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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO.414 OF 2018

Imax Corporation ..Petitioner
Vs.
E-City Entertainment (I) Pvt. Ltd. & Ors. ..Respondents

Dr.Veerendra Tulzapurkar, Senior Advocate, with Mr.Sandeep Parekh, Mr.Rahul Mahajan, Mr.Amit Surve, Ms.Meeta Kadhi for Petitioner.

Dr.Birendra Saraf with Mr.Rohan Savant, Mr.Yakshay Chheda, Ms.Devanshi Sethi i/b. M/s.Parinam Law Associates for Respondent No.1.

Mr.Gautam Ankhad with Mr.Krishna Shah i/b. M/s.A & P Partners for Respondent Nos.2 & 3.

Mr.Sharan Jagtiani with Ms.Sanaya Kapadia, Mr.Ankit Ransubhe i/b. Mr.Ajay Basutkar for Respondent No.4.

CORAM : G.S. KULKARNI, J.

DATE: 13 November 2019

ORAL ORDER :

1. This is a petition for enforcement and execution of the foreign award filed under Section 47, 48 and 49 of the Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act"). The respondents have raised a preliminary objection contending that the petition is barred by limitation. By this order this objection of the respondents is being decided.

2. The petitioner-original claimant is seeking enforcement of the international commercial award(s) namely the Liability award dated 9 February 2006, an award dated 24 August 2007 being a quantum and jurisdiction award and an award dated 27 March 2008 being a Final Award of the International Chamber of Commerce. The prayers in the petition are combined prayers seeking enforcement and execution of the arbitral awards which are required to be noted and read thus:-

“(a) That this Hon'ble Court be pleased to pass an order and/or declaration that the said Arbitral Awards, i.e. Liability Award dated February 09, 2016, Quantum Award dated August 24, 2007 and Final Award dated March 27, 2008 passed by the Hon'ble Arbitral Tribunal in Case Reference No. 13339/JNK/EBS, **in favor of the Petitioner, are enforceable under the provisions of the Part II of the Arbitration Act and directions to be issued to enforce and execute the said Arbitral Awards as a decree in favor of the Petitioner and against all the Respondents;**

(b) That all the Respondents be directed to deposit the decretal amount of a sum of U.S. \$ 11,309,496.06 plus interest at the rate of U.S. \$ 2,512.60 per day from October 1, 2007 till payment and realization thereof and the Petitioner be permitted to withdraw the same;

(c) That pending the enforcement and/or execution of the said Arbitral Awards, this Hon'ble court be pleased to pass the order directing all the Respondents to disclose on oath forthwith or within such time as this Hon'ble Court deem fit:

i. Immovable Properties owned by all the Respondents in its possession and in possession of any third parties;

ii. Movable properties owned by all the Respondents in its possession and in the possession of any third parties;

iii. Shares, debentures, bonds, securities etc., held by all the respondents in any company/entity;

iv. All debts due and payable to all the Respondents by any third party or parties;

v. Details of bank accounts which all the

Respondents holds;

vi. Details of the stock in trade and raw material of all the Respondents;

vii. Details of cash in hand with all the Respondents.

(d) Upon disclosure as per prayer clause (c) above, this Hon'ble Court be pleased to order allowing realization of the total amount as per the Arbitration Awards as and by way of attachment and sale of items disclosed by all the Respondents;

(e) For ad-interim reliefs in terms of prayers (c) above;

(f) Cost of the Petition”

3. There is a prior history of litigation also before the Indian Courts. Respondent No.1 on 27 July 2008, had approached this Court by filing a petition under Section 34 of the Arbitration Act, challenging the awards in question. This petition was filed after 90 days however within the extended period of 30 days as provided under Section 34(3) of the Arbitration Act. However as the said petition was filed beyond the prescribed period of 90 days, a notice of motion was filed by respondent No.1 seeking condonation of delay. The petitioner appeared as the respondent in the said petition, and opposed the said notice of motion as filed by respondent No.1 as also opposed the Section 34 petition. The petitioner contended that each of the foreign award(s) was a separate award and even assuming that Section 34 was to apply, the awards were required to be challenged within prescribed limitation as provided under Section 34 of the Arbitration Act. The petitioner in opposing the Section 34 petition also contended that the respondent's

Section 34 petition was *per se* not maintainable as awards in question were foreign awards.

4. By an order dated 10 June 2013 this Court condoned the delay as also held that it had jurisdiction to entertain Section 34 petition filed by the respondents. The petitioner being aggrieved by these orders approached the Supreme Court in a Special Leave Petition. By an interim order dated 19 November 2013, the Supreme Court stayed the proceedings of the respondents Section 34 petition pending before this Court. The proceedings before the Supreme Court were decided finally by an order dated 10 March 2017 whereby the Supreme Court set aside the orders passed by this Court, inter-alia holding that this Court had no jurisdiction to entertain the Section 34 petition challenging the foreign awards. It is thereafter that this petition under Section 47, 48 and 49 of the Arbitration Act was filed by the petitioner on 2 April 2018 seeking enforcement and execution of the foreign award(s) in question.

