



2026:AHC-LKO:4615

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**MATTERS UNDER ARTICLE 227 No. - 3886 of 2024**

M/s Genebio Healthcare Pvt. Ltd. ....Petitioners(s)  
through Director, Arun Kumar  
Srivastava

Versus

Paradigm Enterprises through .....Respondents(s)  
Director Ritika Pandey and others

---

|                            |                                                                            |
|----------------------------|----------------------------------------------------------------------------|
| Counsel for Petitioners(s) | : Pritish Kumar, Amal Rastogi                                              |
| Counsel for Respondent(s)  | : Sarvesh Kumar Dubey, A.S.G.I.,<br>Ankit Kumar Pandey, Raj Kumar<br>Singh |

---

**Along with**

**1. Matters Under Article 227 No.5145 of 2024:**

Paradigm Enterprises through Director Ritika Pandey and others  
Versus

Micro, Small and Medium Enterprises, Facilitation Council, Lko,  
Thru, Chairperson/Chairman and 2 others

**A.F.R.**

**RESERVED ON : 08.12.2025**

**DELIVERED ON: 21.01.2026**

**Court No. - 6**

**HON'BLE JASPREET SINGH, J.**

**Introduction**

1. An award dated 27.09.2023 passed by the Micro Small and Medium Enterprises, Facilitation Council, Lucknow (hereinafter referred to as the Facilitation Council) is in the legal vortex between the petitioner and the private respondent no.1. Both contesting parties are at logger heads. The present petitioner is at pains to get the said award executed whereas the private respondent no.1 is leaving no stone unturned in challenging the said award on all possible grounds.

2. In the aforesaid context, the petitioner filed petition No.3886 of 2024 assailing the orders dated 17.01.2024 and order dated 20.06.2024 passed by the Commercial Court No.2, Lucknow in Arbitration Case No.3 of 2024 whereby the preliminary objections raised by the petitioner have been turned down.

3. After the preliminary objections were turned down, the petitioner moved an application for releasing the amount deposited by the respondent no.1 which has been allowed vide order dated 27.09.2024 passed by the Commercial Court No.2, Lucknow in the aforesaid Arbitration Case No.3 of 2024 and being aggrieved, the private respondent no.1 herein, filed an independent petition assailing the said order by means of the connected Petition No.5145 of 2024.

4. Since the issue involved in these two petitions are between the same parties and interconnected, hence both the petitions are being decided by this common judgment.

5. For convenience, M/s Genebio Healthcare Pvt. Ltd. hereinafter, will be referred to as the "petitioner" whereas Paradigm Enterprises (who is the petitioner of the connected petition) will be referred to as the "contesting respondent".

### **Factual Matrix**

6. Before proceedings further, it will be appropriate to notice the facts giving rise to the instant petition. The contesting respondent no.1 acting as an authorized distributor of the petitioner company had made a bid on GEM Portal and was successful in getting an order to supply 20 lakh Novel Coronavirus Sample Collection Kit. The aforesaid order was

placed with the petitioner and it was supplied directly to the U.P. Medical Supplies Corporation. Though the contesting respondent received the entire payment of Rs.1,27,12,739/- but it was not paid to the petitioner. In this factual background, the petitioner made a reference under section 18 of the Micro Small and Medium Enterprises Development Act 2006 (hereinafter referred to as the Act of 2006) before the Facilitation Council who after hearing the parties made its award on 27.09.2023.

7. The contesting respondent assailed the said award dated 27.09.2023 by filing a writ petition before a Division Bench of this Court bearing Writ-C No.8511 of 2023 which came to be dismissed vide order dated 17.10.2023, leaving it open for the contesting respondent to assail the said award in terms of Section 34 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the Act of 1996) before the appropriate court.

8. The contesting respondent then on 16.01.2024 filed a petition before the Commercial Court Lucknow under section 34 of the Act of 1996 which was registered as Arbitration Case No.3 of 2024.

9. The said case was registered on 17.01.2024 and notices were issued to the petitioner (who was the respondent in the petition under section 34 of the Act of 1996). The petitioner after having put in appearance before the Commercial Lucknow filed his preliminary objections regarding maintainability of the petition under section 34 of the Act of 1996 primarily on two grounds: **(i)** that the contesting respondent had not deposited 75% of the awarded amount in terms of

Section 19 of the Act of 2006, hence the petition under section 34 could not be entertained; **(ii)** that the petition under section 34 of the Act of 1996 itself was barred by limitation and in absence of any application seeking condonation of delay, the petition could not have been registered as a regular petition, hence the petition under section 34 was liable to be dismissed on the aforesaid grounds.

10. In the interregnum, the petitioner had pressed for the recovery of the awarded sum and in furtherance thereof, a recovery notice had been issued to the State Authorities for recovery. The contesting respondent assailed the said recovery by filing another writ petition before a Division Bench of this Court bearing Writ-C No.3594 of 2024.

11. After hearing the parties the said writ petition was disposed of on 19.04.2024, noticing the contention of the contesting respondent that he was ready to deposit 75% of the awarded sum before the Commercial Court, with observation that the sum would be deposited within a week and in case if the said amount was deposited, then the Commercial Court would admit the petition as per the settled law and the district administration may not pursue the recovery proceedings. Later, by means of order dated 01.05.2024 the period of one week as granted in the order dated 19.04.2024 was extended by further three days.

12. Armed with the order of the Division Bench dated 19.04.2024 the contesting respondent filed an application depositing 75% of the award passed under the Act of 2006 and also raised objections to the preliminary objections filed by the petitioner before the Commercial

Court. Another application was filed seeking stay on the recovery proceedings.

13. The Commercial Court No.2, Lucknow after hearing the parties turned down the preliminary objections raised by the petitioner by means of order dated 20.06.2024 which is the subject matter of challenge in Petition No.3886 of 2024.

14. The petitioner had moved an application for release of the amount deposited by the contesting respondent which was allowed by the Commercial Court initially on 19.07.2024. This order dated 19.07.2024 was challenged by the contesting respondent by filing a petition under Article 227 of the Constitution of India bearing No.3611 of 2024. A Co-ordinate Bench of this Court by means of judgment and order dated 02.08.2024 allowed the petition setting aside the order dated 19.07.2024 with a direction to the Commercial Court to consider the application filed by the contesting respondent for stay of the award, alongwith the application for release of the amount and decide the same expeditiously, by a reasoned order.

15. In furtherance of the order dated 12.08.2024 passed in Writ Petition No.3611 of 2024 the matter was reconsidered by the Commercial Court who vide its order dated 27.09.2024 allowed the application for release of the deposited sum subject to the condition that the petitioner would furnish an indemnity indicating that in case if any adverse order was passed in the petition under section 34 of the Act of 1996, then the petitioner would refund the aforesaid amount released alongwith 6% interest per annum, to the Court.

16. In so far as the application for stay of the recovery proceedings is concerned, the said application was also disposed of, directing the contesting respondent to furnish a security to the extent of remaining 25% of the awarded sum within a period of three weeks and subject to the aforesaid the recovery proceedings were stayed.

17. The contesting respondent being aggrieved against the said order dated 27.09.2024 assailed the same in the connected Petition No.5145 of 2024 and prayed that the order directing the contesting respondent to furnish a security towards 25% of the awarded sum be set aside as well as another part of the same order be also set aside whereby the amount has been released in favour of the petitioner and the amount so released may be directed to be refunded.

18. The record further indicates that by means of order dated 05.11.2024 passed by a Co-ordinate Bench in Writ Petition No.5145 of 2024 it was directed that the said petition be connected alongwith Petition No.3886 of 2024. The record further indicates that both the petition were heard by a Co-ordinate Bench and judgment was reserved on 12.11.2024. However, the Co-ordinate Bench while dictating the judgment found that certain clarifications were required and the matter was directed to be listed for rehearing. The Co-ordinate Bench on 19.03.2025 had directed the petitioner to file a copy of an affidavit indicating specifically the date on which the said application had been filed. In the meantime, the matter was placed before this Court. This Court had called for a report from the Registrar (Listing) which was placed before the Court on 27.10.2025 indicating that the matter was

now cognizable by this Court. It is in the aforesaid backdrop that this Court being seized of the aforesaid two petitions, heard the learned counsel for the parties, finally.

