M/s SRM Constructions Vs. UOI

Ex. Pet No.19 of 2025

16.09.2026 **Present:** Mr. J.S. Bhogal, Sr. Advocate with Mr. Satish Sharma and Ms. Swati Verma, Advocates, for the petitioner-Decree Holder

Mr. Lokender Paul Thakur, Advocate, for the respondent-Judgment Debtor.

During hearing of this execution petition, an objection has been taken by the respondent-Judgment Debtor to the maintainability of execution petition being barred by limitation . The matter has accordingly been heard for considering the aforesaid issue raised by the respondent-Judgment Debtor

2. Award was passed by the Sole Arbitrator on 20.03.2012. Objections under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act in short) were preferred against the award by the judgment debtor on 16.06.2012. The instant execution petition was filed on 23.05.2025 i.e. beyond the period of 12 years stipulated in Article 136 of the Limitation Act.

Learned counsel for the respondent-Judgment Debtor contends that the execution petition having been filed beyond the permissible 12 years period, for enforcement of the award, the same is liable to be dismissed.

3. Having heard learned counsel on both sides, I do not find any merit in the contention raised for the judgment debtor. This is for the following reasons:-

3(i) Learned counsel for the respondent-Judgment Debtor placing reliance upon following paragraphs of ***(2020) 17 SCC 324 (Hindustan Construction Company Limited and Anr versus Union of India and Ors),*** submits that the aforesaid decision had held that principle of automatic stay of impugned arbitral award on filing of objections within the prescribed period under Section 34 of the Act, was incorrectly applied in **(2004) 1 SCC 540 National Aluminium Co. Ltd. versus Pressteel & Fabrications (P) Ltd. and Anr.,** and **(2009) 17 SCC 796 Fiza Developers and Inter-Trade Private Limited versus AMCI (India) Private Limited and Anr** inasmuch as even the un-amended Section 36 did not contemplate automatic stay of the impugned award:-

> *38. Thus, the reasoning of the judgments in NALCO (supra), and Fiza Developers and Intra-trade Pvt.*

Ltd. (supra) being per incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly.1 The fact that NALCO (supra) has been followed in National Buildings Construction Corporation Ltd. v. Lloyds Insulation India Ltd. (supra) does not take us any further, as National Buildings Construction Corporation Ltd. (supra) in following NALCO (supra), a per incuriam judgement, also does not state the law correctly. Thus, it is clear that the automatic-stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36 - even as originally enacted - is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court.

58. Equally, Shri Neeraj Kishan Kaul's argument that Section 87 is nothing but a re-hash of Section 26, and therefore in substance there is a direct encroachment on a judgment of this Court, must also be rejected. When contrasted with Section 26, Section 87 is in two parts: Section 87(a) negatively stating that the 2015 Amendment Act shall not apply to Court proceedings arising out of arbitral proceedings irrespective of whether such court proceedings are commenced before or after the commencement of the 2015 Amendment Act; and *positively applying only to court proceedings in case they arise out of arbitral proceedings that are commenced on or after the commencement of the 2015 Amendment Act. It can thus be seen that the scheme of Section 87 is different from that of Section 26, and is explicit in stating that court proceedings are merely parasitical on arbitral proceedings. It is therefore clear that only arbitral proceedings have to be looked at to see whether the 55 2015 Amendment Act kicks in. It is therefore not possible to accept Shri Kaul's argument that in the present case there is a direct assault on a judgment of this Court without first removing its basis.*

Constitutional Challenge to the 2019 Amendment Act

59. This now sets the stage for the examination of the constitutional validity of the introduction of Section 87 into the Arbitration Act, 1996, and deletion of Section 26 of the 2015 Amendment Act by the 2019 Amendment Act against Articles 14, 19(1)(g), 21 and Article 300-A of the Constitution of India. The Srikrishna Committee Report recommended the introduction of Section 87 owing to the fact that there were conflicting High Court judgments on the reach of the 2015 Amendment Act at the time when the Committee deliberated on this subject. This was stated as follows in the Srikrishna Committee Report:

"However, section 26 has remained silent on the applicability of the 2015 amendment Act to court proceedings, both pending and newly initiated in case of arbitrations commenced prior to 23 October

2015. Different High Courts in India have taken divergent views on the applicability of the 2015 Amendment Act to such court proceedings. Broadly, there are three sets of views as summarised below:

(a) *The 2015 Amendment Act is not applicable to court proceedings (fresh and pending) where the arbitral proceedings to which they relate commenced before 23 October 2015.*

(b) *The first part of section 26 is narrower than the second and only excludes arbitral proceedings commenced prior to 23 October 2015 from the application of the 2015 Amendment Act. The 2015 Amendment Act would, however, apply to fresh or pending court proceedings in relation to arbitral proceedings commenced prior to 23 October 2015.*

(c) *The wording "arbitral proceedings" in section 26 cannot be construed to include related court proceedings. Accordingly, the 2015 Amendment Act applied to all arbitrations commenced on or after 23 October 2015. As far as court proceedings are concerned, the 2015 Amendment Act would apply to all court proceedings from 23October 2015, including fresh or pending court proceedings in relation to arbitration commenced before, on or after 23 October 2015.*

Thus, it is evident that there is considerable confusion regarding the applicability of the 2015 Amendment Act to related court proceedings in arbitration commenced before 23 October 2015.The Committee is of the view that a suitable legislative amendment is required to address this issue.

