IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE S.MANU

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2026 / 18TH BHADRA, 1948

AR NO. 53 OF 2026

PETITIONER/CLAIMANT:

**M/S. KLM AXIVA FINVEST LIMITED
(FORMERLY KNOWN AS M/S. NEEDS FINVEST LIMITED)
HAVING ITS CORPORATE OFFICE AT KLM GRAND ESTATE,
BYPASS ROAD, EDAPPALLY, ERNAKULAM-
682024,REPRESENTED BY ITS POWER OF ATTORNEY
HOLDER MR. DHANESH K. S.**

BY ADV SHRI.G.RENJITH

RESPONDENTS/RESPONDENTS:

**1 BIJITHA SHAJAN
W/O SHAJAN C S, CHALIPURATH HOUSE, KARUVANNUR
P.O, THRISSUR, PIN - 680711**

**2 SHAJAN C S (DIED)
S/O SHANMUKHAN, CHALIPURATH HOUSE, KARUVANNUR
P.O, THRISSUR., PIN - 680711**

3 SHREEBADRA (MINOR),
AGED 16 YEARS
D/O LATE SHAJAN S, REPRESENTED BY HER MOTHER, BIJITHA SHAJAN, W/O SHAJAN C S, CHALIPURATH HOUSE, KARUVANNUR P.O, THRISSUR., PIN - 680711

4 SHEHA (MINOR),
AGED 12 YEARS
D/O LATE SHAJAN C S, REPRESENTED BY HER MOTHER, BIJITHA SHAJAN, W/O SHAJAN C S, CHALIPURATH HOUSE, KARUVANNUR P.O, THRISSUR., PIN - 680711

BY ADV SRI.V.M.KRISHNAKUMAR
ADV.SMT.SANJANA JAYAKUMAR

THIS ARBITRATION REQUEST HAVING BEEN FINALLY HEARD ON 19.08.2026, THE COURT ON 09.09.2026 PASSED THE FOLLOWING:

CR

S.MANU, J.

A.R.No.53 of 2026

Dated this the 09th day of September, 2026

ORDER

Petitioner is a non-banking financial institution registered under the Companies Act, 2013. First respondent availed a loan of Rs.75,00,000/- from the petitioner by executing Annexure-2 agreement on 04.08.2015. The second respondent is the guarantor. It was agreed that the loan would be repaid in 20 monthly installments commencing from 31.07.2015. Annexure-2 contains an arbitration clause. According to the petitioner, there was failure on the part of the respondents to repay loan amount as agreed. Therefore, Annexure-3 notice was issued, invoking the arbitration clause in the agreement. Thereafter, an arbitrator was nominated. Respondents did not appear before the arbitrator and the arbitrator finally passed Annexure-5 award on 28.12.2018. Petitioner approached the third Additional District Court, Thrissur in EP No. 75 of 2020 seeking execution of Annexure-5 award. The learned Additional District Judge, relying on the judgment in **Hedge Finance Private Limited (M/s.) Ernakulam v. Bijish Joseph** [2022 KHC 591] held that the unilateral nomination of the arbitrator was illegal and hence the award was unenforceable. Accordingly, the EP was dismissed by order dated 24.09.2024. Petitioner thereafter filed Arbitration Request No.148 of 2025. By order dated 09.01.2026 the arbitration request was rejected by this Court holding that it was premature since no fresh notice was issued to the respondents to satisfy the requirement under Section 21 of the Arbitration and Conciliation Act, 1996, after the execution court dismissed the petition. Later, fresh notices were issued to the respondents on 12.01.2026.

Respondents received notices. However, there was no response from their side. Hence, the instant arbitration request was filed.

2. Notice was served and respondents entered appearance through counsel.

3. Heard Adv. G.Renjith, the learned counsel for petitioner and Adv.Sanjana Jayakumar, the learned counsel for the respondents 1 to 4. They both prepared extensively and presented the case with passion.

4. Learned counsel for the petitioner submitted that the petitioner had been prosecuting arbitral proceedings diligently and in a bona fide manner. He submitted that indisputably, Annexure-2 contains an arbitration clause and the same was invoked by the petitioner when there was default in repayment of the loan by the respondents. He submitted that there was no appearance on behalf of the respondents before the arbitrator nominated in the first

instance and an award was passed by the learned arbitrator. Subsequently, the execution court found that the nomination of the arbitrator was unilateral and therefore illegal. He submitted that the execution court arrived at such a conclusion relying on the law as clarified in **Hedge Finance Private Limited**(supra). He submitted that the only option available to the petitioner was to initiate fresh arbitral proceedings and therefore Arbitration Request No.148 of 2025 was filed before this Court. Since this Court was of the view that it was premature for want of a fresh notice, the arbitration request was rejected. Thereafter, in view of the order passed by this Court, fresh notice was issued and the present arbitration request was filed. He submitted that the total amount due from the respondents as on date is approximately Rupees two crores and if the arbitration request is rejected, the petitioner will be remediless. He submitted that fresh arbitral proceedings are permissible in law and relied on

Section 43(4) of the Arbitration and Conciliation Act. The learned counsel submitted that impact of an order passed by the execution court holding that the award was unenforceable is same as that of setting aside an award. He therefore submitted that benefit of Section 43(4) of the Arbitration and Conciliation Act is available to the petitioner in the instant case. He submitted that the period between the commencement of the arbitration and date of the order of the Court should be excluded in computing the time prescribed by the Limitation Act for the commencement of the proceedings with respect to the dispute between the petitioner and the respondents. He, hence submitted that the request for reference is not hit by limitation. Pertaining to the claims raised by the petitioner also, learned counsel raised the same contention.

5. As an alternative contention, the learned counsel for the petitioner submitted that even if it is assumed that provisions of

Section 43(4) are not applicable in the instant case, provisions of Section 43(1) would definitely apply. He submitted that in view of Section 43(1) of the Arbitration and Conciliation Act, the provisions of Limitation Act, 1963 shall apply to arbitrations as they apply to the proceedings in Court. He hence argued that the provisions of the Limitation Act, including Section 14, would be applicable to the case at hand . He submitted that as provided under Section 14 of the Limitation Act, the time spent prosecuting a proceeding bona fide in a court without jurisdiction should be excluded in computing the period of limitation for any suit. He submitted that in the case at hand arbitral proceedings were initiated and were properly prosecuted by the petitioner when unilateral appointment of arbitrators was considered as permissible. He submitted that the legal position subsequently transformed drastically and unilateral appointment was held to be impermissible. Hence, he submitted that the period spent for the first arbitral proceeding and thereafter before the execution court is liable to be excluded as provided under Section 14 of the Limitation Act.