**Submissions on behalf of the parties**

19. Shri Pritish Kumar, learned Senior Counsel assisted by Shri Amal Rastogi for the petitioner while assailing the order dated 20.06.2024 (which is under challenge in Petition No.3886 of 2024) has submitted that the Commercial Court No.2 while passing the order impugned has completely misdirected itself in rejecting the preliminary objections regarding limitation. It was urged that apparently the award passed by the Facilitation Council was dated 27.09.2023. The said award was challenged by filing a petition before the Commercial Court under Section 34 of the Act of 1996 on 16.01.2024 and the limitation for filing a petition under Section 34 of the Act of 1996 is provided in Section 34 (3) itself.

20. It was submitted that an award under Section 36 of the Act of 1996 could be challenged within a period of three months and only 30 days period thereafter was the period for which the delay could be condoned. Since the award was dated 27.09.2023 and the same was received by the contesting respondent on 06.10.2023, hence the Petition under Section 34 ought to have been filed within three months i.e. latest by 06.01.2024. Admittedly, the Petition was filed on 16.01.2024, however, there was no application filed by the contesting respondent seeking condonation of delay.

21. In absence of any application seeking condonation of delay, it was not open for the Commercial Court to have treated the Petition under Section 34 of the Act of 1996, within time. Moreover, in absence of any application seeking condonation of delay, the Court was not vested with jurisdiction to ignore or condone the delay. Filing an application seeking condonation of delay is mandatory and in absence of the application the Petition under Section 34 itself was defective. In the aforesaid circumstances, the Court did not consider the matter in the correct perspective and the finding recorded by the Court that the application was within time, is a perverse finding which cannot be sustained. In support of his submission, learned Senior Counsel has relied upon the decision of the Apex Court in **Chintal (India) Ltd. v. Bhayana Builders (P) Ltd; (2021) 4 SCC 602.**

22. Learned Senior Counsel for the petitioner has further urged that the issue of limitation goes to the roots of the matter. As soon as the petitioner received the notice of the Petition under Section 34 of the Act 1996 and put in appearance before the Court, preliminary objections were raised at the first instance. It was urged that there is no dispute between the parties in so far as the fact that the Petition under Section 34 of the Act of 1996 was filed by the contesting respondent beyond the period of three months. It is also not in dispute that the Petition under Section 34 of the Act of 1996 was not accompanied by an application seeking condonation of delay.

23. Learned Senior Counsel for the petitioner emphasized that the first order passed by the Commercial Court dated 17.01.2024 (which is

under challenge in the Petition No.3886 of 2024) by which it registered the petition itself was bad. Attention of the Court was drawn to the order dated 17.01.2024 to state that as per the Munsarim report the Petition under Section 34 of the Act of 1996 was appropriately stamped with court fee and it was within the territorial jurisdiction of the Court. It also noticed that the petition was time barred but in view of the order passed by the High Court, which has been brought on record (of the petition under Section 34 of the Act of 1996) as Annexure-7 with the petition, it was not time barred. Considering the said report the case was registered and notices were issued to the petitioner.

24. It is submitted by the learned Senior Counsel that this reference to the order passed by the High Court and that the Petition was within time, is a complete misreading of the order of the High Court since the High Court did not condone the delay nor directed that the Petition to be treated within time, hence the basic registration of the case as a regular Petition, treating it to be within time, itself was bad.

25. Learned Senior Counsel has further urged that this fact came to the notice of the petitioner only when the summons from the Commercial Court was served on the petitioner and immediately, the preliminary objections were raised. The petitioner had raised a two fold objections: **(i)** related to the non compliance of Section 19 of the Act of 2006 which mandates deposit of 75% amount of the arbitral award. Since the Petition under Section 34 did not accompany the said pre-deposit, hence the petition could not be entertained; **(ii)** The petition under Section 34 of the Act was barred by limitation:

26. It is urged, that as far as the objections regarding non deposit of 75% of the awarded sum is concerned, the same may not have much bearing now as the same was made good by the contesting respondent in light of the order passed by the Division Bench of this Court in Writ-C No.3594 of 2024. However, the issue of limitation still survived for the reason that despite bringing it to the notice of the Court, in writing yet the contesting respondent did not file any application seeking condonation of delay. Even in the Petition filed under Section 34 of the Act of 1996, there was no prayer nor any averments were made to seek condonation of delay.

27. Significantly, while the petitioner had filed his preliminary objections in writing which was responded by the contesting respondent yet he did not make any application for seeking condonation of delay. In such circumstances where there was no application seeking condonation of delay despite notice to the contesting respondent who had the opportunity to avail but did not. Hence, in light of the clear mandate propounded by the Apex Court in **Chintal India (supra)** the Petition was beyond time and therefore neither the delay could have been condoned nor the petition itself could have been registered as a regular Petition.

28. It was submitted that the Court without giving any cogent reason, in a mechanical manner, has turned down the preliminary objection holding that they were not maintainable and this was apparently erroneous as the order suffers from non application of judicial mind apart from the fact that it is arbitrary and against the settled

principle of law, hence it deserves to be set aside and as a consequence, the Petition under Section 34 of the Act of 1996 filed by the contesting respondent deserves to be dismissed as time barred.

29. **Per contra**, Shri Sarvesh Dubey, learned counsel for the contesting respondent has submitted that the issue of limitation as sought to be projected by the learned Senior Counsel for the petitioner is not correct. It is urged that the contesting respondent had assailed the award dated 27.09.2023 by filing writ petition before a Division Bench of this Court bearing Writ-C No.8511 of 2023. The said petition was disposed of on 17.10.2023 by permitting the contesting respondent to avail the alternate remedy to file objection under Section 34 of the Act of 1996 before the appropriate Court. On 16.10.2023 the contesting respondent had already filed the petition before the Commercial Court which was taken up on 17.10.2023 and noticing the order passed by the Division Bench, the Petition was treated to be within time and in such circumstances the issue of delay did not arise at all. It is for the aforesaid reason that the Commercial Court has rightly rejected the preliminary objection relating to limitation as not maintainable since, the Petition itself was rightly filed within the time prescribed as per law.

30. Shri Dubey, has further pointed out that the contesting respondent had also filed his objections to the preliminary objections raised by the petitioner wherein it was clearly stated that the petition was filed on 16.01.2024 and considering the facts and circumstances the delay was condoned. The Petition was admitted and in any case the contesting respondent was entitled to the benefit of Section 14 of the

Limitation Act, if required, hence the contention of the petitioner that the petition was time barred was not correct.

31. Shri Dubey has further urged that there is another aspect of the matter which requires consideration and i.e. the issue of approbate and reprobate. It is submitted that the petitioner had put in appearance in the Petition under Section 34 of the Act of 1996 and had also raised a contention that the Petition was not maintainable for want of predeposit of 75% of the awarded sum in terms of Section 19 of the Act of 2006. The contesting respondent had deposited 75% of the award and it was also got released by the petitioner in the proceedings pending before the Commercial Court. Once the Petition itself (if not maintainable for being time barred) then the petitioner could not have insisted for deposit of 75% of the amount. Now having contested the proceedings and having insisted for making the pre deposit and having participated in the proceedings to get the amount released, is all indicative of the fact that the petitioner by its own conduct had given up the plea of limitation. Moreover, by conduct the petitioner could not approbate and reprobate, hence the Commercial Court rightly rejected the preliminary objection and the petitioner is also not entitled to raise the issue of limitation before this Court, as it is misconceived and deserves to be dismissed.

32. Shri Dubey, in support of his submission has relied upon the decision of a Co-ordinate Bench of this Court in **Rakesh Kumar Jain v. Zulfkar Ali; 2023 SCC OnLine All 2821**. He has also relied upon a decision of the Orissa High Court in **Faridabad Gurgaon Minerals v. Orissa Mining Corporation Ltd.; AIR 2007 Ori 179** and he has

further relied upon the decision of the Apex Court in **State of Uttar Pradesh v. Karunesh Kumar and others; 2022 SCC OnLine SC 1705.**

**Writ Petition No.5145 of 2024**

33. Shri Dubey while pressing the Petition bearing No.5145 of 2024 has urged that the order releasing the amount in favour of the petitioner is against the mandate of Section 19 of the Act of 2006. No reasons have been recorded despite the fact that on an earlier occasion a Co-ordinate Bench of this Court in Writ Petition No.3611 of 2024 had directed the Commercial Court to pass a reasoned order.