5. At the outset, an objection is raised on behalf of respondent No.1 to the maintainability of this petition on the ground that the petition is time barred considering the provisions of Article 137 under the Schedule to the Limitation Act. Article 137 is a residuary article prescribing period of limitation to be 3 years. The title of the Article

reads as: '*any other application for which no period of limitation is provided elsewhere in this division*' and time from which period begins to run is provided from when the right to apply accrues. Also Article 136 is relevant as contended to be applicable on behalf of the petitioner. It would be appropriate to note the said Articles 136 and 137 which reads thus:-

Description of application	Period of Limitation	Time from which period begins to run
136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve Years	<p>When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or deliver in respect of which execution is sought, takes place:</p> <p>Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.</p>

137. Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues.
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6. Dr.Saraf, learned Counsel for respondent No.1 would contend that the delay on the part of the petitioner is apparent to reach to a conclusion that this petition is barred by limitation, in as much as the impugned foreign awards are dated 9 February 2006, 24 August 2007 and 27 March 2008 and this petition has been filed on 2 April 2018. It is submitted that the scheme of provisions of Sections 46, 47, 48 and 49 falling under Part II of the Act is quite clear in as much as unless the awards are held to be enforceable by this Court in the proceedings of Sections 47 to 49 of the ACA, the award would not be a decree available for execution. The contention is that for the purposes of limitation an application/proceedings filed for seeking enforcement of a foreign award as per requirement of Sections 47 to 49 would be an application/proceeding falling under Article 137 (supra) of the Limitation Act, 1963.

7. Dr.Saraf, learned Counsel for respondent No.1 would next contend that the limitation, for the petitioners to assail the award, started running against the petitioner to file the present Section 47 and

49 proceedings, immediately after the awards were published. It is submitted that considering the dates of the award, it cannot be held that a petition which was filed almost after about 10 years from the last award is within the prescribed period of limitation. Dr. Saraf in supporting this contention would refer to the provisions of Sub-Section (3) of Section 48 which according to him categorically provides that even if an application is made for setting aside or suspension of a foreign award before a competent authority as referred to in clause (e) of sub-section (1) of Section 48, the Court may, if it considers proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security. It is thus contended that, the law recognizes that even after proceedings are filed to challenge the foreign awards, there is no impediment for the decree holder to file proceedings for enforcement of the award.

8. Dr. Saraf would submit that there is no application as filed on behalf of the petitioner seeking condonation of delay. It is contended that even assuming that the petitioner had wrongly approached this Court by filing Section 34 proceedings in the year 2008 and ultimately, the issue came to be decided by the Supreme Court on 10 March 2017 holding that the said proceedings filed by respondent No.1 under

Section 34 were not maintainable, however, the pendency of these proceedings can in no manner save the limitation as prescribed under Article 137 to hold that the proceedings are within the prescribed limitation. This according to Dr.Saraf, for the reason that, seeking enforcement of an award is governed by substantive provisions of Sections 47 to 49 of the ACA and the party holding a foreign award cannot sleep over its enforcement/decreetal rights as arisen under the award and not seek enforcement of the award merely because there are proceedings filed by the award debtor assailing the awards even before a Court not competent to entertain such proceedings. In this context, Dr.Saraf would contend that one important facet which is required to be considered is the fact that although the Section 34 petition was filed on 27 July 2008 by respondent No.1 however till such time the delay on the said petition was condoned as per provisions of Sub-section (3) of Section 34 of the Arbitration Act on 10 June 2013, it was an obvious position that there were no proceedings under Section 34 pending in the eyes of law. It is contended that unless the delay was condoned it could not have been presumed that a Section 34 petition challenging the award could be of any consequence. In other words, Dr.Saraf's submission is that the law would recognize the pendency of the Section 34 petition filed by the respondents only after this Court condoned the delay on the said petition, that is, when the Court passed an order on

respondent No.1's notice of motion on 10 June 2013 condoning the delay. It is thus, submitted that for the period from 27 July 2008 (date of filing of the Section 34 petition) till 10 June 2013 (date when delay was condoned) the Section 34 petition cannot be said to be on the file of the Court, to assume that filing of Section 34 petition as per the pre-amended (prior to amending Act No.3 of 2016 with effect from 23 October 2015) was to operate as a stay on the execution of the award. In supporting all these contentions Dr.Saraf has placed reliance on the decisions of learned Single Judge in **Noy Vallesina Engineering Spa v/s. Jindal Drugs Limited¹**, **M/s.Louis Dreyfus Commodities Suisse S.A., 29 v/s. Sakuma Exports Limited²**, **Hameed Joharan (Dead) & Ors. vs. Abdul Salam (Dead) by LRs. & Ors.³**, **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects And Marketing Limited⁴**.

9. Per contra Dr.Tulzapurkar, learned Senior Counsel for the petitioner would submit that the objection as urged on behalf of respondent No.1 of the petition being time barred is not well founded. At the outset Dr.Tulzapurkar would submit that the respondent's contention of applicability of Article 137 of the Limitation Act is also not correct. This principally for the reason that the foreign award itself is

1 2006 SCC ONLINE BOM 545

2 2015 SCC OnLine Bom 5006

3 (2001) 7 Supreme Court Cases 573

4 (2012) 2 Supreme Court Cases 624

required to be accepted as a decree and these proceedings as filed by the petitioner under Sections 47 and 48 of the Arbitration Act are required to be considered as proceedings for enforcement and execution of the foreign award. This according to Dr.Tulzapurkar is also clear from the prayers (supra) as made in the present petition. Dr.Tulzapurkar would thus submit that it is not Article 137, but Article 136 of the Limitation Act which would be applicable when it comes to enforcement and execution of a foreign award under the provisions of Sections 47 to 49 of the ACA. Article 136 provides inter-alia for execution of any decree or order of any Civil Court, and prescribes a period of limitation of 12 years from the time when the decree or order becomes enforceable.

