SUPREME COURT OF INDIA

Voltas Limited

Vs.

Rolta India Limited

C.A.No.2073 of 2014

(Anil R. Dave and Dipak Misra JJ.)

14.02.2014

JUDGMENT

DIPAK MISRA, J.

1. Leave granted in both the Special Leave Petitions.

2. Regard being had to the similitude of controversy in both the appeals they were heard together and are disposed of by a common judgment. Be it noted, the Division Bench of the High Court of Judicature at Bombay, by two separate judgments and orders passed on 16.8.2013 in Appeals Nos. 7 of 2013 and 8 of 2013 has set aside the judgment and order dated 1.10.2012 passed by the learned single Judge in Arbitration Petition (L) Nos. 1239 of 2012 and 1240 of 2012 respectively as a consequence of which two interim awards passed by the learned Arbitrator on 26.7.2012 in respect of two contracts between the same parties rejecting the counter claim of the respondent-herein have been annulled. For the sake of clarity and convenience we shall state the facts from Civil Appeal arising out of Special Leave Petition (C) No. 30015 of 2013, for the Division Bench has observed that the Appeal No. 7 of 2013 had emanated from the disputes which arose in respect of civil construction agreement dated 2.2.2001 and in Appeal No. 8 of 2013 the disputes related to agreement dated 8.1.2003 for air-conditioning of the two buildings to be constructed for the appellant therein and no separate submissions were advanced before it and the position was the same before the learned single Judge.

3. The expose' of facts are that the appellant and respondent entered into a civil construction contract for construction of two buildings known as Rolta Bhawan II (RB-II) and Rolta Bhawan III (RB-II) and also for modification of building Rolta Bhawan I(RB-I) previously constructed by the respondent. As certain disputes arose, on 3.12.2004 the respondent terminated the contract. After certain correspondences between the parties pertaining to the termination of the contract the appellant by letter dated 29.3.2006 invoked the arbitration clause in respect of its claims against the respondent. As the respondent failed to appoint an arbitrator, it filed an application under Section 11 of the Arbitration and Conciliation Act, 1996 (for short "the Act") before the High Court of Bombay for appointment of arbitrator and the designated Judge vide order dated 19.11.2010 appointed the sole arbitrator.

4. After the controversy came in seisin before the learned Arbitrator, he issued certain directions and, as the facts would unfurl, the appellant filed its statement of claim on 13.4.2011 claiming a sum of Rs.23,31,62,429.77 together with interest at the rate of 15% per annum from the respondent. The respondent, after filing its defence on 24.8.2011, filed the counter claim of Rs.333,73,35,026/- together with interest at the rate of 18% per annum from the date of filing till payment/realization thereof. In the counter claim the respondent justified the termination of the agreement and contended that it was entitled to damages for breach of contract. In the counter claim the notice dated 17.4.2006 sent by the respondent detailing its counter claim to the appellant was referred to.

5. After the counter claim was lodged, the appellant-herein filed its objections about the tenability of the counter claim stating that the same was not maintainable and was also barred by limitation. The learned Arbitrator on 7.1.2012 framed two issues regarding the tenability and limitation of the counter claim as preliminary issues. They are: -

> "(i) Whether the counter claim, or a substantial part thereof, is barred by the law of limitation?
>
> (ii) Whether the counter claim is not maintainable and beyond the scope of reference?"

6. After adumbrating to the facts the learned Arbitrator came to hold that the limitation for making a counter claim is required to be asserted with reference to

the date on which the cause of action arises and the date on which the counter claim is filed. After so opining the learned Arbitrator recorded as follows: -

> "The respondent has been vigilant and assertive of its legal rights right from 3rd December 2004 on which date the Contract was terminated. The assertions in the letters dated 27th April 2005 and 29th March 2006 show unmistakable consciousness of its rights on the part of the Respondent. The last letter dated 29th March 2006 is the notice of the Advocates of the Respondent asserting its right to invoke arbitration. The Tribunal is of the view that cause of action for the Counter-claim which must be treated as an independent action to be instituted, really arose latest by 29th March 2008, if not earlier it is clear that the Counter claim is filed only on 26th September, 2011 and as such it is beyond the period of limitation of three years."
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> It may be noted here that the learned Arbitrator, however, overruled the objection with regard to the maintainability of the counter claim being beyond the scope of reference.