34. It was further urged that the Commercial Court did not record any reason as to what were the circumstances which prevailed and persuaded the Commercial Court to pass an order releasing the entire sum of 75% of deposited amount. There was no justification for the Commercial Court to have directed the contesting respondent to furnish a security for the remaining 25% of the award and subject to it the recovery proceedings were to be stayed, and the said direction was apparently bad in the eyes of law.

35. It was also urged that even the High Court had noticed that the award was not valid and he relied upon para-17 of the order of the Division Bench of this Court dated 19.04.2024 passed in Writ Petition-C No.3594 of 2024 hence there was no reason to release any amount or require the contesting respondent to furnish a security.

36. Shri Dubey further submitted that in case if this Court found that the Petition under Section 34 of the Act of 1996 was barred by

limitation then this Court would necessarily pass an appropriate direction directing the petitioner to return the amount received by him as the petitioner cannot be permitted to retain the benefits of an order and yet challenge the same. In such circumstances, it was urged that the petition filed by the petitioner bearing No.3886 of 2024 was liable to be dismissed and the Petition No.5141 of 2024 deserved to be allowed.

37. Responding to the submissions of Shri Dubey in so far as the Petition No.5451 of 2024 is concerned, Shri Pritish Kumar, learned Senior Counsel urged that the Act of 2006 is a special enactment which clearly indicates in Section 19 that making a pre deposit was mandatory. Once the amount was deposited, the Court was justified in releasing the same. In order to protect the rights of the parties, the Court had already put the petitioner on terms, to file an indemnity to the extent that in case if an order was passed adverse to the petitioner, in the petition under Section 34 of the Act of 1996, then the petitioner would refund the said released amount alongwith 6% interest per annum to the Court.

38. Learned Senior Counsel has further urged that it is now to well settled that a money decree is not stayed. In the given circumstances where the Act of 2006 provides for recovery through the State Authorities and it was resorted to then in order to get stay the proceedings, the contesting respondent deposited the amount on his own. The intention of the contesting respondent to deposit the said sum was also noticed by the Division Bench in its order dated 19.04.2024 passed in Writ-C No.3594 of 2024. The said amount was for the benefit of the petitioner. The petitioner has already submitted the indemnity as required

by the Commercial Court and in such circumstances the order dated 27.09.2024 releasing the sum in favour of the petitioner and requiring the contesting respondent to furnish a security for the remaining 25% cannot be said to be bad rather its only in consonance with law, which requires no interference.

39. It was further urged by the learned Senior Counsel for the petitioner that even the pre deposit of 75% which has been made is only 75% of the amount as indicated in the award dated 27.09.2023 rather as per the Act of 2006 the pre deposit of 75% is to be computed on the total decretal amount, computed alongwith updated interest, till the date when the petition under Section 34 of the Act of 1996 was made. This compliance in the instant case was insufficient and in any case the Commercial Court has granted indulgence to the contesting respondent by accepting insufficient amount as compliance, which is not as per law and in the given circumstances, the Petition filed by the contesting respondent deserves to be dismissed.

### **Discussion and Analysis**

40. The Court has heard the learned counsel for the parties at length and also perused the material on record.

41. At the outset, it will be appropriate to notice Section 5 of the Arbitration and Conciliation Act of 1996 vis-a-vis the scope of interference by this Court in exercise of power under Article 226/227 of the Constitution of India. In this regard, the decision of the Apex Court in **Bhaven Construction v. Sardar Sarover Narmada Nigam Ltd.;**

**(2022) 1 SCC 75** gives guidance and the relevant observations of the Apex Court is as under:-

"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In *Nivedita Sharma v. COAI* [*Nivedita Sharma v. COAI*, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)

"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — *L. Chandra Kumar v. Union of India* [*L. Chandra Kumar v. Union of India*, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

19. In this context we may observe *Deep Industries Ltd. v. ONGC* [*Deep Industries Ltd. v. ONGC*, (2020) 15 SCC 706] , wherein interplay of Section 5 of the Arbitration Act and Article 227 of the Constitution was analysed as under : (SCC p. 714, paras 16-17)

"16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. Section 37 grants a constricted right of first appeal against certain judgments and orders and no others. Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that

Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.”

(emphasis supplied)

20. In the instant case, Respondent 1 has not been able to show exceptional circumstance or “bad faith” on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending.

21. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the “principle of unbreakability”. This Court in *P. Radha Bai v. P. Ashok Kumar* [*P. Radha Bai v. P. Ashok Kumar*, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , observed : (SCC p. 459, paras 36-37)

“36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in *International Commercial Arbitration and Conciliation in Uncitral Model Law Jurisdictions*, 2nd Edn., observed:

‘An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although “an unbreakable time-limit for applications for setting aside” was sought as being desirable for the sake of “certainty and expediency” the prevailing view was that the words ought to be retained “since they presented the reasonable consequence of Article 33.’

According to this “unbreakability” of time-limit and true to the “certainty and expediency” of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.

37. Extending Section 17 of the Limitation Act would go contrary to the principle of “unbreakability” enshrined under Section 34(3) of the Arbitration Act.”

(emphasis in original)

If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished."

42. In a recent decision, the Apex Court in **Shri Digant v. M/s P.D.T. Trading Co. and others; 2025 SCC OnLine SC 2524** considering the scope of Article 226 and 227 of the Constitution of India in context with order arising out of the District Courts the Apex Court has noticed as under:-

"22. The scope of High Court's jurisdiction under Articles 226/227 fell for consideration before a three-Judge Bench of this Court in *Radhey Shyam v. Chhabhi Nath*<sup>1</sup> This Court held that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226, though they may be questioned in the supervisory jurisdiction of the High Court under Article 227 of the Constitution. The power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

23. In the case on hand, the appellate court had considered in detail the issue as to whether the trial court was justified in proceeding with the case, without further notice to the defendants, after submission of pursis (Exh.42) by defendants' counsel, claiming no instructions. After a threadbare analysis and taking into consideration the surrounding circumstances, the appellate court held that the trial court committed no wrong in proceeding with the matter. The appellate court noticed that the advocate representing the defendants had claimed no instructions but not sought withdrawal of his Vakalatnama and the matter thereafter remained pending for over three months till it was decided in March 2015. In between no effort was made by the defendants to engage another lawyer. Moreover, the defendants did not come up with a case that their lawyer's notice was not served on them therefore, they could not engage another counsel. Besides that, the record also indicated that the intention of the defendants was to delay the proceedings because earlier also the suit had proceeded ex parte against them though, later, those orders were recalled. Therefore, in our view, once the appellate court took into consideration all relevant aspects including the fact that pursis (Exh.42) did not seek withdrawal of the Vakalatnama, and withdrawal was not even permitted, there was no such jurisdictional error which warranted exercise of powers under Article 227 of the Constitution of India. The High Court without any justification went on to consider the procedure prescribed for withdrawal of Vakalatnama when neither withdrawal of Vakalatnama was permitted by the Trial Court nor the pursis prayed for its withdrawal. In such circumstances, the entire exercise of the High Court was misconceived. More so, when the view taken by the appellate court that defendant cannot take advantage of his own wrong was a plausible view based on materials available on record. Hence, in our view, appellate court's order was not amenable to interference in exercise of jurisdiction under Articles 226/227 of the Constitution of India. The High Court

clearly exceeded its jurisdiction under Article 227 of the Constitution in interfering with a well reasoned order of the appellate court."

43. Keeping the aforesaid parameters in mind, this Court proceeds to examine the contention of the respective parties. The issue of limitation definitely goes to the roots of the jurisdiction of the Court to entertain a matter, in the first place. It is now well settled that Section 5 of the Limitation Act is not applicable to the proceedings under Section 34 of the Act of 1996 (see **Union of India v. Popular Construction Co.; (2001) 8 SCC 470** which was followed by the Apex Court in **Simplex Infrastructure v. Union of India; (2019) 2 SCC 455** wherein in para 11 it was noticed as under:-

"11. Section 5 of the Limitation Act, 1963 deals with the extension of the prescribed period for any appeal or application subject to the satisfaction of the court that the appellant or applicant had sufficient cause for not preferring the appeal or making the application within the prescribed period. Section 5 of the Limitation Act, 1963 has no application to an application challenging an arbitral award under Section 34 of the 1996 Act. This has been settled by this Court in its decision in *Union of India v. Popular Construction Company* [*Union of India v. Popular Construction Company*, (2001) 8 SCC 470], wherein it held as follows : (SCC pp. 474-75, paras 12 &14)

"12. As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are "but not thereafter" used in the proviso to sub-section (3). In our opinion, this phrase would amount to an express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of that Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase "but not thereafter" wholly otiose. No principle of interpretation would justify such a result.