10. Dr.Tulzapurkar would submit that the statutory scheme qua the enforcement of a foreign award, falls in two stages. The first stage is recognition of the award for enforcement and post recognition execution of the award. It is submitted that thus enforcement and execution in the context of Sections 47 to 49 are synonymous. Referring to the decision of Supreme Court in **Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd.**⁵, **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.**⁶, Dr.Tulzapurkar would contend that the Supreme

⁵ (1999) 9 Supreme Court Cases 334

⁶ (2001) 6 Supreme Court Cases 356

Court has categorically held that “*the foreign award is already stamped as a decree.*” According to Dr.Tulzapurkar, once a foreign award itself is a decree and when the provisions of Sections 47 to 49 lay down a composite scheme for enforcement and execution of a foreign award, for the purposes of limitation, the provisions of Article 136 which provide a limitation of 12 years from the date of receipt of the award, to file such proceedings, are clearly attracted. Dr.Tulzapurkar would submit that there can be no other reading of the statutory scheme of Sections 47 to 49, hence the present petition is within the prescribed period of limitation.

11. The second limb of Dr.Tulzapurkar's submission is to contend that even assuming that the provisions of Article 137 are applicable, the petition is nevertheless within the prescribed limitation. This according to Dr.Tulzapurkar is for the reason that once the Section 34 petition as filed by respondent No.1 on 27 July 2008 *albeit* the notice of motion for condonation of delay, which came to be allowed on 10 June 2013, the pendency of such a petition, as the law stood prior to the Arbitration Amendment Act, 2015, itself acted as a stay on the enforcement of the award. This submission is being supported by contending that the order passed by this Court condoning the delay would relate back to the date of filing of section 34 petition. To make good this submissions,

Dr.Tulzapurkar has placed reliance on the decision of the Single Judge of Delhi High Court in **Delhi Development Authority Vs. Amita Nand Agarwal**⁷. It is next submitted that the interim order dated 19 November 2013 passed by the Supreme Court in the petitioner's SLP merely stayed the Section 34 proceedings pending before this Court. The effect of this order is not that the Section 34 proceedings stood extinguished or were no more on the file of High Court, so as to consider that there is no stay to the enforcement of the award as brought about by pendency of Section 34 petition as per the prevailing law. According to Dr.Tulzapurkar, this stay on the proceedings of the Section 34 petition continued till 10 March 2017 when the Supreme Court set aside the orders passed by the High Court holding that the Section 34 petition as filed by the respondents was not maintainable. Thus according to Dr.Tulzapurkar, the awards in question became available for enforcement only after 10 March 2017 and therefore even if it is assumed that the provisions of Article 137 of the Limitation Act are to be applied, the present petition being filed on 2 April 2018 is required to be held as maintainable. In supporting these contentions, Dr.Tulzapurkar has placed reliance on various decisions namely in **Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited & Anr.**⁸, **Shree Chamundi Mopeds Ltd. Vs. Church of South**

7 2008(1) Arb. LR 588 (Delhi)

8 (2009) 17 Supreme Court Cases 796

India Trust Association CSI Cinod Secretariat, Madras⁹, Force Shipping Ltd. Vs. Ashapura Minechem Ltd.¹⁰, Tropic Shipping Co. Ltd. Vs. Kothari Global Limited¹¹, M/s.Bharat Salt Refineries Ltd. Vs. M/s. Compania Naviera¹² and M/s.Compania Naviera 'SODNOC' Vs. Bharat Salt Refineries Ltd. & Anr.¹³.

12. In rejoinder Dr.Saraf, learned Counsel for respondent No.1 would submit that the contentions urged on behalf of the petitioner that the foreign award has a stamp of a decree is the observation of the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) in a different context. It is submitted that these observations of the Supreme Court are required to be read in the context of erstwhile Arbitration Act (Arbitration Act of 1940) under which the Court was called upon to pass a decree in terms of the award and which is not the position under the present Arbitration Act. It is thus contended that necessarily an application under Sections 47 to 49 for the purpose of limitation would fall under Article 137. Dr.Saraf, learned Counsel for respondent No.1 in supporting this submission would refer to the decision in **Noy Vallesina Engineering Spa v/s. Jindal Drugs Limited** (supra) and **M/s.Louis Dreyfus Commodities Suisse S.A., 29 v/s.**

9 (1992) 3 Supreme Court Cases 1

10 2003 C L C 877

11 2002(2) Bom.C.R. 93

12 O.S.A. No.52 of 2008 dated 01/08/2008

13 AIR 2007 MADRAS 251

Sakuma Exports Limited (supra). Dr.Saraf would next contend that Articles 136 and 137 prescribe the time from which period begins to run, namely that in case of Article 136 when a decree and order becomes enforceable and in case of Article 137 when the right to apply accrues. The Court's attention is drawn to Articles 116, 126 and 137 to point out that these articles provide for the limitation to start running from the date of the decree or order. It is submitted if Section 49 of the Arbitration Act is considered, it clearly prescribes that only when the Court holds that the foreign award is enforceable under the said chapter, the award shall be deemed to be decree of the Court and not before that. It is hence submitted that considering this clear position, Article 136 of the Limitation Act as contended on behalf of the petitioner even otherwise is not applicable.

