 received by parties on 06.10.2016</p> <p>(ii) Application under Section 34 filed before the Hon'ble Delhi</p>		

	High Court on 08.01.2020		
	Total no. of days (Period of (i) and (ii))		1188
B	Less: Period between the date of filing application under Section 34 of the Act in District Court, Faridabad on 04.01.2017 and date of return of the Plaint by Commercial Court, Gurugram on 21.12.2017 (Applying Section 14 of the Limitation Act)	352	
C.	Less: Period between the date of filing Appeal before the Punjab & Haryana High Court on 15.02.2018 and receipt of the certified copy of the originals from the commercial court, Gurgaon on 21.12.2019	676	1028
D.	Total Delay(1188-1028)		160

18. By placing reliance on this chart, he contends that if the petitioner waited for a period of 55 days to file its appeal before the Punjab High Court and a further period of 17 days after the Supreme Court decision to file the present petition, it cannot now claim exclusion of these 72 days (55+17 days) under Section 14 of the Limitation Act while also claiming exclusion of the 88 days it took to even institute the original petition before the Faridabad Court. He relies on the decision of the Supreme Court in *Simplex Infrastructure Ltd. v. Union of India* (2019) 2 SCC 455 to contend that Section 34(3) of the Act has set down a very strict time period of 90 days' limitation, at the first instance, and a further period of 30 days' in case the petitioner shows sufficient cause

for the delay, to challenge an award under Section 34 of the Act. Therefore, as per the statutory position, no further extension of the limitation period can be granted to the petitioner beyond this period of 120 (90+30) days. He thus contends that in the present case, even after excluding the entire period during which proceedings remained pending in one or the other court along with the five days spent for obtaining certified copies, the net period of delay is 160 days which cannot simply be condoned in view of the expressed bar under Section 34 (3) of the Act.

19. I have heard the learned senior counsel for the parties and with their assistance perused the record as also the charts produced by them in support of their respective calculations regarding the number of days taken to institute the accompanying petition.

20. From the rival contentions of the parties, three primary issues arise for my consideration in the present petition, the first being as to whether the present petition is a re-presentation of the original petition or a fresh petition. The second being as to whether, in the facts of the present case, the petitioner is entitled to claim exclusion of any period under Section 14 of the Limitation Act. If the answer to this question is in the affirmative, then the final issue is as to the total number of days for which exclusion under Section 14 of the Limitation Act is warranted, which will determine whether the petition is within limitation or not.

21. I begin by examining the first issue as to whether the present petition, as filed on 08.01.2020, can be deemed as a fresh petition disentitling the petitioner to claim the benefit of Section 14 of the Limitation Act. On law, there appears to be no quarrel between the

parties as both sides agree that every instance of re-presentation has to be treated as a fresh petition. On facts, the respondent has taken great pains to urge that since the present petition contains additional factual averments in paragraphs 7 to 12, the petition has to be treated as a fresh petition and not a *re-presentation* of the original petition, as returned by the Gurugram Court. It has also been contended that the mere annexing of the original petition, as returned by the Gurugram Court, to the present petition neither makes it the same as the original petition, nor makes the present petition in compliance with Supreme Court directions inasmuch as the Supreme Court had directed the petitioner to present the original petition in its authentic form before this Court.

22. This issue hinges primarily on a comparison of the two petitions. Having perused the original petition, as filed before the Faridabad Court on 03.01.2017 and returned by the Gurugram Court on 21.12.2019, and the petition filed before this Court on 08.01.2020, I find that while the factual matrix as set out in paragraphs 1 to 6 of the original petition and the present petition as also the grounds set out in both the petition are identical; six extra paragraphs, being paragraph nos. 7-12, have been incorporated immediately after the grounds set out in the petition filed before this Court. It is the petitioner's case that as per the requirement indicated by the Registry and the advice rendered by its counsel, who advocated adherence to the Original Side Rules of this Court, the petitioner filed this comprehensive petition before this Court by incorporating the events which took place after the original petition was filed before the Faridabad Court on 03.01.2017. The question before this Court is not as to whether the petitioner's decision to incorporate these paragraphs in the factual matrix is correct as