\*\*\*

14. Here the history and scheme of the 1996 Act support the conclusion that the time-limit prescribed under Section 34 to challenge an award is absolute and unextendable by court under Section 5 of the Limitation Act."

44. The facts in the instant case relating to the issue of limitation are not in dispute between the parties. It is not disputed that the

contesting respondent assailed the award passed by the Facilitation Council by filing Writ-C No.8511 of 2023. The Division Bench of this Court on 05.10.2023 had passed the following order which reads as under:-

"Heard learned counsel for the petitioner and Shri S.B.Pandey, learned DSGI/Senior Advocate, assisted by Shri R.K. Singh, learned counsel for the respondent no.1 and 3.

Learned counsel for the respondent prays for and is granted three days' time to complete his instructions with regard to the status of award.

List this case on 10.10.2023."

45. Later on 17.10.2023 the Division Bench in the said petition passed the following order:-

"Case called out in the revised list.

Learned counsel for the petitioners is not present. Sri Rajesh Tewari , Advocate is present for respondent nos.2 & 3 and Sri S. B. Pandey, learned A.S.G.I. assisted by Sri R. K. Singh Advocate is present for respondent no.1.

Learned counsel for the respondent nos.1, 2 & 3 state that the award dated 27.09.2023 has been passed and against the same the petitioners have alternative remedy to file objections under Section 34 before the appropriate Court.

With the aforesaid liberty, the petition is consigned to record."

46. From the perusal of the order dated 17.10.2023 as quoted above, it would reveal that the counsel for the contesting respondent (herein) was not present before the Court. However, taking note of the fact that the contesting respondent had an alternate remedy of filing objection under Section 34 of the Act of 1996, the Court did not deem appropriate to entertain the petition and after granting the aforesaid liberty, consigned the petition to record.

47. The record further indicates that the contesting respondent filed the Petition under Section 34 of the Act of 1996 before the Commercial Court on 16.01.2024. This was taken up by the Court concerned on

17.01.2024. The Commercial Court on 17.01.2024 had passed an order, which is under challenge in this petition, and it is being reproduced hereinafter:-

"प्रार्थी/वादी के विद्वान अधिवक्ता द्वारा प्रार्थनापत्र ए-3 माध्यस्थम् एवं सुलह अधिनियम, 1996 की धारा-34 के अन्तर्गत प्रस्तुत किया गया है। सुना तथा मुंसरिम आख्या का अवलोकन किया। मुंसरिम आख्यानुसार वाद सुनवाई का अधिकार अन्तर्गत न्यायालय है। पर्याप्त न्यायशुल्क लगा है। प्रार्थनापत्र कालबाधित है, परन्तु माननीय उच्च न्यायालय के आदेश एनेक्चर-7 जो प्रार्थनापत्र के साथ संलग्न है, के आधार पर कालबाधित नहीं है। प्रस्तुत वाद आर्बीट्रेशन वाद के रूप में पंजीकृत हो। पत्रावली लन्च बाद पेश हो।"

**"दिनांक- 17.01.2024**

पत्रावली कम्प्युटर द्वारा कमर्शियल कोर्ट न० 2 में प्रेषित की जाती है।"

**"दिनांक- 17.01.2024**

पत्रावली कम्प्युटर द्वारा रैनडम मे कमर्शियल कोर्ट न० 1 से प्राप्त हुई। दर्ज रजिस्टर हो।"

**"दिनांक- 17.01.2024**

पत्रावली लंच बाद पेश हुई। वादी अधिवक्ता उपस्थित। प्रतिवादी अनुपस्थित। प्रार्थना-पत्र 6-ग पर वादी के विद्वान अधिवक्ता को सुना। वादी द्वारा प्रार्थना पत्र 6-ग अंतर्गत धारा 34, उपधारा 2 व 3, मध्यस्थम् एवं सुलह अधिनियम, 1996 वास्ते निषेधाज्ञा दिया गया है। मेरे मत से इस पत्रावली में प्रार्थना पत्र 6-ग पर आदेश पारित करने से पूर्व विपक्षी को भी सुना जाना आवश्यक व समीचीन है।

**आदेश**

विपक्षी को उभय प्रकार से नोटिस जारी हो। वादी इस संदर्भ में आवश्यक पैरवी अंदर सप्ताह करे। पत्रावली वास्ते सुनवाई दिनांक- 12.02.2024 को पेश हो।"

48. Another fact which needs to be seen at this stage is as to whether the High Court in its order had granted any indulgence to the contesting respondent by which the Petition which otherwise was barred by limitation could have been treated to be within time.

49. In order to examine this aspect, the contents of paragraphs 45 to 48 of the Petition filed by the contesting respondent under Section 34 of the Act of 1996 is being reproduced hereinafter for ready reference:-

"45. That the petitioner also filed a Writ Petition in High Court, Lucknow Bench having case No. (Writ-C No.8511 of 2023) on dated 27.09/2023 with a prayer to issue direction to the Arbitrator, MSME Facilitation Council, Lucknow to proceed with the matter strictly in accordance with the provision of the Arbitration and Conciliation Act, 1996 as mandated by the Micro, Small and Medium Enterprises Development Act, 2006.

46. That it is to be noted that the Arbitrator, MSME Facilitation Council, Lucknow passed an arbitral award on dated 27.09.2023 that very day when the petitioner filed a Writ Petition in the High Court, Lucknow Bench.

47. That during the proceedings of the above mentioned Writ Petition, the Counsel of the respondent filed a Counter-Affidavit and informed the Hon'ble High Court about the arbitral award passed dated 27.09.2023 by the Arbitrator, MSME Facilitation Council, Lucknow.

48. That the Hon'ble High Court, Lucknow Bench dismissed the above said Writ Petition on dated 17.10.2023 with direction to the petitioner to file a separate petition under Section 34 of the Arbitration and Conciliation Act, 1996 before the Appropriate Court. The Photocopy of the order dated 17.10.2023 is annexed with this petition as annexure no.7."

50. From the perusal of the aforesaid, it would be clear that annexure no.7 which has been referred to by the Commercial Court in its order dated 17.01.2024 it is the same order which was passed by the Division Bench of this Court in Writ-C No.8511 of 2023. The said order has already been reproduced hereinabove and it would be clear that the Court except for permitting the contesting respondent to take recourse to the alternate remedy did not provide any further liberty or any further indulgence so as to impact the merit or disability in the petition. The Division Bench clearly did not make any observation which could be construed as an observation that the delay, if any, would stand condoned or would be ignored whenever the contesting respondent choose to take

recourse to the alternate remedy of filing objection under Section 34 of the Act of 1996.

51. In this background, the observations made by the Commercial Court in its order dated 17.01.2024 that though the Petition under Section 34 of the Act of 1996 was barred by limitation but because of the order passed by the High Court (order which was annexure no.7) the Petition was not time barred, is apparently a clear case of misreading and misconstruing the order passed by the High Court.

52. The petitioner having received the summon and had put in appearance before the Commercial Court and filed his preliminary objections on 12.02.2024 raising the issue of maintainability on two counts (i) the Petition under Section 34 was bad for non compliance of Section 19 of the Act of 2006 as it was not accompanied with a pre deposit of 75% of the decretal amount, (ii) the Petition was barred by limitation in terms of Section 34 (3) of the Act of 1996.

53. In its reply, the contesting respondent, insofar as the issue of limitation is concerned, pleaded its stance in paragraph 12 and 13 as under:-

"12. That the appellant/petitioner would like to inform this present Hon'ble Court that there is no delay in filing the present matter under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner/appellant filed the present matter on dated 16.01.2024 before this Hon'ble Court and the one day time has been wasted in sending the copy of the above matter to all the respondents via speed post.

13. That further, the present Hon'ble Court after seeking the facts and evidence already, condone the delay of 1 day on dated 12.02.2024 in filing the present matter under Section 34 of the Arbitration and Conciliation Act, 1996. Moreso, the petition has already been admitted and the benefit of Sec. 14 of the Limitation Act would be given to the petitioner, if required. Therefore, to say that the present matter is delayed is wrong and vehemently denied."