13. Having heard learned Counsel for the parties, the short question which has arisen for consideration at this stage of the proceeding is as to whether the present petition is filed within the prescribed limitation or the petition would be required to be held as time barred.

14. Some admitted facts are required to be noted. The three awards as sought to be executed by the petitioner are the awards dated 9 February 2006, 24 August 2007 and the final award dated 27 March

2008 of the ICC London. It is also not in dispute that the respondents approached this Court on 27 July 2008 by filing a petition under Section 34 of the Arbitration Act challenging these foreign awards. As the Section 34 petition was filed beyond the period of 90 days, however, within the extended period of 120 days, a delay condonation application (Notice of Motion) No.2560 of 2008 was filed by the respondents in the said petition. By an order dated 10 June 2013 passed by this Court on the said application filed by the respondents, this Court condoned the delay in filing Section 34 petition as also it was held that the Section 34 petition although it assailed a foreign award(s) was maintainable. The petitioner being aggrieved by the said orders passed by this Court, approached the Supreme Court in a Special Leave Petition. The Supreme Court by an order dated 19 November 2013 stayed the proceedings of the Section 34 petition. The Supreme Court finally by an order dated 10 March 2017 set aside the orders passed by this Court holding that this Court had no jurisdiction to entertain the Section 34 petition. Thereafter on 2 April 2018 the petitioner filed the present petition seeking enforcement and execution of the Award.

15. The provisions of the Arbitration Act would be required to be given a broader meaning and the Court would not take a narrow pedantic approach, more particularly considering the situation in hand

when the petitioner has foreign awards in its favour, recognised by the foreign court and requiring enforcement and execution. The provisions of Sections 47 to 49 are required to be applied in a meaningful manner which would not defeat the substantive and concluded arbitral proceedings between the parties. It is in this perspective, even the submission as urged on behalf of the respondents that the petitioner should have filed a delay condonation application, praying for condonation of delay in filing this petition for enforcement and execution of the award would be required to be considered. This for more than one reason. Indisputedly it was the respondents who brought about a situation by approaching this Court by filing Section 34 proceedings challenging the awards, although with a delay. This Section 34 petition was filed on 27 July 2008. The delay was condoned on 10 June 2013. Although there were already proceedings pending before this Court from July 2008 till 10 June 2013 when the delay condonation was granted, in the facts of the case it cannot be said that the awards were instantly available to the petitioner for enforcement and execution inasmuch as there was a situation brought about that there were substantive proceedings challenging the award(s) were pending before this Court. The fate of the award(s) itself was the subject matter of consideration before this Court. The order dated 10 June 2013 condoning the delay would surely relate back to the date on

which the petition was filed. Considering the provisions of the Arbitration Act prior to its amendment by the 2015 Amendment Act (with effect from 23 October 2015), filing of the Section 34 petition amounted to stay of the award. The law in this regard is well settled. In **Fiza Developers and Inter-Trade Private Limited Vs. AMCI (India) Private Limited & Anr.** (supra) the Supreme Court held that until disposal of the application under Section 34 of the Arbitration Act, there is an implied prohibition on the enforcement of the arbitral award as the very filing and pending of an application under Section 34, in effect operated as a stay on the enforcement of the award. The Court in paragraphs 19 and 20 held thus:-

“20. Section 36 provides that an award shall be enforced in the same manner as if it were a decree of the court, but only on the expiry of the time for making an application to set aside the arbitral award under Section 34, or such application having been made, only after it has been refused.

20.Until the disposal of the application under Section 34 of the Act, there is an implied prohibition of enforcement of the arbitral award. The very filing and pendency of an application under Section 34, in effect, operates as a stay of the enforcement of the award.”

(emphasis supplied)

16. The order dated 10 June 2013 passed by this Court condoning delay in filing Section 34 petition would be required to be taken relating back to the day on which Section 34 petition was filed that is it would relate back to 27 July 2008.. In this context learned Senior Counsel for the petitioner would be correct in relying on the decision of

the learned Single Judge of the Delhi High Court in **Delhi Development**

Authority Vs. Amita Nand Aggarwal (supra) has observed as under:-

9. In the present case, the objections were filed though beyond 90 days but within the period of 120 days and the objections raised by the Registry were also removed within the period of two weeks. I consider, since the petition / objections under Section 34 of the Act was returned for want of court fees and certain technical reasons and the objections raised by the Registry were complied with and after rectification, the petition was re-filed within a reasonable period, the petition must be considered to have been filed on the original date when it was filed in the Registry and not on the date when it was re-filed after removing objections.” (emphasis supplied)

17. Hence, the legal position as had arisen was that with effect from 27 June 2008, the Section 34 petition as filed by the respondents could be said to be pending. Thus even if the petitioners were to file a petition within three years after the awards, and before the delay was condoned i.e. upto 10 June 2013, nonetheless the petitioners were met with a fate of stay of the awards, and the awards were thus not available for enforcement and execution.