undoubtedly in the light of the Supreme Court's directions in its decision dated 10.12.2019, the proper course of action for the petitioner to take was to simply present the petition before this Court in the form of the original petition as returned by the Gurugram Court. Yet, the position remains that all material contents of this petition, including the grounds taken herein, are completely identical to those in the original petition. No fresh grounds have been taken by the petitioner on account of the additional paragraphs and, therefore, this addition has neither caused any prejudice to the respondent nor can it be said that the original petition has, in fact, been amended. By adding these paragraphs to the present petition, the respondent has merely brought on record for the attention and benefit of this Court the details of the several proceedings arising out of the original filing before the Faridabad Court. This combined with the fact that the original petition as returned by the Gurugram Court has been admittedly annexed to this petition, it is incorrect to say that the present petition is an entirely new petition. In any event, irrespective of the fact as to whether the petition filed before this Court is treated as a re-presentation of the original petition or a fresh petition, I find merit in Ms. Acharya's submission that in the light of the dictum of the Supreme Court in ***Oil and Natural Gas Corporation Limited*** (*supra*) that even if the petitioner had presented the present petition without incorporating any additional paragraphs in the factual matrix, it would have still been considered a freshly filed petition in the eyes of law, as is every other re-presented petition.

23. Similarly, the decision of the Supreme Court in ***Hanumanthappa*** (*supra*), relied upon by both the parties, sets down

that mere addition of certain averments in the plaint at the time of re-presenting it, making it different from the original plaint, does not invite rejection of the plaint under Order VII Rule 10-A of the CPC as the said petition has to be treated as a freshly filed petition. This position was reiterated in *Vogel Media (supra)* wherein this Court held that a petition, upon re-presentation in a Court having jurisdiction, has to necessarily be treated as a fresh petition subject to the statutory requirements of limitation, pecuniary jurisdiction and court fees.

24. At this stage, I must observe that even if the present petition were to be treated as a fresh filing, the same will have no material impact on the reliefs sought in the present application. The more pertinent question which this Court has to examine is whether the petitioner qualifies for the benefit under Section 14 of the Limitation Act, which would be dealt with next. Thus, in my considered view, the respondent's contention that the present petition ought to be treated as an entirely fresh petition and not a re-presentation of the original petition as filed before the Faridabad Court, is neither relevant for the purpose of deciding the present application nor is it a sufficient ground to deprive the petitioner of the benefit of Section 14 of the Limitation Act.

25. I have also carefully considered the respondent's reliance on the decisions in *Chandrayya (supra)*, *Amar Chand Inani (supra)* and *Ram Kishan Rai (supra)*, and find them inapplicable to the facts of the present case. While the decision in *Chandrayya*, where the Court refused to grant the benefit of Section 14 on account of deliberate undervaluation of suit, cannot be applicable to the facts herein, the reliance on *Amar Chand Inani (supra)* is equally misplaced as the facts

of that matter involved a clear lack of jurisdiction in the court approached at the first instance. In the present petition, considering the petitioner, guided by the prevalent legal position as set down in **BALCO** at the time of filing the original petition, assumed that concurrent jurisdiction was vested in Courts both at Faridabad and Delhi on the basis of cause of action and seat of arbitration, it cannot be said that the Faridabad Court was completely devoid of any jurisdiction when it was first approached with the original petition. These decisions, other than reiterating the settled proposition that when a petition returned for re-presentation by a court lacking jurisdiction is presented to the Court with the necessary jurisdiction the petition has to be treated as a fresh plaint, do not delve into the question of exclusion of time under Section 14 of the Limitation Act.