54. At this stage, it will also be relevant to notice the prayer made by the contesting respondent in its Petition under Section 34 of the Act of 1996 which reads as under:-

"Therefore, in view of the facts, reasons law, guidelines, circular, government order, grounds and circumstances as stated above the petitioners most respectfully prayed before this Hon'ble Court:-

(i) That in view of the facts, reasons and circumstances and grounds as mentioned above, it is most respectfully prayed before this Hon'ble Court to quash or set aside the order dated 27.09.2023 passed by the Arbitrator, Facilitation Council, Lucknow as such, the petitioner got no opportunity to present his case and the Arbitrator passed a one sided award or ex-parte award.

(ii) That it is also request before this Hon'ble Court to grant the stay on the operation of the said Arbitral award as per the Section 36(2) and (3) of the Arbitration and Conciliation Act, 1996.

(iii) That to allow any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case detailed herein above in the interest of the justice."

55. The entire purpose of taking note of the aforesaid pleadings and response is to ascertain as to how the contesting respondent envisioned its own case. The stand of the contesting respondent was that the Petition was within time. Even if there was a delay, the same was condoned by the Court and in any case since the contesting respondent had filed Writ-C No.8511 of 2023 assailing the award dated 27.09.2023, hence the contesting respondent was entitled to the benefit of Section 14 of the Limitation Act. Thus, the Commercial Court did not err in rejecting the preliminary objection relating to the issue of limitation raised by the petitioner.

56. In this regard, this Court notices the settled proposition that Section 5 of the Limitation Act does not apply to proceeding under Section 34 of the Act of 1996, whereas Section 14 of the Act of 1963 is applicable. The difference in the two sections and its applicability to

arbitration proceedings as aforesaid was noticed by the Apex Court in **Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others; (2008) 7 SCC 169** and the relevant portion is reproduced as under:-

"20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the extent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act. However, merely because it is held that Section 5 of the Limitation Act is not applicable to an application filed under Section 34 of the Act for setting aside an award, one need not conclude that provisions of Section 14 of the Limitation Act would also not be applicable to an application submitted under Section 34 of the Act of 1996.

21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

22 . The policy of the section is to afford protection to a litigant against the bar of limitation when he institutes a proceeding which by reason of some technical defect cannot be decided on merits and is dismissed. While considering the provisions of Section 14 of the Limitation Act, proper approach will have to be adopted and the provisions will have to be interpreted so as to advance the cause of

justice rather than abort the proceedings. It will be well to bear in mind that an element of mistake is inherent in the invocation of Section 14. In fact, the section is intended to provide relief against the bar of limitation in cases of mistaken remedy or selection of a wrong forum. On reading Section 14 of the Act it becomes clear that the legislature has enacted the said section to exempt a certain period covered by a bona fide litigious activity. Upon the words used in the section, it is not possible to sustain the interpretation that the principle underlying the said section, namely, that the bar of limitation should not affect a person honestly doing his best to get his case tried on merits but failing because the court is unable to give him such a trial, would not be applicable to an application filed under Section 34 of the Act of 1996. The principle is clearly applicable not only to a case in which a litigant brings his application in the court, that is, a court having no jurisdiction to entertain it but also where he brings the suit or the application in the wrong court in consequence of bona fide mistake or (sic of) law or defect of procedure. Having regard to the intention of the legislature this Court is of the firm opinion that the equity underlying Section 14 should be applied to its fullest extent and time taken diligently pursuing a remedy, in a wrong court, should be excluded.

23 . At this stage it would be relevant to ascertain whether there is any express provision in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act. On review of the provisions of the Act of 1996 this Court finds that there is no provision in the said Act which excludes the applicability of the provisions of Section 14 of the Limitation Act to an application submitted under Section 34 of the said Act. On the contrary, this Court finds that Section 43 makes the provisions of the Limitation Act, 1963 applicable to arbitration proceedings. The proceedings under Section 34 are for the purpose of challenging the award whereas the proceeding referred to under Section 43 are the original proceedings which can be equated with a suit in a court. Hence, Section 43 incorporating the Limitation Act will apply to the proceedings in the arbitration as it applies to the proceedings of a suit in the court. Sub-section (4) of Section 43, inter alia, provides that where the court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings with respect to the dispute so submitted. If the period between the commencement of the arbitration proceedings till the award is set aside by the court, has to be excluded in computing the period of limitation provided for any proceedings with respect to the dispute, there is no good reason as to why it should not be held that the provisions of Section 14 of the Limitation Act would be applicable to an application submitted under Section 34 of the Act of 1996, more particularly where no provision is to be found in the Act of 1996, which excludes the applicability of Section 14 of the Limitation Act, to an application made under Section 34 of the Act. It is to be noticed that the powers under Section 34 of the Act can be exercised by the court only if the aggrieved party makes an application. The jurisdiction under Section 34 of the Act, cannot be exercised suo motu. The total period of four months within which an application, for setting aside an arbitral award, has to be made is not unusually long. Section 34 of the Act of 1996 would be unduly oppressive, if it is held that the provisions of Section 14 of the Limitation Act are not applicable to it, because cases are no doubt

conceivable where an aggrieved party, despite exercise of due diligence and good faith, is unable to make an application within a period of four months. From the scheme and language of Section 34 of the Act of 1996, the intention of the legislature to exclude the applicability of Section 14 of the Limitation Act is not manifest. It is well to remember that Section 14 of the Limitation Act does not provide for a fresh period of limitation but only provides for the exclusion of a certain period. Having regard to the legislative intent, it will have to be held that the provisions of Section 14 of the Limitation Act, 1963 would be applicable to an application submitted under Section 34 of the Act of 1996 for setting aside an arbitral award.

\* \* \*

28. Further, there is fundamental distinction between the discretion to be exercised under Section 5 of the Limitation Act and exclusion of the time provided in Section 14 of the said Act. The power to excuse delay and grant an extension of time under Section 5 is discretionary whereas under Section 14, exclusion of time is mandatory, if the requisite conditions are satisfied. Section 5 is broader in its sweep than Section 14 in the sense that a number of widely different reasons can be advanced and established to show that there was sufficient cause in not filing the appeal or the application within time. The ingredients in respect of Sections 5 and 14 are different. The effect of Section 14 is that in order to ascertain what is the date of expiration of the "prescribed period", the days excluded from operating by way of limitation, have to be added to what is primarily the period of limitation prescribed. Having regard to all these principles, it is difficult to hold that the decision in Popular Construction Co. [(2001) 8 SCC 470] rules that the provisions of Section 14 of the Limitation Act would not apply to an application challenging an award under Section 34 of the Act."

57. In order to avail the benefit of Section 14 of the Limitation Act, the Court concerned (who was dealing with the issue as to whether the benefit of Section 14 of the Limitation Act is to be granted or not) was required to ascertain whether the following conditions were met or not.

- (1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court.

58. Now in order to ascertain whether the aforesaid mentioned conditions were applicable, the Court, necessarily was obliged to look at

the pleading made by the respective parties before it. Even for the purposes of condoning the delay, the party seeking the indulgence of the Court must plead and demonstrate that it was prevented by a sufficient cause from filing the Petition/appeal/application before the Court within the prescribed period of limitation. Thus, whether a party claims the benefit of Section 5 or Section 14 of the Limitation Act, the pleadings in this regard assumes significance.

59. In the instant case, it is no doubt true that the Petition filed under Section 34 of the Act of 1996 was beyond three months from the date of the award but it was filed within 30 days thereafter. This period of additional 30 days is significant for the reason that the Court dealing with an application under Section 34 of the Act of 1996 has the power to condone the delay of this additional 30 days, which is in terms of Section 34(3) of the Act 1996 and not in terms of Section 5 of the Limitation Act.

60. In this context, if at all there is a delay, which is within the condonable period of 30 days as aforesaid, then, it has to be explained. It is not as if, despite the delay and there being no application seeking condonation of delay and not even a prayer made in this regard yet it would entitle the court to automatically condone the delay nor the Court would condone the delay merely because it is within the condonable period of 30 days in terms of Section 34(3) of the Act of 1996, irrespective of the explanation offered by the party seeking condonation of delay.

61. What the Court is required to do is to ascertain as to whether the ground shown for approaching the Court with delay and of course which is within the condonable period, constitutes a sufficient cause. Once, the Court is satisfied that the delay in approaching the Court, is within the condonable period of 30 days but beyond three months, as provided under Section 34(3) of the Act of 1996 and the explanation offered constitutes a sufficient cause then the delay can be condoned. This necessarily means applying the judicial mind to the cause shown, the contention of the opposing party and the reason recorded by the Court to reach its conclusion.