18. The orders passed by this Court dated 10 June 2013 condoning the delay and holding that Section 34 petition is maintainable came to be challenged by the petitioner. By an order dated 19 November 2013 the Supreme Court granted stay to the proceedings of the Section 34 petition and finally on 10 March 2017 the Supreme Court set aside the orders passed by this Court holding that Section 34 petition was not maintainable before this Court, the award(s) being foreign award(s).

Thus, it is only after 10 March 2017 the award(s) became available to the petitioner to be enforced. In my opinion, it is at this juncture, even if Article 137 of the Limitation Act as being pressed into service on behalf of the respondents, is applied and a period of three years is to be available to the petitioners to file an enforcement petition, this petition which was filed on 2 April 2018 would be required to be held to be filed within the limitation of three years as prescribed under Article 137, as clear from the above facts. It would be required to be held that the substantive cause of action had arisen to the petitioner to file the present petition only on 10 March 2017 when the Supreme Court set asides the order passed by this Court holding the Section 34 petition to be not maintainable.

19. The respondents have contended that once a stay was granted by the Supreme Court to the proceedings of the Section 34 petition, it would bring about a situation of the Section 34 petition not being on the file of this Court. This may not be a correct proposition for the respondents to urge. In this context and considering the facts of the case, learned Senior Counsel for the petitioner would be correct in placing reliance on the decision of the Supreme Court in **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras** (supra) to contend that the stay which was

granted by the Supreme Court on 19 November 2013 to the proceedings of Section 34 petition would not have any effect on the Section 34 petition to say that the same was not on the file of the Court or the Section 34 petition in any manner had come to an end or that there was no stay on the enforcement of the award. The Supreme Court in paragraph 10 of the said decision has observed thus:-

“... .. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”

20. Apart from the above discussion now it is well settled that a foreign award is stamped as a decree and hence, as a decree it can be enforced and be executable in one and the same proceeding. In that event Article 136 of the Limitation Act would surely become applicable prescribing a limitation of twelve years from the date when award becomes enforceable and/or the award directing payment of money as specifically provided, under Article 136. This particularly, when the execution of such award is held to be permissible in the same proceedings in two parts/stages. One on its enforcement and the

second part being the execution. The law in this context is required to be noted.

21. In **Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd.** (supra) the issue which fell for consideration of the Supreme Court was in respect of the arbitral proceedings which commenced before the Arbitration Act, 1996 (brought into force on 25 January 1996), and the award being delivered after the commencement of the Arbitration Act on 24 September 1997. The issue was whether the provisions of the Arbitration Act, 1940 or Arbitration Act, 1996 would become applicable in regard to enforcement of the foreign award. It is in this context the Court considered as to what is the nature of a foreign award. The Supreme Court while observing that there is not much difference between enforcement of the foreign award under the Old Act and the New Act, held that the only difference is that while under the regime of Arbitration Act, 1940 read with Foreign Awards (Recognition and Enforcement) Act, 1961, a decree follows, whereas under the Arbitration Act, 1996 the foreign award is already stamped as a decree. It would be appropriate to note the observations of the Supreme Court in paragraph 40 of the decision which reads thus:-

As a matter of fact if we examine the provisions of Foreign Awards Act and the new Act there is not much difference for the enforcement of the foreign award. Under the Foreign Awards

Act when the court is satisfied that the foreign award is enforceable under that Act the court shall order the award to be filed and shall proceed to pronounce judgment accordingly and upon the judgment so pronounced a decree shall follow. Sections 7 and 8 of the Foreign Awards Act respectively prescribe the conditions for enforcement of a foreign award and the evidence to be produced by the party applying for its enforcement. Definition of foreign award is same in both the enactments. Sections 48 and 47 of the new Act correspond to Sections 7 and 8 respectively of the Foreign Awards Act. While Section 49 of the new Act states that where the court is satisfied that the foreign award is enforceable under this Chapter (Chapter I, Part II, relating to New York Convention Awards) the award is deemed to be decree of that court. The only difference, therefore, appears to be that while under the Foreign Awards Act a decree follows, under the new Act foreign award is already stamped as the decree. Thus if provisions of the Foreign Awards Act and the new Act relating to enforcement of the foreign award are juxtaposed there would appear to be hardly any difference.”

(emphasis supplied)

22. The Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) again commented on the nature of a foreign award prior to the Arbitration Act, 1996 coming into force namely during the regime of the erstwhile Foreign Awards (Recognition and Enforcement) Act, 1961. The Supreme Court again held that under the Arbitration Act 1996, the foreign award is already stamped as a decree and the party holding the foreign award can apply for enforcement of the award but the Court before taking further effective step for execution of the award is required to proceed under Sections 47 and 49. It is held that in one proceeding there may be different stages, the first stage being that the Court would be required to decide enforceability of the award, having

regard to the requirement of the said provisions and thereafter once it is decided that the foreign award is enforceable, it is to proceed to take further effective steps for execution of such an award. There did not arise question of making foreign award a rule of court/decreed again. It is further observed that if the object and purpose of the provisions of Sections 47 to 49 of the Arbitration Act can be served in the same proceedings, there is no need to take two separately proceedings resulting into multiplicity of litigation. The observations of the Supreme Court in paragraphs 30, 31 and 32 are required to be noted which read thus:-