26. In the light of the aforesaid, I have no hesitation in holding that the petitioner would undoubtedly be entitled to the benefit of Section 14 of the Limitation Act, provided it satisfies this Court that it was diligently and in good faith pursuing the proceedings before the Gurugram Court, the Punjab High Court and the Supreme Court. Arguing against the extension of such benefit, the respondent has vehemently urged that the petitioner's actions were neither bonafide nor diligent as the petitioner, despite knowing that only the courts at Delhi had the requisite jurisdiction over this dispute, willfully chose to pursue proceedings in the wrong courts. The respondent has further urged that this was only confirmed by the Supreme Court on 10.12.2019 in paragraphs 16 to 19 of its decision while holding that the petitioner's appeal under Section 37 of the Act before the Punjab High Court was wholly misconceived. I am unable to agree with this contention of the

respondent. Assessing whether an action was carried out in good faith and was with due diligence, cannot be carried out in abstract and would depend on a careful and thorough analysis of the facts of each case. The principles guiding the application of Section 14 of the Limitation Act have been succinctly set down by the Supreme Court in paragraphs 49 and 50 of its decision ***M.P. Steel*** (*supra*), which reads as under:-

49. The language of Section 14, construed in the light of the object for which the provision has been made, lends itself to such an interpretation. The object of Section 14 is that if its conditions are otherwise met, the plaintiff/applicant should be put in the same position as he was when he started an abortive proceeding. What is necessary is the absence of negligence or inaction. So long as the plaintiff or applicant is bona fide pursuing a legal remedy which turns out to be abortive, the time beginning from the date of the cause of action of an appellate proceeding is to be excluded if such appellate proceeding is from an order in an original proceeding instituted without jurisdiction or which has not resulted in an order on the merits of the case. If this were not so, anomalous results would follow. Take the case of a plaintiff or applicant who has succeeded at the first stage of what turns out to be an abortive proceeding. Assume that, on a given state of facts, a defendant-appellant or other appellant takes six months more than the prescribed period for filing an appeal. The delay in filing the appeal is condoned. Under Explanation (b) of Section 14, the plaintiff or the applicant resisting such an appeal shall be deemed to be prosecuting a proceeding. If the six month period together with the original period for filing the appeal is not to be excluded under Section 14, the plaintiff/applicant would not get a hearing on

merits for no fault of his, as he in the example given is not the appellant. Clearly therefore, in such a case, the entire period of nine months ought to be excluded. If this is so for an appellate proceeding, it ought to be so for an original proceeding as well with this difference that the time already taken to file the original proceeding i.e. the time prior to institution of the original proceeding cannot be excluded. Take a case where the limitation period for the original proceeding is six months. The plaintiff/applicant files such a proceeding on the ninetyeth day i.e. after three months are over. The said proceeding turns out to be abortive after it has gone through a chequered career in the appeal courts. The same plaintiff/applicant now files a fresh proceeding before a court of first instance having the necessary jurisdiction. So long as the said proceeding is filed within the remaining three month period, Section 14 will apply to exclude the entire time taken starting from the ninety-first day till the final appeal is ultimately dismissed. This example also goes to show that the expression “the time during which the plaintiff has been prosecuting with due diligence another civil proceeding” needs to be construed in a manner which advances the object sought to be achieved, thereby advancing the cause of justice.

50. Section 14 has been interpreted by this Court extremely liberally inasmuch as it is a provision which furthers the cause of justice. Thus, in *Union of India v. West Coast Paper Mills Ltd.* [(2004) 3 SCC 458] , this Court held: (SCC p. 464, para 14)

14. “... In the submission of the learned Senior Counsel, filing of civil writ petition claiming money relief cannot be said to be a proceeding instituted in good faith and secondly, dismissal of writ petition on the ground that it

was not an appropriate remedy for seeking money relief cannot be said to be 'defect of jurisdiction or other cause of a like nature' within the meaning of Section 14 of the Limitation Act. It is true that the writ petition was not dismissed by the High Court on the ground of defect of jurisdiction. However, Section 14 of the Limitation Act is wide in its application, inasmuch as it is not confined in its applicability only to cases of defect of jurisdiction but it is applicable also to cases where the prior proceedings have failed on account of other causes of like nature. The expression 'other cause of like nature' came up for the consideration of this Court in RoshanlalKuthalia v. R.B. Mohan Singh Oberoi [(1975) 4 SCC 628] and it was held that Section 14 of the Limitation Act is wide enough to cover such cases where the defects are not merely jurisdictional strictly so called but others more or less neighbours to such deficiencies. Any circumstance, legal or factual, which inhibits entertainment or consideration by the court of the dispute on the merits comes within the scope of the section and a liberal touch must inform the interpretation of the Limitation Act which deprives the remedy of one who has a right."