6. The learned counsel relied on various judgments of the Hon'ble Supreme Court in support of his contentions. He referred to the judgment of the Hon'ble Supreme Court in **State of Goa v. Western Builders** [2006 (6) SCC 239]. The Apex Court in the said case examined as to whether Section 14 of the Limitation Act has been excluded by the special enactment, the Arbitration and Conciliation Act, 1996. Relevant discussion in the judgment is extracted hereunder:-

> "14. *The question is whether Section 14 of the Limitation Act has been excluded by this special enactment i.e. the Arbitration and Conciliation Act, 1996. Section 43 of the Arbitration and Conciliation Act, 1996 clearly says that the Limitation Act, 1963 shall apply to arbitration as it applies to the proceedings in the court.*

15. Therefore, general proposition is by virtue of Section 43 of the Act of 1996 the Limitation Act, 1963 applies to the Act of 1996 but by virtue of sub-section (2) of Section 29 of the Limitation Act, if any other period has been prescribed under the special enactment for moving the application or otherwise then that period of limitation will govern the proceedings under that Act, and not the provisions of the Limitation Act. In the present case under the Act of 1996 for setting aside the award on any of the grounds mentioned in sub-section (2) of Section 34 the period of limitation has been prescribed and that will govern. Likewise, the period of condonation of delay i.e. 30 days in the proviso.

16. But there is no provision made in the Arbitration and Conciliation Act, 1996 that if any party has bona fidely prosecuted its remedy before the other forum which had no jurisdiction then in that case whether the period spent in prosecuting the remedy bona fidely in that court can be excluded or not. As per the provision, sub-section (3) of Section 34 which prescribes the period of limitation (3 months) for moving the application for setting aside the award before the court then that period of limitation will be applicable and not the period of limitation prescribed in the Schedule under Section 3 of the Limitation Act, 1963. Thus, the provision of moving the application prescribed in the Limitation Act, shall stand excluded by virtue of sub-section (2) of Section 29 as under this special enactment the period of limitation has already been prescribed.

Likewise the period of condonation of delay i.e. 30 days by virtue of the proviso.

17. Therefore, by virtue of sub-section (2) of Section 29 of the Limitation Act what is excluded is the applicability of Section 5 of the Limitation Act and under Section 3 read with the Schedule which prescribes the period for moving application.

18. Whenever two enactments are overlapping each other on the same area then the courts should be cautious in interpreting those provisions. It should not exceed the limit provided by the statute. The extent of exclusion is, however, really a question of construction of each particular statute and general principles applicable are subordinate to the actual words used by legislature.

19. There is no provision in the whole of the Act which prohibits discretion of the court. Under Section 14 of the Limitation Act if the party has been bona fidely prosecuting his remedy before the court which has no jurisdiction whether the period spent in that proceedings shall be excluded or not. Learned counsel for the respondent has taken us to the provisions of the Act of 1996: like Section 5, Section 8(1), Section 9, Section 11, sub-sections (4), (6), (9) and sub-section (3) of Section 14, Section 27, Sections 34, 36, 37, 39(2) and (4), Section 41, sub-section (2), Sections 42 and 43 and tried to emphasise with reference to the aforesaid sections that wherever the legislature wanted to give power to the court that has been incorporated in the *provisions, therefore, no further power should lie in the hands of the court so as to enable to exclude the period spent in prosecuting the remedy before other forum. It is true but at the same time there is no prohibition incorporated in the statute for curtailing the power of the court under Section 14 of the Limitation Act. Much depends upon the words used in the statute and not general principles applicable. By virtue of Section 43 of the Act of 1996, the Limitation Act applies to the proceedings under the Act of 1996 and the provisions of the Limitation Act can only stand excluded to the extent wherever different period has been prescribed under the Act of 1996. Since there is no prohibition provided under Section 34, there is no reason why Section 14 of the Limitation Act should not be read in the Act of 1996, which will advance the cause of justice. If the statute is silent and there is no specific prohibition then the statute should be interpreted which advances the cause of justice. Our attention was invited to various decisions of this Court but we shall refer to a few of them which have some relevance."*

7. He made reference to another judgment of the Hon'ble Supreme Court in **Gulbarga University v. Mallikarjun S. Kodagali and Another** [2008 (13) SCC 539]. He relied on the following

paragraph of the judgment:-

> "8. *Dr. M.P. Raju, learned counsel appearing on behalf of the appellant, would contend that the earlier decision of this Court in Union of India v. Popular Construction Co. [(2001) 8 SCC 470 : AIR 2001 SC 4010] whereupon reliance has been placed by the High Court has since been revisited by this Court in State of Goa v. Western Builders [(2006) 6 SCC 239] holding: (SCC p. 246, paras 14-18)*
>
> > *"14. The question is whether Section 14 of the Limitation Act has been excluded by this special enactment i.e. the Arbitration and Conciliation Act, 1996. Section 43 of the Arbitration and Conciliation Act, 1996 clearly says that the Limitation Act, 1963 shall apply to arbitration as it applies to the proceedings in the court.*
> >
> > *15. Therefore, general proposition is by virtue of Section 43 of the Act of 1996 the Limitation Act, 1963 applies to the Act of 1996 but by virtue of sub-section (2) of Section 29 of the Limitation Act, if any other period has been prescribed under the special enactment for moving the application or otherwise then that period of limitation will govern the proceedings under that Act, and not the provisions of the Limitation Act. In the present case under the Act of 1996 for setting aside the award on any of the grounds mentioned in sub-section (2) of Section 34 the period of limitation has been prescribed and that will govern. Likewise, the period of condonation of delay i.e. 30 days in the proviso.*

16. But there is no provision made in the Arbitration and Conciliation Act, 1996 that if any party has bona fide prosecuted its remedy before the other forum which had no jurisdiction then in that case whether the period spent in prosecuting the remedy bona fidely in that court can be excluded or not. As per the provision, sub-section (3) of Section 34 which prescribes the period of limitation (3 months) for moving the application for setting aside the award before the court then that period of limitation will be applicable and not the period of limitation prescribed in the Schedule under Section 3 of the Limitation Act, 1963. Thus, the provision of moving the application prescribed in the Limitation Act, shall stand excluded by virtue of sub-section (2) of Section 29 as under this special enactment the period of limitation has already been prescribed. Likewise the period of condonation of delay i.e. 30 days by virtue of the proviso.