“30. Alternatively it was contended that a party holding a foreign award has to file a separate application and produce evidence as contemplated under Section 47 and also satisfy the conditions laid down under Section 48 and it is only after the Court decides about the enforceability of the award, it should be deemed to be a decree under Section 49 as available for execution. In other words, the party must separately apply before filing an application for execution of a foreign award. The Arbitration and Conciliation Ordinance, 1996 was promulgated with the object to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral award and to define law relating to conciliation and for matters connected therewith or incidental thereto. In para 4 of the Statement of Objects and Reasons contained in the Act, the main objects of the Bill are stated. To the extent relevant for the immediate purpose, they are:

“i) to comprehensive cover international commercial arbitration and conciliation as also domestic arbitration and conciliation;

(ii) --(iv) * * *

(v) to minimize the supervisory role of courts in the arbitral process;

(vi) * * *

vii) to provide that every final arbitral award is enforced in the same manner as if it were a decree of the court;”

31. Prior to the enforcement of the Act, the Law of Arbitration in this country was substantially contained in three enactments namely, (1) The Arbitration Act, 1940, (2) The Arbitration (Protocol and Convention) Act, 1937 and (3) The Foreign Awards (Recognition and Enforcement) Act, 1961. A party holding a foreign award was required to take recourse to these enactments. Preamble of the Act makes it abundantly clear that it aims at to consolidate and amend Indian laws relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. The object of the Act is to minimize supervisory role of court and to give speedy justice. In this view, the stage of approaching court for making award a rule of court as required in Arbitration Act, 1940 is dispensed with in the present Act. If the argument of the respondent is accepted, one of the objects of the Act will be frustrated and defeated. Under the old Act, after making award and prior to execution, there was a procedure for filing and making an award a rule of court i.e. a decree. Since the object of the act is to provide speedy and alternative solution of the dispute, the same procedure cannot be insisted under the new Act when it is advisedly eliminated. If separate proceedings are to be taken, one for deciding the enforceability of a foreign award and the other thereafter for execution, it would only contribute to protracting the litigation and adding to the sufferings of a litigant in terms of money, time and energy. Avoiding such difficulties is one of the objects of the Act as can be gathered from the scheme of the Act and particularly looking to the provisions contained in Sections 46 to 49 in relation to enforcement of foreign award. In para 40 of the Thyssen judgment already extracted above, it is stated that as a matter of fact, there is not much difference between the provisions of the 1961 Act and the Act in the matter of enforcement of foreign award. The only difference as found is that while under the Foreign Award Act a decree follows, under the new Act the foreign award is already stamped as the decree. Thus, in our view, a party holding foreign award can apply for enforcement of it but the court before taking further effective steps for the execution of the award has to proceed in accordance with Sections 47 to 49. In one proceeding there may be different stages. In the first stage the Court may have to decide about the enforceability of the award having regard to the requirement of the said provisions. Once the court decides that foreign award is enforceable, it can proceed to take further effective steps for execution of the same. There arises no question of making foreign award as a rule of court/decree again. If the object and purpose can be served in the same proceedings, in our view, there is no need to take two separate proceedings resulting in multiplicity of litigation. It is also clear from objectives contained in para 4 of the Statement of Objects and Reasons, Sections 47 to 49 and Scheme of the Act that every final arbitral

award is to be enforced as if it were a decree of the court. The submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and is of no consequence in the view we have taken. In our opinion, for enforcement of foreign award there is no need to take separate proceedings, one for deciding the enforceability of the award to make rule of the court or decree and the other to take up execution thereafter. In one proceeding, as already stated above, the court enforcing a foreign award can deal with the entire matter. Even otherwise, this procedure does not prejudice a party in the light of what is stated in para 40 of the Thyssen judgment.

32. Part II of the Act relates to enforcement of certain foreign awards. Chapter 1 of this Part deals with New York Convention Awards. Section 46 of the Act speaks as to when a foreign award is binding. Section 47 states as to what evidence the party applying for the enforcement of a foreign award should produce before the court. Section 48 states as to the conditions for enforcement of foreign awards. As per Section 49, if the Court is satisfied that a foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court and that court has to proceed further to execute the foreign award as a decree of that court. If the argument advanced on behalf of the respondent is accepted, the very purpose of the Act in regard to speedy and effective execution of foreign award will be defeated. Thus none of the contentions urged on behalf of the respondent merit acceptance so as to uphold the impugned judgment and order. We have no hesitation or impediment in concluding that the impugned judgment and order cannot be sustained.”

(emphasis supplied)

23. Learned Single Judge of this Court in **Force Shipping Ltd. Vs. Ashapura Minechem Ltd.** (supra) referring to the decision in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) observed that along with application for enforcement it would be open to a party seeking enforcement of a foreign award to apply for execution in the form prescribed so that once the court proceeds to hold that the Award is

enforceable, it can thereafter proceed to execute the decree without further procedural requirements.