7. After the interim award was passed by the learned Arbitrator, the respondent filed an application under Section 34 of the Act for setting aside the decision of the learned Arbitrator rejecting the counter claims made by it on the ground of limitation. The learned single Judge, after adverting to the facts in detail and the contentions raised by the learned counsel for the parties, referred to certain authorities, namely, Ispat Industries Limited v. Shipping Corporation of India Limited[1] and State of Goa v. Praveen Enterprises[2], and came to hold that the arbitral proceedings in respect of those disputes commenced on the date on which the request for the said disputes to be referred to arbitration was received by the respondent, and further that only such disputes which were referred to in the notice invoking arbitration agreement with a request to refer the same to arbitration, the arbitral proceedings commenced and it would not apply to the counter claim. Thereafter the learned single Judge proceeded to state as follows: -

> "When the notice was given by the respondent on 29th March, 2006, the said notice was only in respect of the disputes having arisen between the parties due to refusal of claims made by the petitioner. On the date of issuance of such notice, the petitioner had not even asserted its claim. After issuance of such notice on 29th March, 2006, the petitioner by its letter dated 17th April, 2006 had asserted its claim for the first time. The dispute in respect of the counter claim raised when the petitioner did not pay the said amount as

> demanded. Such disputes thus did not exist when the notice invoking arbitration agreement was given by the respondent on 29th March, 2006. In my view, the arbitral proceedings therefore, cannot be said to have commenced in respect of the counter claim when the notice was given by the respondent on 29th March, 2006. The counter claim was admittedly filed on 26th September, 2011 which was made beyond the period of limitation. The arbitral proceedings commenced in respect of the counter claim only when the said counter claim was lodged by the petitioner on 26th September, 2011. Even if the date of refusal on the part of the respondent, to pay the amount as demanded by the petitioner by its notice dated 17th April, 2006 is considered as commencement of dispute, even in such case on the date of filing the counter claim i.e. 26th September, 2011, the counter claim was barred by law of limitation. In my view, thus the tribunal was justified in rejecting the counter claim filed by the petitioner as time barred."

8. After so stating the learned single Judge held that the opinion expressed by the learned Arbitrator was not perverse and based on correct appreciation of documents and was resultant of a plausible interpretation and accordingly rejected the application preferred under Section 34 of the Act.

9. Being dissatisfied, the respondent-herein preferred an appeal before the Division Bench which chronologically referred to the correspondences made between the parties, the reasoning ascribed by the learned Arbitrator, the submissions propounded before it, the principles stated in Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd.[3] as regards the jurisdiction of the Court while dealing with an application under Section 34 of the Act, the concept of limitation as has been explained in Praveen Enterprises (supra), the demand made by the appellant therein by letter dated 17.4.2006 quantifying a sum of Rs.68.63 crores, exclusion of period between 3.5.2006 to 19.11.2010 during which period the application under Section 11 of the Act was pending before the High Court and on that foundation, in the ultimate eventuate, came to hold that the counter claim filed on 26.9.2011 was within limitation. The aforesaid view obliged the Division Bench to allow the appeal, set aside the judgment and order passed by the learned single Judge as a consequence thereof the rejection of the counter claim by the learned Arbitrator stood overturned. Be it noted, rest of the interim award of the learned Arbitrator was not disturbed.

10. Assailing the legal substantiality of the view expressed by the Division Bench, Mr. K.K. Venugopal, learned senior counsel appearing for the appellant, has raised the following contentions: -

i) Existence of dispute is fundamentally essential for a controversy to be arbitrated upon and in the case at hand there being no dispute raised by the respondent as warranted in law, the counter claim put forth before the learned Arbitrator deserved to be thrown at the threshold and the High Court would have been well advised to do so.

ii) The limitation for a counter claim has to be strictly in accordance with Section 43(1) of the Act read with Section 3(2)(b) of the Limitation Act, 1963 and any deviation therefrom is required to be authorized by any other provision of law. The only other provision of law which can depart from Section 43(1) of the Act read with Section 3(2)(b) of the Limitation Act, is the provision contained in Section 21 of the Act, where the respondent to the claimant's claim invokes arbitration in regard to specific or particular disputes and further makes a request for the said disputes to be referred to arbitration and in that event alone, the date of filing of the counter claim would not be the relevant date but the date of making such request for arbitration would be the date for computing limitation. The Division Bench has not kept itself alive to the requisite twin tests and has erroneously ruled that the counter claim as filed by the respondent is not barred by limitation.