17. Therefore, by virtue of sub-section (2) of Section 29 of the Limitation Act what is excluded is the applicability of Section 5 of the Limitation Act and under Section 3 read with the Schedule which prescribes the period for moving application.

18. Whenever two enactments are overlapping each other on the same area then the courts should be cautious in interpreting those provisions. It should not exceed the limit provided by the statute. The extent of exclusion is, however, really a question of construction of each particular statute and general principles applicable are subordinate to the actual words used by legislature."

Referring to Popular Construction [(2001) 8 SCC 470 : AIR 2001 SC 4010] and National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd. [(2004) 1 SCC 540] it was held: (Western Builders case [(2006) 6 SCC 239] , SCC pp. 248-49, para 25)

"25. Therefore, in the present context also it is very clear to us that there are no two opinions in the matter that the Arbitration and Conciliation Act, 1996 does not expressly exclude the applicability of Section 14 of the Limitation Act. The prohibitory provision has to be construed strictly. It is true that the Arbitration and Conciliation Act, 1996 intended to expedite commercial issues expeditiously. It is also clear in the Statement of Objects and Reasons that in order to recognise economic reforms the settlement of both domestic and international commercial disputes should be disposed of quickly so that the country's economic progress be expedited. The Statement of Objects and Reasons also nowhere indicates that Section 14 of the Limitation Act shall be excluded. But on the contrary, intendment of the legislature is apparent in the present case as Section 43 of the Arbitration and Conciliation Act, 1996 applies the Limitation Act, 1963 as a whole. It is only by virtue of sub-section (2) of Section 29 of the Limitation Act that its operation is excluded to that extent of the area which is covered under the Arbitration and Conciliation Act, 1996. Our attention was also invited to the various decisions of this Court interpreting sub-section (2) of Section 29 of the Limitation Act with reference to other Acts like the Representation of the People Act or the provisions of the Criminal Procedure

Code where separate period of limitation has been prescribed. We need not overburden the judgment with reference to those cases because it is very clear to us by virtue of sub-section (2) of Section 29 of the Limitation Act that the provisions of the Limitation Act shall stand excluded in the Act of 1996 to the extent of area which is covered by the Act of 1996. In the present case under Section 34 by virtue of sub-section (3) only (sic for) the application for filing and setting aside the award a period has been prescribed as 3 months and delay can be condoned to the extent of 30 days. To this extent the applicability of Section 5 of the Limitation Act will stand excluded but there is no provision in the Act of 1996 which excludes operation of Section 14 of the Limitation Act. If two Acts can be read harmoniously without doing violation to the words used therein, then there is no prohibition in doing so."

The ratio laid down in the said decision has since been reiterated in Union of India v. Bhavna Engg. Co. [(2008) 13 SCC 546 : (2007) 5 Raj 458] stating: (SCC pp. 546-47, para 2)

"2. This Court in a recent judgment rendered in State of Goa v. Western Builders [(2006) 6 SCC 239] held that Section 14 of the Limitation Act, 1963 is applicable in the arbitration and conciliation proceedings. Having gone through the various facts, we are of the view that the mistake committed by the appellant in approaching the Madhya Pradesh High Court and the Bombay High Court is bona fide. We, therefore, condone the delay. In the facts of this case and in the

> *interest of justice, we, however, think it proper that the Section 34 application pending before the Additional District Judge, Gwalior be transferred to the Bombay High Court. The application will be decided on merits expeditiously. Parties are at liberty to urge all the contentions before that Court."*

> *9. There cannot be any doubt whatsoever that in terms of sub-section (2) of Section 34 of the Act, an arbitral award may be set aside only if one of the conditions specified therein is satisfied. Sub-section (3) of Section 34 provides for the period of limitation within which an application under Section 34 of the Act is to be filed. The proviso appended thereto empowers the court to entertain an application despite expiry of the period of limitation specified therein, namely, three months. No provision, however, exists as regards application of Section 14 of the Limitation Act. This Court, as noticed hereinbefore in Western Builders [(2006) 6 SCC 239] opined that sub-section (2) of Section 29 thereof would apply to an arbitration proceedings and consequently Section 14 of the Limitation Act would also be applicable. We are bound by the said decision. Once it is held that the provisions of Section 14 of the Limitation Act, 1963 would apply, it must be held that the learned trial Judge as also the High Court had committed an error in not applying the said provisions."*

8. He also placed reliance on the judgment of the Hon'ble Supreme Court in **Shakti Tubes Limited through Director v. State of Bihar and others** [2009 (1) SCC 786]. Learned counsel made

reference to the following paragraphs of the judgment:-

> "20. *Section 14 of the Limitation Act speaks of prosecution of the proceedings in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. What would be the true purport of the words "other cause of a like nature"? The same must relate to the subject-matter of the issue. A three-Judge Bench of this Court had an occasion to consider the same in Rameshwarlal v. Municipal Council, Tonk [(1996) 6 SCC 100] wherein it was held: (SCC p. 101, para 3)*
>
> > *"3. Normally for application of Section 14, the court dealing with the matter in the first instance, which is the subject of the issue in the later case, must be found to have lack of jurisdiction or other cause of like nature to entertain the matter. However, since the High Court expressly declined to grant relief relegating the petitioner to a suit in the civil court, the petitioner cannot be left remediless. Accordingly, the time taken in prosecuting the proceedings before the High Court and this Court, obviously pursued diligently and bona fide, needs to be excluded."*
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> > *(emphasis in original)*
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> *21. The question again came up for consideration before this Court in Union of India v. West Coast Paper Mills Ltd. [(2004) 3 SCC 458] wherein Lahoti, J. (as the learned Chief Justice then was), held as under: (SCC p. 464, para 14)*
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> > *"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 Roshanlal Kuthalia 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."*
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> ....

23. The provisions of Section 14 of the Limitation Act have been held to be applicable even in a proceeding arising under Section 34 of the Arbitration and Conciliation Act, 1996. (See Gulbarga University v. Mallikarjun S. Kodagali [(2008) 13 SCC 539 : (2008) 11 Scale 79] .)

> *24. We, therefore, have no hesitation in holding that the provisions of Section 14 of the Limitation Act, 1963 were applicable to the fact of the present case."*

9. He also relied on a judgment of a three-Judge Bench of the Hon'ble Supreme Court in **Consolidated Engineering Enterprises and another v. Principal Secretary, Irrigation Department and others** [(2008) 7 SCC 169]. He made reference to the following paragraphs of the judgment:-

> "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.*

..