24. The learned Senior Counsel for the petitioner has also referred to the decision of the learned Single Judge of the Madras High Court in **M/s.Compania Naviera 'SODNOC' Vs. Bharat Refineries Ltd. & Anr.** (supra) in which the court referring to the decision of the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) rejected the contention of the respondent that as the award was passed on 2 March 2000 the petition to enforce the award should have been filed within three years and as the same being filed in the year 2005, the relief was barred by limitation. It was held that the foreign award is already stamped as a decree and the party having the foreign award can straight away apply for enforcement of the foreign award, the party would have 12 years time like that of a decreeholder to execute the foreign award. The Court in paragraphs 41 and 42 has made the following observations:-

“41. The next objection of the learned Counsel for the 1st respondent is that as the award was passed on 2.3.2000, the petition to enforce the award should have been filed within 3 years and as the same was filed only in 2005, the relief is barred by limitation.

42. I am unable to accept this submission also. Under the Act, 1996, the foreign award is already stamped as a decree and the party, having a foreign award can straight away apply for enforcement of it and in such circumstances, the party having a

foreign award has got 12 years time like that of a decree holder. Therefore it cannot be said that the present petition is barred by limitation.”

25. In another decision in **M/s.Bharat Salt Refineries Ltd. Vs. M/s. Compania Naviera** (supra) another learned Single Judge of the Madras High Court referring to the decision of the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) rejected the contention that the petition for enforcement should have been filed within three years from the date of the award. In paragraph 20 the Court held as under:-

“20. The contention of the appellant that as the award was made on 2.3.2000, the petition for enforcement should have been filed within three years therefrom and the petition for enforcement filed in the year 2005 is hit by limitation is raised only for rejection. Under the 1996 Act, the foreign award is stamped as a decree and the party having a foreign award has got 12 years time like any other decree for its enforcement or execution. Hence the point of limitation is also decided against the appellant, in the sense, the petition filed for enforcement is well within the period of limitation. Our view is fortified by the ruling of the Apex Court in the case of M/S FUERST DAY LAWSON LTD. VS. JINDAL EXPORTS LTD (AIR 2001 Supreme Court 2293), ”

.....

A reading of the above it is clear that once the Court decides that a foreign award is enforceable, it can proceed to take further effective steps for execution of the same and also the award shall be deemed to be a decree of that Court.

26. It is thus beyond a pale of doubt that enforcement and execution can form part of the same proceedings. If this be so then certainly Article 136 under the Limitation Act becomes relevant. If the argument

of non applicability of Article 136 as urged on behalf of the respondent is accepted, it would be contrary to the principle of law as laid down by the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) apart from deeply damaging the decretal interest of the award creditors apart from being contrary to the object of Section 47 to 49 of the Arbitration Act.

27. In fact the above legal position now stands reinforced as seen from a recent decision of the Supreme Court in **M/S.Shriram EPC Ltd. Vs. Rioglass Solar SA**¹⁴, the Supreme Court taking note of the decisions in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) and **Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd.** (supra) has held that the observations of the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) that *“the only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree.”* to mean that the expression “stamped” means “regarded” This means that the foreign award is to be regarded as a decree. The following observations of the Supreme Court in paragraph 19 read thus:-

“One sentence in Fuerst Day Lawson (supra) reads, “[T]he only difference as found is that while under the Foreign Awards Act a decree follows, under the new Act the foreign award is already stamped as the decree.” This sentence does not lead to the

conclusion, following the judgment in Thyssen Stahlunion GMBH Vs. Steel Authority of India Ltd., (1999) 9 SCC 334, that under the 1996 Act, a foreign award is considered to be stamped already. All that this sentence means is that the foreign award is to be regarded as a decree. The expression "stamped" means "regarded". This judgment also does not carry us much further.

(emphasis supplied)

28. Now coming to the contention as urged on behalf of the respondents, the main thrust of the respondents' argument is the decision of the learned Single Judge of this Court in **Noy Vallesina Engineering Spa v/s. Jindal Drugs Limited** (supra). In my opinion considering the facts of the present case and as noted above, that the Supreme Court on 10 March 2017 set aside the order passed by this Court holding that the Section 34 petition filed by the respondents was not maintainable and the present proceedings being filed on 2 April 2018, even by applicability of the provisions of Article 137 of the Limitation Act, the petition is not barred by limitation. In any case, applying the principle of law as laid down in *Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.* (supra) and *M/S. Shriram EPC Ltd. Vs. Rioglass Solar SA* (supra), the Court cannot overlook the prayers as made by the petitioner which are in the nature of a combined petition namely for enforcement and for execution of the award. As observed above a broader view is required to be taken to advance the object and intention of the provisions of the Arbitration Act and not a hard technical

approach as urged by the respondents that the petition be held as time barred, by applying Article 137 of the Limitation Act in the absence of a delay condonation application and the delay being condoned. This contention of the respondents militates against from what the Supreme Court has now further clarified in **M/S.Shriram EPC Ltd. Vs. Rioglass Solar SA** (supra) that when it was observed in **Furest Day Lawson Ltd. Vs. Jindal Exports Ltd** (supra) that the Foreign award is already stamped as a decree, it means that “the foreign award is to be regarded as a decree.” In view of this clear position in law there is no manner of doubt and more particularly as seen the prayers as made in the petition that this petition cannot be held to be time barred, as contended on behalf of the respondents.