62. Now, if a party is seeking the benefit of Section 14 of the Limitation Act then in such a case the Court would be required to examine whether the conditions subsist for grant of the benefit of the Section 14 on the basis of pleading and then applying it to the facts of the given case, the Court will have to record its satisfaction that the pleadings set out by a party claiming the benefit of Section 14 of the Limitation Act has made out a case and only then the benefit of Section 14 can be granted.

63. At this stage, it will be appropriate to consider the decision of the Apex Court in **Chintal India (supra)** which has been made the pivot of the submission by the learned Senior Counsel for the petitioner. In **Chintal India (supra)** the issue before the Apex Court was whether an order passed by a Court refusing to condone the delay in filing an application under Section 34 of the Act of 1996 is an appealable order under Section 37(1)(c) of the Act. It is in this context that the Apex Court

considered several decisions and taking aid of the "effect doctrine" held that by refusing to condone the delay, the effect is, that the Court refuses to set aside the award which in terms of Section 37(1)(c) of the Act of 1996 is appealable and such an appeal would be maintainable.

64. Needless to say that the Apex Court was not dealing with a situation as to what should be the content in a Petition under Section 34 of the Act of 1996 or as to how the said Petition is to be construed. It is also equally settled that the judgment is not to be construed like euclid theorem and an observation in a judgment torn out of its context cannot be said to conclude an issue. It is in this regard, the observations made by the Apex Court in **Chintal India (supra)** more particularly paragraph 11, which for the sake of clarity is being reproduced hereinafter:-

"8. A reading of section 34(1) would make it clear that an application made to set aside an award has to be in accordance with both sub-sections (2) and (3). This would mean that such application would not only have to be within the limitation period prescribed by sub-section (3), but would then have to set out grounds under sub-sections (2) and/or (2A) for setting aside such award. What follows from this is that the application itself must be within time, and if not within a period of three months, must be accompanied with an application for condonation of delay, provided it is within a further period of 30 days, this Court having made it clear that section 5 of the Limitation Act, 1963 does not apply and that any delay beyond 120 days cannot be condoned – see *State of Himachal Pradesh v. Himachal Techno Engineers and Anr.* (2010) 12 SCC 210 at paragraph 5. "

65. The aforesaid paragraph would reveal that the Apex Court was not dealing with such an issue so as to hold that a petition under Section 34 of the Act of 1992 must be accompanied by a separate application for condonation of delay. The observations made therein can be seen as a prudent course which may be adopted by a person while filing its petition under Section 34 of the Act. However, merely because an application seeking condonation of delay has not been made separately

will *per se* not make the Petition under Section 34 of the Act of 1996 not maintainable. There may be a situation where a Petition under Section 34 of the Act of 1996 may be barred by limitation and the petitioner in such a Petition itself may have made averments regarding sufficient cause and may have even sought a prayer in the petition itself without making a separate application for seeking condonation of delay. Hence, in such circumstances, it cannot be said that the observations made by the Apex Court in paragraph 11 above, indicates that a petition under Section 34 of the Act of 1996 in all circumstances must be accompanied with a separate application for seeking condonation of delay. It is for the aforesaid reason, that this Court finds that the submissions of the learned Senior Counsel for the petitioner is too technical and is an attempt to tear out the observations of the Apex Court out of context.

66. For the purposes of clarity it will be worthwhile to notice another decision of the Apex Court in **Shesh Nath Singh and another v. Baidyabati Sheoraphuli Cooperative Bank Ltd. and another; (2021) 7 SCC 313** wherein the issue of condonation of delay was considered by the Apex Court and in paragraphs 59 to 63, it held as under :-

"59. The condition precedent for condonation of the delay in filing an application or appeal, is the existence of sufficient cause. Whether the explanation furnished for the delay would constitute "sufficient cause" or not would be dependent upon facts of each case. There cannot be any straitjacket formula for accepting or rejecting the explanation furnished by the appellant applicant for the delay in taking steps. Acceptance of explanation furnished should be the rule and refusal an exception, when no negligence or inaction or want of bona fides can be imputed to the defaulting party.

60. It is true that a valuable right may accrue to the other party by the law of limitation, which should not lightly be defeated by condoning delay in a routine manner. At the same time, when stakes are high, the explanation should not be rejected by taking a pedantic and hypertechnical view of the matter, causing thereby

irreparable loss and injury to the party against whom the lis terminates. The courts are required to strike a balance between the legitimate rights and interests of the respective parties.

61. Section 5 of the Limitation Act, 1963 does not speak of any application. The section enables the court to admit an application or appeal if the applicant or the appellant, as the case may be, satisfies the court that he had sufficient cause for not making the application and/or preferring the appeal, within the time prescribed. Although, it is the general practice to make a formal application under Section 5 of the Limitation Act, 1963, in order to enable the court or tribunal to weigh the sufficiency of the cause for the inability of the appellant applicant to approach the court/tribunal within the time prescribed by limitation, there is no bar to exercise by the court/tribunal of its discretion to condone delay, in the absence of a formal application.

62. A plain reading of Section 5 of the Limitation Act makes it amply clear that, it is not mandatory to file an application in writing before relief can be granted under the said section. Had such an application been mandatory, Section 5 of the Limitation Act would have expressly provided so. Section 5 would then have read that the court might condone delay beyond the time prescribed by limitation for filing an application or appeal, if on consideration of the application of the appellant or the applicant, as the case may be, for condonation of delay, the court is satisfied that the appellant applicant had sufficient cause for not preferring the appeal or making the application within such period. Alternatively, a proviso or an Explanation would have been added to Section 5, requiring the appellant or the applicant, as the case may be, to make an application for condonation of delay. However, the court can always insist that an application or an affidavit showing cause for the delay be filed. No applicant or appellant can claim condonation of delay under Section 5 of the Limitation Act as of right, without making an application.

63. As observed above, Section 238-A makes the provisions of the Limitation Act applicable to proceedings under the IBC before the adjudicating authority and the appellate authority (Nclat) “as far as may be”. Section 14(2) of the Limitation Act which provides for exclusion of time in computing the period of limitation in certain circumstances, provides as follows:

“14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) \*\*\*

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.”

67. Thus having considered the decision of the Apex Court as noticed hereinabove, it can be safely be said, that it is not merely because the application under Section 34 of the Act of 1996 was not

accompanied by a separate application seeking condonation of delay, *per se* would make the application under Section 34 of the Act of 1996 not maintainable without considering as to whether in the pleading any ground was set out for condonation of delay or for grant of benefit of Section 14 of the Limitation Act or any prayer was made to the aforesaid effect or not.

68. Insofar as the decision cited by Shri Dubey is concerned, suffice to state that the decision of a Co-ordinate Bench of this Court in **Rakesh Kumar Jain (supra)** in an a different fact situation and is in context with Section 5 of the Limitation Act as applicable to the civil proceedings and not in context with the Arbitration & Conciliation Act, 1996 as such may not be applicable to the instant case, hence it does not come to the aid of the contesting respondent. For the same reason, the decision of **Faridabad Gurgaon Minerals (supra)** also does not help the contesting respondent. Similarly, the decision of the Apex Court in **Karunesh Kumar (supra)** deals with the proposition of approbate and reprobate, which though as a proposition is not disputed but the said proposition of approbate and reprobate has no applicability in the instant case, hence the said judgment also does not help the contesting respondent.