42. The AC Act is no doubt, a special law, consolidating and amending the law relating to arbitration and matters connected therewith or incidental thereto. The AC Act does not prescribe the period of limitation, for various proceedings under that Act, except where it intends to prescribe a period different from what is prescribed in the Limitation Act. On the other hand, Section 43 makes the provisions of the Limitation Act, 1963 applicable to proceedings—both in court and in arbitration—under the AC Act. There is also no express exclusion of application of any provision of the Limitation Act to proceedings under the AC Act, but there are some specific departures from the general provisions of the Limitation Act, as for example, the proviso to Section 34(3) and sub-sections (2) to (4) of Section 43 of the AC Act.

43. Where the Schedule to the Limitation Act prescribes a period of limitation for appeals or applications to any court, and the special or local law provides for filing of appeals and applications to the court, but does not prescribe any period of limitation in regard to such appeals or applications, the period of limitation prescribed in the Schedule to the Limitation Act will apply to such appeals or applications and consequently, the provisions of Sections 4 to 24 will also apply. Where the special or local law prescribes for any appeal or *application, a period of limitation different from the period prescribed by the Schedule to the Limitation Act, then the provisions of Section 29(2) will be attracted. In that event, the provisions of Section 3 of the Limitation Act will apply, as if the period of limitation prescribed under the special law was the period prescribed by the Schedule to the Limitation Act, and for the purpose of determining any period of limitation prescribed for the appeal or application by the special law, the provisions contained in Sections 4 to 24 will apply to the extent to which they are not expressly excluded by such special law. The object of Section 29(2) is to ensure that the principles contained in Sections 4 to 24 of the Limitation Act apply to suits, appeals and applications filed in a court under special or local laws also, even if it prescribes a period of limitation different from what is prescribed in the Limitation Act, except to the extent of express exclusion of the application of any or all of those provisions.*

....

54. On the other hand, Section 14 contained in Part III of the Limitation Act does not relate to extension of the period of limitation, but relates to exclusion of certain period while computing the period of limitation. Neither sub-section (3) of Section 34 of the AC Act nor any other provision of the AC Act exclude the applicability of Section 14 of the Limitation Act to applications under Section 34(1) of the AC Act. Nor will the proviso to Section 34(3) exclude the application of Section 14, as Section 14

> *is not a provision for extension of period of limitation, but for exclusion of certain period while computing the period of limitation. Having regard to Section 29(2) of the Limitation Act, Section 14 of that Act will be applicable to an application under Section 34(1) of the AC Act. Even when there is cause to apply Section 14, the limitation period continues to be three months and not more, but in computing the limitation period of three months for the application under Section 34(1) of the AC Act, the time during which the applicant was prosecuting such application before the wrong court is excluded, provided the proceeding in the wrong court was prosecuted bona fide, with due diligence. Western Builders [(2006) 6 SCC 239] therefore lays down the correct legal position."*

10. Learned counsel contended that the provisions of Section 14 of the Limitation Act are indisputably applicable to the proceedings under the Arbitration and Conciliation Act, 1996 also in view of the law laid down by the Hon'ble Supreme Court in the judgments referred above. He hence submitted that in view of the applicability of the provisions of Section 14 of the Limitation Act to the proceedings under the Arbitration and Conciliation Act, the

objection raised by the respondents that the claims as also the arbitration request are barred by limitation is not sustainable. He also submitted that the Arbitration and Conciliation Act has been enacted to provide a speedy, efficacious and low-cost adjudicatory mechanism so as to ensure that economic disputes are settled within a short time, in an effective manner. He submitted that the courts have a duty to interpret the provisions of the Arbitration and Conciliation Act keeping in mind the object of the Act. He, therefore, argued that provisions of Section 43 of the Arbitration and Conciliation Act shall be interpreted liberally and situations wherein courts hold that the arbitral awards were unenforceable shall also be construed as having the same impact of the awards being set aside. He pleaded that such a view may be adopted by this Court, to extend the benefit of Section 43(4) of the Arbitration and Conciliation Act to the petitioner. He also relied on judgments of the Hon'ble Supreme

Court in the **Reserve Bank of India v. Peerless General Finance & Investment Co. Ltd. and Others** [(1987) 1 SCC 424] and referred to the following paragraph of the said judgment:-

> "33. *Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking*

> *at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression "Prize Chit" in Srinivasa [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."*

11. He thereafter referred to the judgment of the Hon'ble Supreme Court in **Edukanti Kistamma(dead) through Lrs and Others v. S. Venkatareddy(dead) through Lrs and Others** [(2010) 1 SCC 756]. The relevant paragraph of the judgment is extracted hereunder:-

> "26. *The 1950 Act being the beneficial legislation requires interpretation to advance social and economic justice and enforce the constitutional directives and not to deprive a person of his right to property. The statutory provisions should not be construed in favour of such deprivation. Interpretation of a beneficial legislation with a narrow pedantic approach is not justified. In case there is any doubt, the court should interpret a beneficial legislation in favour of the beneficiaries and not otherwise as it would be against the legislative intent. For the purpose of interpretation of a statute, the Act is to be read in its entirety. The purport and object of the Act must be given its full effect by applying the principles of purposive*

construction. The court must be strong against any construction which tends to reduce a statute's utility. The provisions of the statute must be construed so as to make it effective and operative and to further the ends of justice and not to frustrate the same. The court has the duty to construe the statute to promote the object of the statute and serve the purpose for which it has been enacted and should not efface its very purpose. (Vide S.P. Jain v. Krishna Mohan Gupta [(1987) 1 SCC 191 : AIR 1987 SC 222] , RBI v. Peerless General Finance and Investment Co. Ltd. [(1987) 1 SCC 424 : AIR 1987 SC 1023] , Haryana SEB v. Suresh [(1999) 3 SCC 601 : 1999 SCC (L&S) 765 : AIR 1999 SC 1160] , Gayatri Devi Pansari v. State of Orissa [(2000) 4 SCC 221 : AIR 2000 SC 1531] , High Court of Gujarat v. Gujarat Kishan Mazdoor Panchayat [(2003) 4 SCC 712 : 2003 SCC (L&S) 565 : AIR 2003 SC 1201] , Indian Handicrafts Emporium v. Union of India [(2003) 7 SCC 589 : AIR 2003 SC 3240] , Ashok Leyland Ltd. v. State of T.N. [(2004) 3 SCC 1] , Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd. [(2004) 1 SCC 702 : AIR 2004 SC 355] , Deepal Girishbhai Soni v. United Insurance Co. Ltd. [(2004) 5 SCC 385 : 2004 SCC (Cri) 1623 : AIR 2004 SC 2107], Maruti Udyog Ltd. v. Ram Lal [(2005) 2 SCC 638 : 2005 SCC (L&S) 308 : AIR 2005 SC 851], Oriental Insurance Co. Ltd. v. Brij Mohan [(2007) 7 SCC 56 : (2007) 3 SCC (Cri) 304 : AIR 2007 SC 1971] and Karnataka State Financial Corpn. v. N. Narasimahaiah [(2008) 5 SCC 176 : AIR 2008 SC 1797].)"