Applying the aforesaid dictum of the Supreme Court, I find no reason to deny the benefit of Section 14 of the Limitation Act to the petitioner. (emphasis supplied)

27. When the facts of the present case are considered in the light of the principles enunciated by the Supreme Court in ***M.P. Steel*** (*supra*), I find that the petitioner, while filing the original petition in the Faridabad Court and its appeal before the Punjab High Court and while opposing the respondent's appeal in the Supreme Court, has remained mindful of the limitation periods applicable in every proceeding. It has duly

prosecuted the proceedings at every stage; in fact, it is undisputed that both the original petition as also the appeal before the Punjab High Court were filed within the prescribed period of limitation. Its decision to approach the Faridabad Court was informed by the decision in **BALCO** and it was not until the Supreme Court clarified the position of law by its decision dated 10.12.2020 that only the Courts at Delhi are clothed with the territorial jurisdiction to deal with the petitioner's objections, that there was any clarity regarding jurisdiction. I cannot ignore another significant fact that a competent court of law, i.e., the Punjab and Haryana High Court, had found merit in the petitioner's plea regarding the Gurugram Court's jurisdiction to entertain its petition. Even while approaching the High Court by way of an appeal under Section 37 of the Act, which the Supreme Court held as not being tenable, the petitioner had been guided by the decision of a Division Bench of this Court in **Antrix Corporation Ltd v Devas Multimedia Pvt Ltd**, 2018 (4) ArbLR 66 (Delhi). This is material in establishing that the petitioner does, in fact, satisfy the twin test to qualify for the benefit of Section 14 as set down by the Supreme Court in **Surya Chakra** (*supra*) as it acted diligently and in good faith when it filed the original petition. The mere fact that the petitioner did not seek return of its petition from the Gurugram Court after 28.09.2018 - when the Supreme Court granted interim stay, or after 06.11.2019 - when the respondent agreed not to raise the plea of limitation if the petition were to be presented within four weeks, cannot be a valid ground to hold that the petitioner's actions were lacking bonafide, for the petitioner was justifiably prosecuting and awaiting the final adjudication of the respondent's appeal before the Supreme Court. In these circumstances, the

respondent's plea in this regard is liable to be rejected. I have, therefore, no hesitation in holding that the petitioner is entitled to be granted benefit under Section 14 of the Limitation Act.

28. In this regard, I have also considered the respondent's reliance on the decision in ***Pawan Goel*** (*supra*) and find it inapplicable to the facts of the present case as the appellant therein pursued its appeal filed before this Court, which lacked jurisdiction, and continued to do so even after it was pointed out that as per the dictum of the Supreme Court in a case bearing similar facts, the appeal was required to be filed before the Punjab & Haryana High Court. The appellant therein, while continuing to oppose this arguments, did not even carry the prosecution to completion and instead withdrew its appeal after some time with liberty to approach the court of competent jurisdiction. Thus, the conduct of the appellant in ***Pawan Goel*** (*supra*) was neither bonafide and diligent nor did the facts deal with the issue of exclusion of time spent in pursuing *appellate* proceedings arising out of the orders of the court lacking jurisdiction.

29. Now coming to Mr. Nigam's third and final submission that even if the entire period during which proceedings were actually pending before one court or the other, the present petition is still barred by delay. To decide this issue, it would be useful to consider the events which have transpired from the date of passing of the rectified award on 04.10.2016, to the date of filing of the present petition before this Court on 08.01.2020.

30. Though the present petition came to be filed after a period of 1188 days from the date of receipt of the rectified award, the proceedings challenging the award were originally initiated by the

petitioner on 03.01.2017, which remained pending before one court or the other for a total period of 1028 days.