The committee feels that permitting the 2015 Amendment Act to apply to pending court proceedings related to arbitrations commenced prior to 23 October 2015 would result in uncertainty and prejudice to parties, as they may have to be heard again. It may also not be

> *advisable to make the 2015 Amendment Act applicable to fresh court proceedings in relation to such arbitrations, as it may result in an inconsistent position. Therefore, it is felt that it may be desirable to limit the applicability of the 2015 Amendment Act to arbitrations commenced on or after 23 October 2015 and related court proceedings."*

According to the learned counsel for the respondents-Judgment Debtor, in terms of law laid down in ***Hindustan Construction Co. Ltd.*** the limitation in the instant case started running from 20.03.2012 and the limitation period to file execution petition seeking enforcement of the award came to an end on 19.03.2024. This execution petition having been filed about 12 months later i.e. 23.12.2025, therefore, is barred by limitation.

3(ii) At the time of institution of petition under Section 34 of the Act by the Judgment Debtor, the law as laid down by the Hon'ble Supreme Court in **National Aluminium Co. Ltd.** and **(Fiza Developers and Inter-Trade Private Limited,** was governing the field. These decisions had applied the principle of automatic stay of award on filing of objections under Section 34 of the

Act within the prescribed limitation period.

In the instant case, objections under Section 34 of the Act were preferred by the respondent-Judgment Debtor within the prescribed limitation period. Therefore, even though no separate application had been moved by the judgment debtor seeking stay of the arbitral award impugned therein, yet by virtue of the law laid down in the aforesaid decisions, there was deemed construction of automatic stay of award on the filing of petition under Section 34 of the Act. Such construction suspended the period of limitation from the date of the award i.e. 20.03.2012.

3(iii) The deemed suspension/stay of the award w.e.f. 20.03.2012 continued at least till Section 36 of the Arbitration and Conciliation Act was amended by Act No. 3 of 2016 that came into force w.e.f 23.10.2015. The amendment [Section 36(2)] clarified that "*where an application to set aside the arbitral award has been filed in the Court under Section 34, the filing of such an application shall not by itself render that award unenforceable unless the Court grants an order of stay of* *the operation of the said arbitral award in accordance with the provisions of sub-section (3) on a separate application made for that purpose."*

3(iv) In ***Hindustan Construction Company Limited,*** decided on 27.11.2019, Hon'ble Apex Court held that principle of automatic stay of award on the filing of objections under section 34 of the Act was incorrectly applied in **National Aluminium Co. Ltd** and **Fiza Developers and Inter-Trade Private Limited.** That the aforesaid decisions are p*er incuriam.* That un-amended Section 36 did not contain any provision for deemed stay of the award on mere filing of the objections under section 34 of the Act. However, law as laid down in **National Aluminium Co. Ltd** and **Fiza Developers and Inter-Trade Private Limited** was governing the field till the amendment of the Act (Section 36 in particular) by the Amending Act No. 3 of 2016 brought into force with effect from 23.10.2015. Given this position, it has to be held that period of limitation was arrested in the case of petitioner, with effect from 20.03.2012 till 23.10.2015. By excluding this period, the filing of execution petition comes within the limitation period.

3(v) There is one additional reason for rejecting the contention of the respondent-Judgment Debtor. In ***(2022) 3 SCC 117 (Cognizance for extension of limitation, in Re***, the Hon'ble Apex Court directed for excluding the period from 15.03.2020 till 28.02.2022 for the purposes of limitation under any general or special laws in respect of all judicial or quasi-judicial proceedings. Hon'ble Apex Court held that, consequential balance period of limitation remaining as on 03.10.2021 if any, shall become available with effect from 01.03.2022. Therefore, even if ,only the COVID period, as directed to be excluded by Hon'ble Apex Court from computation of limitation is excluded in the case of the petitioner, then also the execution petition filed by the petitioner has to be held within the limitation period.

4. For the foregoing reasons, the objection raised by the learned counsel for the respondent-Judgment Debtor about the maintainability of the execution petition on account of it being barred by limitation is rejected.

Final opportunity of three weeks is granted to the respondent-Judgment Debtor to comply with the arbitral award by depositing the same in the Registry of this Court.

List on **09.10.2026**

Jyotsna Rewal Dua
Judge

September 16, 2026
(R.Atal)