12. Learned counsel submitted that a huge amount is due to the petitioner from the respondents and the petitioner had been diligently prosecuting its case before the arbitral tribunal, thereafter the execution court and later before this Court. He submitted that if the contentions of the respondents are accepted and it is held that no reference can be made, huge loss will be caused to the petitioner company. He therefore pleaded that this Arbitration Request may be allowed and the parties may be referred for arbitration.

13. Conversely, the learned counsel for the respondents vehemently submitted that the claims raised in this arbitration request are hopelessly time-barred. She submitted that the dispute arose long ago and the petitioner did not diligently prosecute the case. She submitted that the petitioner, at the first instance, resorted to unilateral appointment of the arbitrator which is impermissible in law. The petitioner secured an award and the execution court rightly

held that the award was unenforceable. She argued that a court giving a declaration that an award was unenforceable and setting aside an arbitral award under Section 34 of the Arbitration and Conciliation Act are two distinct and dissimilar situations. She submitted that if an award is set aside under the provisions of Section 34 of the Arbitration and Conciliation Act, the same is on the basis of the grounds delineated in the provision and on the other hand, holding that an award is unenforceable or is a nullity is a totally different situation. She also submitted that if an award is unenforceable and void in the eye of law, question of setting it aside does not arise. She asserted that the provisions of Section 43(4) of the Arbitration and Conciliation Act are not applicable in the instant case. She referred to the language employed in Section 43(4) and pointed out that the legislature has consciously employed the words '*where the court orders that an arbitral award be set aside*'. She submitted that the intention of the legislature is clear that the provisions of Section 43(4) would be attracted only if an arbitral award is set aside. She submitted that if the argument of the learned counsel for the petitioner that a situation where an arbitral award has been held unenforceable can also be equated with the situation of an arbitral award being set aside is accepted, the Court will be venturing to rewrite the language of the provision and the same is impermissible. She hence contended that as the award passed by the arbitrator appointed at the first instance was held unenforceable by the execution court, the petitioner is not entitled to claim the benefit of Section 43(4) of the Act.

14. Learned counsel also took exception to the argument advanced by learned counsel for the petitioner that the provisions of Section 14 of the Limitation Act would apply to the instant case. She, with reference to paragraph 12 of the judgment of the Hon'ble

Supreme Court in **Consolidated Engineering Enterprises** (supra), submitted that the Apex Court had held 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.

15. She contended that the conditions pointed out by the Hon'ble Supreme Court, as noted above, should be satisfied cumulatively and if any one of the conditions mentioned is not satisfied, then the benefit of Section 14 of the Limitation Act cannot be claimed. She submitted that in the case at hand none of the

conditions mentioned has been satisfied. She therefore argued that provisions of Section 14 of the Limitation Act cannot be pressed into service by the petitioner in the case at hand.

16. Learned counsel for the respondents placed reliance on a judgment of a learned Single Judge of this Court in **India Cements Capital Limited (M/s.) v. William and Others** [2015 (4) KHC 728]. She referred to the following paragraph of the judgment:-

> "18. *Petitioner's contention that if an award is declared to be a nullity in execution proceedings, it will amount to adding one more ground to S.34 of the Act is totally unacceptable. As mentioned earlier, S.34 of the Act provides seven grounds to set aside an award. If the expression "set aside" is understood correctly, there will not be any lack of clarity or obfuscation. Ordinarily the expression "set aside" is understood as meaning abandon, abjure, abrogate, discard, dispense with, to omit, reject, repudiate, etc. The term "set aside" is defined in Black's Law Dictionary (Eighth Edition) as vb. (Of a Court) to annul or vacate (a judgment, order, etc.). The term "set aside" in the legal parlance means, to cancel, annul or revoke a judgment or order. It is an*

indisputable proposition that in order to set aside a decree or order or award, there must be one in existence. In other words, a decree or award not in existence cannot be set aside. No one can seek to set aside a decree or award which is not in existence. That exercise will be as futile, rather as impossible, as one attempting to commit feticide of an unborn foetus. Therefore, what is provided in S.34 of the Act is only ways and means to set aside an award made in an arbitral proceedings. As succinctly stated by the Supreme Court, what is sought to be achieved by taking recourse to S.47 of the Code is to make a declaration that the decree (here, an award) sought to be executed is a nullity. In other words, seeking a pronouncement that there is no executable decree or award at all. If the end result of an adjudication under S.47 of the Code is entering a finding that there is no decree or award at all, there cannot be a question of setting aside such a decree or award in that proceedings. Therefore, the contention of the revision petitioner that the declaration of nullity of an award in a proceeding under S.47 of the Code will tantamount to adding one more ground to S.34 of the Act is legally incorrect and, therefore, not acceptable."

17. She contended that this Court explained the expression 'set aside' in the above extracted paragraph and categorically held

that in order to set aside a decree or order or award, there must be one in existence. She submitted that as contended by her, the award passed at the first instance was rendered by an arbitral tribunal appointed unilaterally and therefore the same was not in existence in the eye of law. Therefore, question of setting aside such an award would not arise at all. She therefore submitted that the basic requirement to claim the benefit of Section 43(4) of the Arbitration and Conciliation Act is absent in the instant case.