31. The petitioner contends that in the light of its adherence to all the relevant limitation periods applicable for filing, it is entitled to a blanket exclusion all the way till the Supreme Court's decision on 10.12.2019. The respondents, on the other hand, have vehemently opposed exclusion of (i) the first period of 88 days (07.10.2016 to 02.01.2017) taken by the petitioner to file the original petition (ii) the second period of 55 days (22.12.2017 to 14.02.2018) taken by the petitioner to file its appeal under Section 37 before the Punjab High Court and (iii) the third period of 17 days (21.12.2019 to 07.01.2020) taken by the petitioner to institute the present petition; it has been contended that these three periods have to be clubbed together as no legal proceedings were pending then before any Court. Therefore, it has been urged that the petitioner cannot claim that it was prosecuting any legal proceedings during this time, which adds up to 160 days (88+55+17), and the same cannot be excluded under Section 14 as it surpasses the statutory limitation period prescribed under Section 34(3) of the Act by 40 days.

32. Thus, what appears is that the petitioner has prayed for exclusion of not only the period during which proceedings are actually pending, but also the period spent in preparing and filing the appeal. To determine this question, it may be apposite to refer to the observations in paragraph 52 of the decision in *M.P. Steel Corporation (supra)* wherein the Supreme Court was dealing with the aspect of excluding the period during which preparatory steps were being taken to file an appeal under Section 37 of the Act. In fact, the Supreme Court, after

considering the decisions of the Madhya Pradesh High Court and Andhra Pradesh High Court on this aspect, affirmed the interpretation of the Madhya Pradesh High Court by holding that the period from the cause of action till the institution of the appellate or revision proceedings from original proceedings, which may have ultimately failed for want of jurisdiction, was liable to be excluded under Section 14 of the Limitation Act. The relevant paragraph of the decision in *M.P. Steel* (*supra*) reads as under:

52. As has been already noticed, Sarathy case [(2000) 5 SCC 355 : 2000 SCC (L&S) 699] has also held that the court referred to in Section 14 would include a quasi-judicial tribunal. There appears to be no reason for limiting the reach of the expression “prosecuting with due diligence” to institution of a proceeding alone and not to the date on which the cause of action for such proceeding might arise in the case of appellate or revisional proceedings from original proceedings which prove to be abortive. Explanation (a) to Section 14 was only meant to clarify that the day on which a proceeding is instituted and the day on which it ends are also to be counted for the purposes of Section 14. This does not lead to the conclusion that the period from the cause of action to the institution of such proceeding should be left out. In fact, as has been noticed above, the Explanation expands the scope of Section 14 by liberalising it. Thus, under Explanation (b) a person resisting an appeal is also deemed to be prosecuting a proceeding. But for Explanation (b), on a literal reading of Section 14, if a person has won in the first round of litigation and an appeal is filed by his opponent, the period of such appeal would not be liable to be excluded under the section, leading to an absurd result. That is why a plaintiff or an applicant resisting an appeal filed by a defendant shall also be deemed to prosecute a proceeding so that the time taken in the appeal can also be the subject-matter of exclusion under Section 14. Equally, Explanation (c) which deems misjoinder of parties or a cause of action to be a cause of a like nature with defect of jurisdiction, expands the scope of the section. We have

*already noticed that the India Electric Works Ltd. [(1971) 1 SCC 24] judgment has held that strictly speaking misjoinder of parties or of causes of action can hardly be regarded as a defect of jurisdiction or something similar to it. Therefore properly construed, Explanation (a) also confers a benefit and does not by a side wind seek to take away any other benefit that a purposive reading of Section 14 might give. We, therefore, agree with the decision of the Madhya Pradesh High Court that the period from the cause of action till the institution of appellate or revisional proceedings from original proceedings which prove to be abortive are also liable to exclusion under the section. The view of the Andhra Pradesh High Court is too broadly stated. **The period prior to institution of the initiation of any abortive proceeding cannot be excluded for the simple reason that Section 14 does not enable a litigant to get a benefit beyond what is contemplated by the section—that is to put the litigant in the same position as if the abortive proceeding had never taken place.***

33. I have also considered the respondent's reliance on the decision in *Simplex* (*supra*) to urge that only the period during which proceedings were actually pending before any Court can be excluded, but find it inapplicable to the facts of this case. Instead, I find that in *Simplex*, the Supreme Court did not have any occasion to deal with appellate proceedings arising out of the order passed by the original Court and therefore, there was no occasion for the Supreme Court to deal with the question as to whether the *time spent in taking preparatory steps for filing the appeal ought to be excluded*.