29. In so far as the reliance on behalf of the respondents on the decision in **Hameed Joharan (Dead) & Ors. vs. Abdul Salam (Dead) by LRs. & Ors.**(supra), this decision may not assist the respondents when the issue is of enforcement of a foreign award. The Supreme Court in this decision has considered as to what would be the purport of the word “enforce” as used in Article 136 of the Limitation Act. The Supreme Court was considering the meaning of the word “enforce” as used in Article 136 of the Limitation Act. However, in the present facts

considering that the award is a foreign award, the reliance on this decision is not well founded, more particularly in view of the principles of law in regard to the enforceability of a foreign award as laid down in *Furest Day Lawson Ltd. Vs. Jindal Exports Ltd.* (supra) and *M/S.Shriram EPC Ltd. Vs. Rioglass Solar SA* (supra).

30. The decision in **Assam Urban Water Supply and Sewerage Board Vs. Subash Projects And Marketing Limited** (supra) would also not assist the respondents, as the question which fell for determination of the Court was as to whether the appellants were entitled to extension of time under Section 4 of the Limitation Act,1963 and the context of the words "*prescribed period*" as used in the said provision. It was held that Section 2(j) of the Limitation Act defines the period of limitation and when read in the context of Section 34(3) of the Arbitration Act,1996, the prescribed period for making an application for setting aside the arbitral award was three months. It was held that the period of 30 days mentioned in the proviso that follows sub-section (3) of Section 34 of the Arbitration Act is not the "period of limitation" and therefore, not the 'prescribed period' for the purpose of making an application for setting aside the arbitral award. It was held that the period of 30 days beyond three months which the Court may extend on sufficient cause being shown under the proviso below sub-section (3) of Section 34 of

the Arbitration Act being not a period of limitation (prescribed period), and Section 4 of the Limitation Act would thus not be applicable. I wonder as to how this decision would at all be applicable in the present facts.

31. The decision of the learned Single Judge of this Court in **M/s.Louis Dreyfus Commodities Suisse S.A., 29 v/s. Sakuma Exports Limited** (supra) would also not assist the respondents. This was a case where initially the execution application simplicitor came to be filed without filing of an enforcement petition. Subsequently, the enforcement petition was filed and the learned Judge referring to the decision of the learned Single Judge of this Court in **Noy Vallesina Engineering Spa v/s. Jindal Drugs Limited** (supra) and the decision of the Supreme Court in **Fuerst Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra) the Court held that the petition was not barred by limitation. Learned Judge in paragraphs 46, 48 and 49 has made the following observations:-

“46. The Supreme Court in the case of M/s. Fuerst Day Lawson Ltd. (supra) has held that there is no need to take two separate proceedings resulting in multiplicity of proceedings. It is also clear from objectives contained in the statement of objects and reasons that in view of Section 47 to 49 and the scheme of Arbitration Act, every final arbitral award is to be enforced as if it were a decree of the court. The Supreme Court held the submission that the execution petition could not be permitted to convert as an application under Section 47 is technical and was of no consequence in the view the Supreme Court had taken in the said

judgment. It is held that in one proceedings, the court enforcing a foreign award can deal with the entire matter and that the procedure does not prejudice a party. It is not in dispute that the said execution application filed by the petitioner was pending for quite some time. No objection was raised by the respondent by filing reply.

.....

*48. In the said judgment, this Court held that such an application for enforcement of the foreign award would attract Article 137 and according to that Article, the period of limitation is three years and would commence from the date when right to apply occurs. This Court has also observed that the least that could be said is that the question as to whether any period of limitation is prescribed for making an application for enforcement of the foreign award and if there is period of limitation prescribed, what would be that period of limitation, was not a question free from doubt and this Court accordingly, condoned the delay filed by the petitioner. In my view, the petitioner has filed the execution application which was within four months from the date of the said foreign award and was prosecuting the same in good faith and with due diligence. The respondent raised an objection about the maintainability of the said application for the first time before the Division Bench and not earlier. In my view, the petitioner has thus made out a case for condonation of delay in filing the petition under Section 47 of the Arbitration Act. The judgment of this Court in case of Noy Vallesina Engineering Spa (*supra*) assist the case of the petitioner and not the respondent.*

*49. I am not inclined to accept the submission made by learned senior counsel for the respondent that Section 14 of the Limitation Act, 1963 would not be attracted to Arbitration Petition (No.47 of 2015) filed by the petitioner. The petitioner filed the said application based on the interpretation of the judgment of the arbp47-15g Supreme Court in M/s.Fuerst Day Lawson Ltd. (*supra*) and the said proceedings were pending. The Division Bench of this Court did not find the said execution application not maintainable but on the contrary directed that if any application is filed under Section 47 by the petitioner, the same shall be heard along with the said execution application. In my view, there is thus no substance in the submission of learned senior counsel that Section 14 would not be applicable to the facts of this case. I am therefore of the view that the delay in filing the arbitration petition deserves to be condoned. I shall now deal with the submissions made by both the leaned counsel on enforceability of the foreign award.”*

(emphasis supplied)

32. In fact the Court has recognized the clear applicability of the well

settled principle of law as laid down in **Furest Day Lawson Ltd. Vs. Jindal Exports Ltd.** (supra)

33. As a sequel to the above discussion, the respondents objection that the petition is required to be held as time barred, cannot be accepted. It is held that the present petition is filed within the prescribed limitation.

[G.S. KULKARNI, J.]