18. Learned counsel relied on the judgment of the Hon'ble Supreme Court in **Project Director, National Highways No.45 E and 220 National Highways Authority of India v. M. Hakeem and Another** [(2021) 9 SCC 1]. She referred to the following paragraph of the judgment:-

> "47. "*Purposive construction*" *of statutes, relevant in the present context, is referred to in a recent concurring judgment by Nariman, J. in Eera v. State*

(NCT of Delhi) (2017) 15 SCC 133 : (2018) 1 SCC (Cri) 588] , as the theory of "creative interpretation". However, even "creative interpretation" has its limits, which have been laid down in the aforesaid judgment as follows : (SCC p. 214, para 139)

> *"139. A reading of the Act as a whole in the light of the Statement of Objects and Reasons thus makes it clear that the intention of the legislator was to focus on children, as commonly understood i.e. persons who are physically under the age of 18 years. The golden rule in determining whether the judiciary has crossed the Lakshman Rekha in the guise of interpreting a statute is really whether a Judge has only ironed out the creases that he found in a statute in the light of its object, or whether he has altered the material of which the Act is woven. In short, the difference is the well-known philosophical difference between "is" and "ought". Does the Judge put himself in the place of the legislator and ask himself whether the legislator intended a certain result, or does he state that this must have been the intent of the legislator and infuse what he thinks should have been done had he been the legislator. If the latter, it is clear that the Judge then would add something more than what there is in the statute by way of a supposed intention of the legislator and would go beyond creative interpretation of legislation to legislating itself. It is at this point that the Judge crosses the Lakshman Rekha and becomes a legislator,*

> *stating what the law ought to be instead of what the law is.”*

19. The learned counsel for the respondent relied on yet another judgment of the Hon'ble Supreme Court in **HPCL Bio-Fuels Ltd. v. Shahaji Bhanudas Bhad** [2024 SCC Online SC 3190] to buttress her contention that all ingredients required for the applicability of Section 14 shall be fulfilled to claim the benefit of the said provision. She submitted that if those conditions are not satisfied, it should be deemed that limitation was running without any hindrance and the claims should be held to be time-barred. She made specific reference to the following paragraph of the judgment:-

> “89. *Undoubtedly, this Court over a period of time has taken a consistent view that the expression “other cause of a like nature” appearing in Section 14 should be given a wide interpretation. However, while considering the applicability of Section 14 of the Limitation Act, one must not lose sight of the fact that the applicability of the provision is contingent*

> *upon not just the reason for the failure of the earlier proceedings, but is also dependent on several other factors as explained in the preceding paragraphs. It is only when all the ingredients required for the applicability of Section 14 are fulfilled that the benefit would become available. In this context the appellant has submitted that as the proceedings undertaken by the respondent before the IBC and the proceedings for the appointment of arbitrator before the High Court are not for the "same relief", hence the benefit of Section 14 of the Limitation Act will not be available to the respondent. To address this contention of the appellant, it is important to understand the purpose of IBC proceedings vis-à-vis proceedings under Section 11(6) of the Act, 1996."*

20. She reiterated her contention that it is not open to the Court to alter the language of a provision while interpreting the law. She submitted that if it is held that Section 43(4) applies to cases wherein arbitral awards have been held to be unenforceable, the same would be contrary to the language of Section 43(4) as well as the legislative intent. She hence contended that none of the arguments advanced by the petitioner is sustainable in law and

hence the arbitration request is liable to be rejected.

21. In order to appreciate the contentions raised by both sides, it is essential to advert to the chronology of dates and events in the instant case. The loan agreement was executed on 04.08.2015. Respondents committed default in payment on 30.09.2015. Registered notices were issued to the respondents on 09.05.2017 at the instance of the petitioner. Notices were received by the respondents on 15.05.2017. Arbitral proceedings were thereafter commenced and the petitioner filed claim statement before the arbitrator on 30.07.2017. On 11.09.2017, the arbitral tribunal issued notice to the respondents for appearance before it. There was no appearance for the respondents before the tribunal and on 28.12.2018 award was passed. Thereafter, execution proceedings were pursued before the third Additional District Court, Thrissur and on 24.09.2024, the EP was dismissed, relying on the law explained in

Hedge Finance Private Limited (supra). On 23.06.2025, the petitioner approached this Court by filing Arbitration Request No.148 of 2025. The said arbitration request was rejected by order dated 9.1.2026 by this Court. Thereafter, on 12.01.2026, a notice invoking the arbitration clause, as contemplated under Section 21 of the Arbitration and Conciliation Act, was issued. Acknowledgments were returned to the learned counsel for the petitioner on 19.1.2026. It is contended by the petitioner that the total period between 30.09.2015, the date on which the respondents committed default and the commencement of the present arbitration is 3764 days. It is further contended by the petitioner that the period between the commencement of the initial arbitral proceedings and the date of the order of the execution court is 2689 days. Therefore, it is contended that the remaining period is 1075 days. Hence, it is contended that a period of three years is available under Article 137 of the Limitation Act and in the instant case if the period between the initiation of the first arbitral proceedings and the date of the order of the execution court is excluded, the notice dated 12.01.2026 was issued within the period of limitation.

22. Contentions of both sides revolve around the scope and application of Section 43 of the Act. The provision is extracted hereunder for swift reference:-

> "43. *Limitations.*
> *(1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitration's as it applies to proceedings in Court*
> *(2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred in section 21.*
> *(3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and*

> *notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.*
> *(4) 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 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted."*

23. First limb of the argument of the learned counsel for the petitioner is that the petitioner is entitled for the benefit of Section 43(4) of the Act. As noted above, the argument is that the executing court's declaration that the appointment of the arbitrator was illegal, and hence that the award was unenforceable, virtually amounted to the arbitral award being set aside, thereby attracting sub-section (4) of Section 43. Counter argument vehemently advanced on behalf of the respondents is that there is a marked

distinction between a declaration that an arbitral award is a nullity and an order setting aside an arbitral award under Section 34 of the Act. Further it was argued that a party can claim exclusion of the period spent in an earlier arbitral proceeding only if it establishes the existence of a judicial order setting aside the arbitral award.