69. Now applying the aforesaid principles to the facts of the instant case, it would reveal that the Commercial Court while dealing with the issue of limitation has merely referred to the contention of the respective parties and referred to the Munsarim report as furnished and in his report and in terms of the order passed by the High Court, the Petition

was within time. The relevant portion relating to the finding recorded by the Commercial Court in its order dated 20.06.2024 is being reproduced hereinafter:-

"सुना व पत्रावली का अवलोकन किया। पत्रावली के अवलोकन के पश्चात विदित होता है कि याची/अपीलार्थी द्वारा माननीय उच्च न्यायालय के आदेश दिनांक 19.04.2024 व 01.05.2024 के अनुपालन में एवार्ड की 75% धनराशि न्यायालय में दिनांक 03.05.2024 को जमा की जा चुकी है। जहाँ तक विपक्षी सं०-4 द्वारा याचिका कालबाधित के संबंध में की गई आपत्ति का प्रश्न है, उक्त के सम्बन्ध में मुंसरिम आख्या के अवलोकन से यह स्पष्ट होता है कि मुंसरिम द्वारा माननीय उच्च न्यायालय में योजित रिट सी नं०-8511/2023 में पारित आदेश दिनांकित 17.10.2023 के आधार पर कालबाधित न होने की आख्या दी गई है। यहाँ यह भी उल्लेखनीय है कि उक्त एवार्ड दिनांक 27.09.2023 को पारित किया गया है। उक्त एवार्ड पारित होने के 90 दिन पश्चात विस्तारित समयावधि 30 दिन अर्थात् कुल 120 दिन के भीतर याची अपीलार्थी द्वारा आर्बीट्रेशन वाद प्रस्तुत किया गया है एवं इस विलम्ब का समुचित कारण यह बताया गया है कि उसके द्वारा माननीय उच्च न्यायालय में याचिका रिट-सी नं०-8511/2023 योजित की गई थी, जिसे माननीय उच्च न्यायालय द्वारा दिनांक 17.10.2023 को निस्तारित किया गया है। जिसके आधार पर याचिका को समय सीमा में मानते हुए उक्त वाद दिनांक 17.01.2024 को आर्बीट्रेशन वाद के रूप में दर्ज किया जा चुका है एवं पत्रावली में आर्बीट्रेटर रिकॉर्ड भी तलब किया जा चुका है। ऐसी स्थिति में न्यायालय के मत में विपक्षी सं०-4 की ओर से प्रस्तुत प्रारंभिक आपत्ति सी-9 पोषणीय न होने के कारण निरस्त किये जाने योग्य है।"

70. The reasoning of the Commercial Court that the Petition was filed beyond 90 days but within 30 days thereafter i.e. to say within 120 days and the ground indicated for such delay was the filing of the Writ Petition No.8511 of 2023 before the High Court which was disposed of on 17.10.2023, hence the Petition was registered, as being within time and that the record from the Arbitrator had been summoned, hence, in such circumstances, the preliminary objections are not maintainable, reflects poorly, for more than one reason: (i) First and foremost, the issue of limitation was a jurisdictional issue which was to be considered with most seriousness, which is not reflected from the above quoted,

reasoning of the said Court. Merely because the Munsarim had given an incorrect report would not mean that substantive right of the party can be subsumed because of the Munsarim report or that the Court loses its jurisdiction to adjudicate the issue of limitation. The report of the Munsarim is subservient to the order of the Court and not vice versa; **(ii)** This Court is pained to notice that the Commercial Court failed to even read the order passed by the Division Bench of this Court dated 17.10.2023 passed in Writ-C No.8511 of 2023. It has already been noticed in the preceding paragraphs that the Division Bench in its order dated 17.10.2023 did not make any observation relating to condoning of delay or giving any indication or direction that whenever the contesting respondent filed objections under Section 34 of the Act of 1996, the same would be treated to be within time and be considered on merits, curtailing the right of the petitioner (opposite party before Commercial Court) to raise the issue of limitation; **(iii)** Even otherwise, if the Munsarim had given an incorrect report and at the first given opportunity, the petitioner had pointed out the said fact by filing his preliminary objection then it was the duty of the Commercial Court to have applied its judicial mind to the controversy and to have decided. However, without entering into the controversy, relating to limitation it has skirted the issue by holding that the Munsarim had given a report and the record had been summoned from the Arbitrator, hence the preliminary objections were not maintainable, make the order impugned vulnerable; **(iv)** It appears that the Commercial Court was not aware of the difference between entertainability and maintainability. It is one

thing to say that an objection relating to limitation may not be entertained but in the given circumstances, there can be no reason why an issue of limitation could be held to be not maintainable, merely because a Munsarim had given a report which was based on a clear misreading of the order passed by the High Court; (v) Another reason which reflects poorly on the Commercial Court is that even if at all, it was turning down the preliminary objection regarding limitation then the least that was required to be done was to have accorded some cogent reason to arrive at a conclusion, which would have some legal logic behind it.

71. Apparently, as already noticed above, the contesting respondent had made no prayer for condonation of delay nor any separate application for seeking condonation of delay was moved moreover, there was no pleadings for seeking benefit of Section 14 of the Limitation Act nor there was any pleadings to show as to how the contesting respondent was entitled to get the benefit of condonation of delay or Section 14 of the Limitation Act and yet the Commercial Court rejected the objection on limitation as not maintainable which is patently perverse and it suffers from the vice of being non reasoned and arbitrary exercise of jurisdiction and the said order is liable to be set aside.

72. In light of the aforesaid detailed discussions, this Court finds that the order dated 20.06.2024 passed by the Commercial Court is patently erroneous and cannot be sustained, in so far as it rejected the preliminary objection on the point of limitation. To that extent, the order dated 20.06.2024 is set aside. The Commercial Court shall decide the

issue of limitation, a fresh, by taking note of the clear pleadings of the parties and decide as to whether it is a case for condonation of delay or it is a case for seeking exclusion of time in terms of Section 14 of the Limitation Act, by a reasoned and a speaking order, taking into consideration the observations made by this Court. An endeavour would be made to decide the issue of limitation as aforesaid as expeditiously as possible, preferably within a period of four weeks, from the date a copy of this order is placed before the Court concerned.

73. It is made clear that this Court has not entered into the veracity of the pleadings and has not made any observations as to whether a case for condonation or case for exclusion of time is made out or not, which will be for the Commercial Court to do, of course, in light of the observations made hereinabove and in accordance with law. The fresh order to be passed as aforesaid, would govern the fate of the order dated 17.01.2024. Thus, the Petition No.3886 of 2024 is partly allowed in the aforesaid terms.

#### **Discussion in respect of Writ Petition No.5145 of 2024**

74. In order to appreciate the controversy in the connected petition bearing No.5145 of 2024, it will be appropriate to notice the reliefs prayed by the contesting respondent (who is the petitioner of Writ Petition No.5145) as under:-

"(i) To issue appropriate, order or direction to set aside the order dated 27.09.2024 passed by the learned Commercial Court No.2, Lucknow passed in Application No.C06 to the extent for depositing the security towards the 25% of awarded amount in Arbitration Case No.3 of 2024 in re Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises.

(ii) To issue appropriate, order or direction to set aside the order dated 27.09.2024 passed by the learned Commercial Court No.2, Lucknow passed in Application No.C-30 (Application for releasing the amount) & Application No.C-53 (Supplementary Affidavit) to the extent for depositing the security towards the 25% of awarded amount in Arbitration Case No.3 of 2024 in re: Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises.

(iii) To issue appropriate, order or direction to the learned Commercial Court to issue necessary direction to the respondent no.3 to refund the amount which has been taken in pursuance to the order dated 19.07.2024.

(iv) To issue appropriate, order or direction to the learned Commercial Court No.2, Lucknow to en-cash the indemnity bond deposited by the respondent no.3 in pursuance to the order dated 19.07.2024 passed in Application No.C-30 in Arbitration Case No.3 of 2024 in re: paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises, if it has been released in pursuance of the order dated 19.07.2024 to the respondent no.3 and further deposited in the fixed deposit and ensure to release after final adjudication of the Arbitration Case No.3 of 2024 in re: Paradigm Enterprises Vs. Union of India through the Secretary, Micro, Small and Medium Enterprises."

75. The thrust of the submission advanced by Shri Dubey is that the Division Bench of this Court in its order dated 19.04.2024 passed in Writ-C No.3594 of 2024 noticed that the award passed by the Facilitation Council was no award in the eyes of law. Once such an observation was made by the Division Bench of the High Court, and the very same award was under challenge in proceedings under Section 34 of the Act of 1996, in such circumstance, it was not just and appropriate for the Commercial Court to have released to deposit sum in favour of the petitioner i.e. M/s Genebio Healthcare Pvt. Ltd.

76. If this submission is considered, the record would reveal that the observations made by the Division Bench in the aforesaid order was in context with the submission advanced by the contesting respondent in his petition before the High Court. A copy of the order passed by the High Court is on record as annexure no.11 with Writ Petition No.5145 of

2024 and it would reveal that from paragraph 9 onwards the Court has considered the submissions of the learned counsel for the contesting respondent. The observations of the Court has been mentioned in paragraph 18 and 23 to 25 of the said order and the relevant portion thereof reads as under:-

"18. However, this Court is of the opinion that the petitioner cannot be permitted to simultaneously, argue the same ground in appeal that it has filed under Section 34 of the Act of 1996/Section 19 of the MSMED Act, 2020 and raise a challenge to the arbitral award before this Court.