34. On applying these principles to the facts of the present case, I find that even though the first period (07.10.2016 to 02.01.2017) and the third period (21.12.2019 to 07.01.2020) cannot be excluded, there is no reason to disallow the exclusion of the second period of 55 days falling between 22.12.2017 and 14.02.2018. Once it is found that no

negligence or inaction can be attributed to the petitioner, and the benefit of Section 14 is available to it, the entire period right from the institution of the original proceedings to the termination of the appellate proceedings ought to be excluded while computing the delay, if any. In case this period were not to be excluded, it would violate the spirit of Section 14 of the Limitation Act which endeavors to restore the petitioner to the same position as it was on the day it filed the original petition. I am, therefore, of the view that this period of 55 days deserves to be excluded.

35. Now, on law, there is no dispute that under Section 34(3) of the Act, the petitioner was entitled to file a petition assailing the award within 90 days', which was further extendable by a period of 30 days, i.e., a total period of 120 days. While the petitioner can avail of the period of 90 days' period unconditionally, the benefit arising out of the extended 30 day's period can only be extended if the petitioner satisfies this Court that there was sufficient cause for it to cause such delay. The parties are ad idem that the clock began running on limitation w.e.f. the date of receipt of the rectification award, i.e., 07.10.2016 and the original petition was filed on the 88th day. From this day onwards, the time taken to complete the proceedings, albeit pending before the court lacking the necessary territorial jurisdiction, would be excluded under Section 14 of the Limitation Act, i.e., a total period of 1028 days. This period includes the time taken to obtain certified copies of all orders and to receive the original records back from the Gurugram Court.

36. Once this period of 1028 days is excluded along with the period of 55 days which were spent by the petitioner in preparing its Section 37 appeal to be filed before the High Court, the net excludable period

works out to 1088 days. Therefore, the net period taken by the petitioner to approach this Court for assailing the award dated 26.08.2016 rectified on 04.10.2016 works out to be 105 days.

37. Although this implies that the present petition was filed beyond the inner limitation period of 90 days, it was still filed 15 days into the remaining additional limitation period of 30 days which can be condoned provided the petitioner adduces sufficient cause for the same. Now, the petitioner has sought to explain this 15 day-long period as the time taken to prepare the present petition, collate requisite documents and establish communication with its counsel during the winter break. On considering this explanation advanced by the petitioner, I find that sufficient grounds have been made out for condoning the delay of these fifteen days which is, accordingly, condoned.

38. There is an additional reason for rejecting the respondent's contention that the present petition, as filed on 08.01.2020, has to be treated as having been filed after a net period of 160 days, i.e., 40 days beyond the maximum period of 120 days as envisaged under Section 34(3) of the Act. As noted hereinabove, the main contention of the respondent is that the period of 55 days spent in preparing the appeal cannot be excluded; if this plea were to be accepted, it would imply that on 10.12.2019, i.e., the date on which the Supreme Court was finally deciding the respondent's appeal, the petitioner had already caused a delay of 143 days and no petition under Section 34 could be entertained. It would further imply that the Supreme Court's directions for re-presentation of the original petition before this Court came at a time when the petition was already time-barred, being beyond the statutorily permissible period of 120 days. In that case, it was open and,

rather, appropriate for the respondent to agitate this issue before the Supreme Court that any such re-presentation would time-barred per se. The respondent, who failed to take any such plea before the Supreme Court, is now estopped from seeking rejection of the petitioner's Section 34 challenge on the ground of delay.

39. For all the aforesaid reasons, the application deserves to succeed and is accordingly allowed with no order as to costs. The accompanying petition being well within the 120 days' period envisaged under Section 34(3) of the Act, is taken up for consideration up for merits.

O.M.P.(COMM) 23/2020

40. At the request of learned ASG, list for consideration on 22.06.2020 at 12:00 pm.

JUNE 17, 2020

sdp/sr

REKHA PALLI, J