24. Legislature has carefully chosen to exclude the period between the commencement of the arbitration and the date of the order of the Court in computing the time prescribed under the Limitation Act for commencement of proceedings, including arbitration, where the Court orders that an arbitral award be set aside. On a literal reading, the phrase "an arbitral award be set aside" used in sub-section (4) of Section 43 does not allow for the inclusion of any other circumstance within the purview of the clause. Section 34 of the Act uses the same wording. Section 34 is encompassed in Chapter VII, "Recourse Against Arbitral Award". The

provision has the title "Application for setting aside arbitral award." The remedy under Section 34 is a unique remedy, and the Court's jurisdiction to set aside the award can only be exercised if the conditions outlined in subsections (2) and (2A) of Section 34 of the Act are satisfied. Timelines for filing of the application and disposal are also incorporated in Section 34. Procedural requirement of issuing prior notice is also ingrained. A limited window for extension of the time-limit for filing the application is also a notable feature of the provision. Scope and ambit of Section 34 have been explained by the Hon'ble Supreme Court in umpteen reported judgments. Under the scheme of the Act, proceedings for setting aside an arbitral award are therefore a significant feature of the Act. Hence, the reference to the Court ordering that an arbitral award be set aside in Section 43(4) can be understood only with reference to an order passed under Section 34 of the Act. I find merit in the contention of the learned counsel for the respondents that Parliament consciously refrained from employing broader expressions in Section 43(4) and the deliberate legislative choice of words cannot be disregarded or substituted by judicial interpretation. I hence hold that Section 43(4) would apply only when the Court orders that an arbitral award be set aside under Section 34 or Section 37 of the Act and an order of an execution court, holding that the arbitral award is unenforceable or is a nullity, cannot be equated with an order passed under Section 34 or Section 37 of the Act.

25. The next limb of the argument of the learned counsel for the petitioner is that even if Section 43(4) has no application, in view of Section 43(1) of the Act, the provisions of the Limitation Act shall apply to arbitrations as they apply to proceedings in Court. As noted above, it was therefore submitted that Section 14 of the Limitation Act would apply and the period spent in the first round of arbitral

proceedings as well as in the execution proceedings would stand excluded, as the petitioner was bonafidely prosecuting the matter. Section 14 reads as under:-

> "**14. Exclusion of time of proceeding bona fide in court without jurisdiction**.
>
> (1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and 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.*
>
> *(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.*
>
> *(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in*

relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation. For the purposes of this section,-

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

26. The Hon'ble Supreme Court has explicitly elucidated that Section 14 of the Limitation Act is applicable to arbitration proceedings under the Arbitration and Conciliation Act, 1996 in various reported judgments, including the judgments in **Consolidated Engineering Enterprises** (supra),**Western Builders** (supra), **Shakti Tubes Limited** (supra) and **Gulbarga University**(supra) cited by the learned counsel for the petitioner.

Hence, it is needless to deliberate much on the applicability of the provision to arbitral proceedings. Nevertheless, the learned counsel for the respondents argued vigorously that the benefit of Section 14 of the Limitation Act can be claimed only when the party claiming the same was pursuing proceedings bona fide before an incompetent forum. She submitted that the petitioner in the instant case unilaterally nominated an arbitrator and proceeded with the arbitration against the scheme of the Act. She submitted that since the unilateral appointment of the arbitrator was illegal, it cannot be argued by the petitioner that it was prosecuting the matter bonafidely and diligently. Learned counsel for the petitioner, on the contrary, submitted that when the arbitrator was nominated, the legal position was different. He pointed out that an arbitrator was chosen by the parties at the time of execution of the agreement and the name of the arbitrator was mentioned in the arbitration clause in the agreement. It was also envisaged that arbitration could be conducted by another named arbitrator in case of death, refusal, neglect or incapability of the arbitrator first mentioned in the clause. Annexure-5 award was passed by the arbitrator mentioned in the agreement. He therefore argued that the petitioner had bonafidely and diligently prosecuted the matter before the arbitrator agreed by both sides. He also submitted that the respondents did not choose to seek recourse to the remedy under Section 34 of the Act. They raised objection only when the petitioner sought execution of the award. He therefore pointed out that the respondents, without challenging the award, waited for execution proceedings and are now raising a plea of limitation to avoid satisfying of the liability to pay the huge amount now due to the petitioner company.

27. Chronology of the proceedings between the parties is

narrated in a previous paragraph. Submission of the learned counsel for the petitioner that the first round of arbitral proceedings were before an arbitrator who was specifically mentioned in the arbitration agreement is correct. Respondent had no quarrel about an arbitrator being nominated in the agreement while executing the agreement. Therefore, it cannot be said that the petitioner was not diligent. Proceedings before the arbitrator named in the agreement and also before the execution court cannot be held as pursued without bonafides by the petitioner. That being so, in my view, the petitioner is eligible for the benefit of Section 14 of the Limitation Act. The period spent for completing the first arbitral proceedings and for executing the award is liable to be excluded in calculating the period of limitation. I hence accept the contention of the learned counsel for the petitioner in this regard. Section 14 of the Limitation Act would come to the rescue if the arbitral proceedings were prosecuted diligently and bonafidely before an arbitral tribunal, even though it was later held as incompetent by a competent court.

28. Whether the claims are time-barred is the next aspect to take into account. Though the learned counsel for the respondents vehemently argued that the claims are hopelessly time-barred, the learned counsel for the petitioner refuted the contention by asserting that if the period spent for the first round of arbitral proceedings and the execution proceedings is excluded, the arbitration request at hand was filed within the time limit. He relied on the chronology mentioned above in support of his assertion. Prima facie, it appears that the contention of the learned counsel for the petitioner deserves to be accepted. Moreover, no intricate inquiry into the issue of limitation is within the province of the referral court. It is entirely for the arbitral tribunal to consider the issue when an evidentiary analysis is essential to decide whether the

claims are time-barred or not. It is apposite to refer to the following paragraph of the judgment of a three-Judge Bench of the Apex Court in **Aslam Ismail Khan Deshmukh v. Asap Fluids Private Limited and another** [(2025) 1 SCC 502] in this regard.

> "**43.** *Therefore, while determining the issue of limitation in the exercise of powers under Section 11(6) of the 1996 Act, the referral Court must only conduct a limited enquiry for the purpose of examining whether the Section 11(6) application has been filed within the limitation period of three years or not. At this stage, it would not be proper for the referral Court to indulge in an intricate evidentiary enquiry into the question of whether the claims raised by the petitioner are time-barred. Such a determination must be left to the decision of the arbitrator.*
>
> **44.** *After all, in a scenario where the referral Court is able to discern the frivolity in the litigation on the basis of bare minimum pleadings, it would be incorrect to assume or doubt that the Arbitral Tribunal would not be able to arrive at the same inference, especially when they are equipped with the power to undertake an extensive examination of the pleadings and evidence adduced before them.*