\* \* \*

23. Having gone through the pleadings on record and having heard learned counsel for the parties, we find that prayer nos.2 and 3 of the writ petition fail and cannot be granted by this Court as the similar prayers had been made by the petitioner in Writ Petition (C) No.8511 of 2023 which was dismissed by this Court on 17.12.2023.

24. With regard to prayer nos.1 and prayer no.4 of this petition, regarding quashing of recovery notice dated 16.04.2024 issued by the Sub Divisional Magistrate, Sadar, Lucknow and the recovery notice dated 22.03.2024 issued by Tehsildar, Sadar Lucknow and for releasing the bank account of the Company, the petitioner's appeal under Section 19 has not yet been raised by the private respondent before the Commercial Court.

25. The Commercial Court shall look into the condition of pre-deposit of 76% of the arbitral award and pass an appropriate order. At this stage, the counsel for the petitioner on instructions from his client says that it is ready to deposit 75% of arbitral award in the appeal before the Commercial Court. This assurance has been given to the Court orally. However, if the petitioner complies with the condition of re-deposit of 75% of arbitral award within a week, and the Commercial Court admits the appeal as per the law settled in Tirupati Steels (supra) then the District administration may not pursue the recovery proceedings as impugned in this petition. "

77. The aforesaid order of the Division Bench would reveal that it had not expressed any opinion regarding the award passed by the Facilitation Council. The observation in paragraph-17 of the judgment, as relied upon by the counsel for the contesting respondent is being torn out of context. Thus, this Court is not inclined to accept this submission

that the Division Bench had recorded any finding or observed that the award passed by the Facilitation Council was no award in the eyes of law and that was binding on the Commercial Court

78. Needless to say that the said award is under challenge before the Commercial Court in proceedings under Section 34 of the Act 1996 which is the appropriate forum where the validity of the award will be tested on the grounds mentioned in Section 34 of the Act of 1996 and the said court would deal with it in accordance with law.

79. The other submission of Shri Dubey that the Commercial Court has not given any cogent reason as to why the said amount should be released in favour of the petitioner, if examined in context with Section 19 of the Act of 2006, it would reveal that there is a legislative mandate for the Court to balance the equities between the parties.

Section 19 of the Act of 2006 reads as under:-

"19.Application for setting aside decree, award or order.—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose."

80. The aforesaid provision is clear that if any award passed under the Act of 2006 is challenged, it must be accompanied by a pre-deposit of 75% of the decretal amount which is mandatory as also held by the Apex Court in **Tirupati Steel v. Subh Industrial Component and other; (2022) 7 SCC 429**. The proviso appended to Section 19 also

clarifies that the Court can release such amount in favour of the supplier as it may deem reasonable and such release can be subjected to condition as the Court may deem necessary.

81. The Apex Court in **India Glycols Ltd. v. MSEFC, Telangana; (2025) 5 SCC 780** wherein Section 19 of the Act of 2006 was considered and in para 9 to 12 the Apex Court held as under:-

"9. In terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the 1996 Act are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the 1996 Act would govern an award of the Facilitation Council.

10. However, there is a super added condition which is imposed by Section 19 of the Msmed Act, 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the Msmed Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the 1996 Act to challenge the award which it failed to pursue.

11. In the judgment of this Court in Gujarat State Civil Supplies Corpn. [Gujarat State Civil Supplies Corpn. Ltd. v. Mahakali Foods (P) Ltd., (2023) 6 SCC 401 : (2023) 3 SCC (Civ) 7] , a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that: (SCC p. 433, para 52)

“52. ... 52.4. The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal under Section 18(3) of the Msmed Act, 2006 would be governed by the Arbitration Act, 1996.”

12. The appellant failed to avail of the remedy under Section 34. If it were to do so, it would have been required to deposit seventy-five per cent of the decretal amount. This obligation under the statute was sought to be obviated by taking recourse to the jurisdiction under Articles 226/227 of the Constitution. This was clearly impermissible."

82. It is in exercise of this power, the Commercial Court considering the application made by the petitioner has taken note of the reasons given therein and has exercised its jurisdiction to release the deposited amount in favour of the petitioner, subject to the petitioner

filing an undertaking that in case any adverse order is passed against the petitioner in proceedings under Section 34 of the Act of 1996, the petitioner would be bound to return the aforesaid amount to the Court alongwith interest at the rate of 6% per annum.

83. From the perusal of the order dated 27.09.2024, it reveals that the Commercial Court has taken note of the respective submissions advanced by the counsel for the parties, considered the averments made in the application for release and taking note of the provision of Section 19, and then it has released the amount by recording reason. This exercise of jurisdiction, by the Commercial Court cannot be said to be inflicted with any error of law or jurisdiction nor it has been exercised with any illegality or material irregularity which may persuade this Court to interfere in the said order on the aforesaid premise.

84. It will also be relevant to notice that the Commercial Court had ordered release of the amount earlier and the said order was assailed by the contesting respondent by filing Writ Petition No.3611 of 2024 before a Co-ordinate Bench of this Court. The Co-ordinate Bench in its order dated noticed that the order impugned could not be sustained as it did not contain reasons. The Court had set aside the order and directed the Commercial Court No.2, Lucknow to pass fresh orders on the release application.

85. It is thereafter, the Commercial Court found that the supplier i.e. the petitioner herein was small scale industry and in case if the amount is not released it would cause grave hardship to the petitioner and by recording reasons, it released the amount. In order to protect the

rights of the contesting respondent, it has also directed that in case of any order passed in favour of the contesting respondent and adverse to the petitioner in proceedings under Section 34 of the Act of 1999, then the petitioner would return the aforesaid released amount alongwith interest at the rate of 6% per annum. In this way the rights of the contesting parties have been protected and the mandate of the proviso appended to Section 19 has also been achieved. Thus, it cannot be said that the order suffers from any vice of error of jurisdiction or that it is non speaking or non reasoned.

86. It is now to well settled to be disputed that a money decree is not stayed. In case, if a patently erroneous judgment/award/decreed comes before a Court and is under challenge on the ground of egregious fraud which is patent on the face of the record. In such circumstances, the Court may stay a money decree. However, as a general rule money decree is not stayed. Even otherwise the Court has a jurisdiction to secure the decretal amount and it may also release such part of the decretal amount as Court may deem just and proper in the facts of the case. [See **Lifestyle Equities C.V. v. Amazon Technologies, 2025 SCC OnLine SC 2153**]. Thus, it cannot be gainfully urged that a money decree must as a matter of course be stayed.

87. The grounds which are raised by the learned counsel for the contesting respondent will have to be tested before the Commercial Court in proceedings under Section 34. Subject to the outcome of the said proceedings under Section 34, the order passed by the Commercial Court dated 27.09.2024 would follow suit.

88. It is also to be noticed that the Commercial Court has directed the contesting respondent to furnish a valuable security for the remaining 25% of the decretal amount, this direction issued in exercise of the jurisdiction to secure the decretal amount also cannot be said to be bad.

89. The entire crux of the contention of the learned counsel for the contesting respondent is that the award passed by the Facilitation Council was behind his back and without granting proper opportunity. This is something which has to be seen on the basis of the record by the Commercial Court. It is not a case of egregious fraud which is apparent from the record and in such circumstances, it cannot be said, that by directing the contesting respondent to furnish a security for 25% of the remaining sum subject to which the recovery proceedings against the contesting respondent shall remain stayed, also does not suffer from any error, rather it is an appropriate course of action which has been taken by the Commercial Court and it cannot be faulted. As a fortiori direction sought by the contesting respondent to refund the money which has been released in favour of the petitioner cannot be passed. Accordingly, this Court does not find that there is any merit in the petition filed by the contesting respondent.

### **Conclusion**

90. For the detailed reasons recorded hereinabove **Petition No.3886 of 2024, M/s Genebio Healthcare Pvt. Ltd. through Director Arun Kumar Srivastava v. Paradigm Enterprises through Director Ritika Pandey and others** is partly allowed, whereas **Petition No.5145 of 2024, Paradigm Enterprises v. Micro, Small and others** shall stand

dismissed. In the facts and circumstances, there shall be no order as to costs.

**(Jaspreet Singh,J.)**

**January 21, 2026**  
ank