> ***45.*** *As observed by us in SBI General Insurance Co. Ltd. v. Krish Spg., [(2024) 12 SCC 1 : 2024 SCC OnLine SC 1754], the power of the referral Court under Section 11 must essentially be seen in light of the fact that the parties do not have the right of appeal against any order passed by the referral Court under Section 11, be it for either appointing or refusing to appoint an arbitrator. Therefore, if the referral Court delves into the domain of the Arbitral Tribunal at the Section 11 stage and rejects the application of the claimant, we run a serious risk of leaving the claimant remediless for the adjudication of their claims.*
>
> ***46.****Moreover, the courts are vested with the power of subsequent review in which the award passed by the arbitrator may be subjected to challenge by any party to the arbitration. Therefore, the courts may take a second look at the adjudication done by the Arbitral Tribunal at a later stage, if considered necessary and appropriate in the circumstances.*
>
> ....
>
> ***50.*** *<u>As evident from the aforesaid discussion and especially in light of the observations made in Krish Spg., this Court cannot conduct an intricate evidentiary enquiry into the question of when the cause of action can be said to have arisen between the parties and whether the claim raised by the petitioner is time-barred. This has to be strictly left for the determination by the Arbitral Tribunal.</u> All other*

submissions made by the parties regarding the entitlement of the petitioner to 4,00,000 and 2,00,010 equity shares in Respondent 1 company are concerned with the merits of the dispute which squarely falls within the domain of the Arbitral Tribunal.

51.*It is now well-settled law that, at the stage of Section 11 application, the referral Courts need only to examine whether the arbitration agreement exists — nothing more, nothing less. This approach upholds the intention of the parties, at the time of entering into the agreement, to refer all disputes arising between themselves to arbitration. However, some parties might take undue advantage of such a limited scope of judicial interference of the referral Courts and force other parties to the agreement into participating in a time-consuming and costly arbitration process. This is especially possible in instances, including but not limited to, where the claimant canvasses either ex facie time-barred claims or claims which have been discharged through "accord and satisfaction", or cases where the impleadment of a non-signatory to the arbitration agreement is sought, etc."*

52*. In order to balance such a limited scope of judicial interference with the interests of the parties who might be constrained to participate in the arbitration proceedings, the Arbitral Tribunal may direct that the costs of the arbitration shall be borne by the party which the Tribunal ultimately finds to have abused the process of law and* *caused unnecessary harassment to the other party to the arbitration."*

29. Given the foregoing discussion, I find that this is not a case wherein nomination of arbitrator should be refused. The basic parameters for exercising the jurisdiction to nominate an arbitrator are satisfied in this case. Hence, the arbitration request is allowed with the following directions:-

I. The Kerala High Court Arbitration Centre is directed to nominate a sole Arbitrator from Panel-II, to resolve the disputes that have arisen between the petitioner and the respondents under Annexure-2 Agreement.

II. The learned Arbitrator may entertain all issues between the parties in connection with the said Agreement, including questions of jurisdiction and limitation, if any, raised by the parties. All contentions of the parties are left open and they are at liberty to raise their claims and counterclaims, if any, before the learned Arbitrator, in accordance with law.

III. The Registry shall communicate the substance of this order to the Kerala High Court Arbitration Centre within ten days and the Centre shall inform the learned Arbitrator within a further period of one week and shall obtain duly signed Form 3 as required under Rule 20(4) of the Kerala High Court (Arbitration Centre) Rules, 2025 and forward the same to this Court.

IV. Upon receipt of the Form 3, the Registry shall issue a certified copy of this order with a copy of the Form 3 appended to the Kerala High Court Arbitration Centre. The original of the Disclosure Statement shall be retained by the Kerala High

Court Arbitration Centre.

V. The fees of the learned Arbitrator of the Kerala High Court Arbitration Centre shall be governed by Rule 28 of the Kerala High Court (Arbitration Centre) Rules, 2025. The manner in which the fees and costs payable by the parties shall be governed by Rule 27 of the Kerala High Court (Arbitration Centre) Rules, 2025.

VI. If the learned Arbitrator needs the assistance of an expert, then he is at liberty to seek such assistance in the course of the arbitration proceedings.

Sd/-
S.MANU
JUDGE

skj

APPENDIX OF AR NO. 53 OF 2026

PETITIONER'S ANNEXURES

Annexure 1	**THE TRUE COPY OF THE CERTIFIED COPY OF THE POWER OF ATTORNEY DATED 14.12.2019**
Annexure 2	**THE TRUE COPY OF THE LOAN AGREEMENT ENTERED BETWEEN THE PETITIONER BANK AND THE RESPONDENTS 1 AND 2 DATED 4.8.2015**
Annexure 3	**THE TRUE COPY OF THE LAWYER NOTICE DATED 9.5.2017 ISSUED TO THE RESPONDENTS 1 AND 2**
Annexure 4	**THE TRUE COPY OF THE CLAIM STATEMENT FILED BEFORE THE ARBITRATOR DATED 30.7.2017**
Annexure 5	**THE TRUE COPY OF THE ARBITRATION AWARD PASSED IN ARBITRATION REFERENCE BEARING NO. 4 OF 2017 OF THE SOLE ARBITRATOR DATED 28.12.2018**
Annexure 6	**TRUE COPY OF THE ORDER PASSED BY THE III ADDITIONAL DISTRICT COURT, THRISSUR IN EP. NO.75 OF 2020 IN ARB. NO. 4 OF 2017 DATED 24.9.2024**
Annexure 7	**TRUE COPY OF THE JUDGEMENT IN ARBITRATION REQUEST. NO. 148 OF 2025 OF THE HIGH COURT OF KERALA DATED 9.1.2026**
Annexure 8	**TRUE COPY OF THE NOTICE INVOKING ARBITRATION SENT BY THE COUNSEL FOR THE PETITIONER TO THE RESPONDENTS DATED 12.1.2026**
Annexure 9	**TRUE COPY OF THE ACKNOWLEDGEMENTS CARD RECEIVED BY THE COUNSEL FOR THE PETITIONER INDICATING THE DELIVERY OF THE NOTICE**

RESPONDENTS' ANNEXURES

Annexure R1(a)	**True copy of the judgment in State of West Bengal v. M/s. B.B.M. Enterprises(2026 (3) KHC 418)**
Annexure R1(b)	**A true copy of the judgment reported in 2021 (5) SCC 738 (Bharat Sanchar Nigam Ltd. v. Nortel Networks India Pvt. Ltd.) (2021 KHC 6156)**
Annexure R1(c)	**A true copy of the judgment in Elfit Arabia v. Concept Hotel BARONS Limited 2024(5) KHC 495**
Annexure I	**True copy of the Judgment in India Cements Capital Ltd. v. William and Others,(2015 (4) KHC 728) is produced herewith and marked as Annexure 1.**