(iii) The principle stated in Praveen Enterprises's case is not applicable to the present case because the correspondences made by the respondent, including the letter dated 17.4.2006, show that there had neither been any enumeration of specific claims nor invocation of the arbitration clause but merely computation of certain claims, though for application of the exception as carved out in Praveen Enterprises (supra), both the conditions precedent, namely, making out a specific claim and invocation of arbitration are to be satisfied.

(iv) The exclusion of the period during pendency of the application under Section 11 of the Act, as has been held by the Division Bench, is wholly contrary to the principle laid down in paragraphs 20 and 32 in Praveen Enterprises (supra).

(v) Assuming the principle stated in Praveen Enterprises (supra) is made applicable, the claims asserted by the respondent in its letter dated 17.4.2006 could only be saved being not hit by limitation and not the exaggerated counter claim that has been filed before the learned Arbitrator.

(vi) The Division Bench completely erred in interfering with the interim award in exercise of power under Section 34 of the Act, though the principle stated in Saw Pipes Ltd. (supra) is not attracted and further that the recording of finding that the award passed by the learned Arbitrator suffers from perversity of approach is not acceptable inasmuch as a possible and plausible interpretation of the contract and documents has been made which is within the domain of the learned Arbitrator as has been stated in Rashtriya Ispat Nigam Limited v. Dewan Chand Ram Saran[4].

11. Mr. R.F. Nariman, learned senior counsel appearing for the respondent, defending the impugned judgment, has proponed the following: -

a) The documents brought on record demonstrably establish that dispute existed between the parties as regards the counter claim and hence, the submission raised on behalf of the appellant on that score is sans substance.

b) The Division Bench has rightly come to hold that the counter claim filed by the respondent-herein was within time on the basis of the law laid down in Praveen Enterprises (supra) inasmuch as the date of filing of the counter claim has to relate back to the date of claim made by the respondent and the correspondences between the parties do clearly show that the respondent had raised its claim and also sought for arbitration in a legally accepted manner.

c) The alternative submission that the counter claim has to be confined to the amount quantified in the letter dated 17.4.2006 is unacceptable in law, for in Praveen Enterprises (supra) it has been held that the statement of claim need not be restricted to the claims in the notice and on that base it can safely be concluded that the said proposition holds good for counter claims as well. That apart, the principle also gets support from what has been laid down in McDermott International Inc. v. Burn Standard Co. Ltd. and others[5].

12. First, we shall address to the submissions pertaining to existence and raising of dispute as regards the counter claim. We are required to deal with the same in the case at hand since Mr. Venugopal, learned senior counsel, has urged that if no

dispute was raised at any point of time, it could not have been raised before the learned Arbitrator as it would be clearly hit by limitation. Learned senior counsel has placed reliance on Major (Retd.) Inder Singh Rekhi v. Delhi Development Authority[6] and Jammu and Kashmir State Forest Corporation v. Abdul Karim Wani and others[7], to bolster the submission that in the case at hand the disputes as regards the counter claim really had not arisen, for mere assertions and denials do not constitute a dispute capable of reference to arbitration and hence, not to be entertained when it is dead or stale.

13. In Major (Retd.) Inder Singh Rekhi (supra) the High Court had rejected the petition preferred under Section 20 of Arbitration Act, 1940 as barred by limitation. The two-Judge Bench referred to Section 20 of the 1940 Act and opined that in order to be entitled to order of reference under Section 20, it is necessary that there should be an arbitration agreement and secondly, dispute must arise to which the agreement applied. In the said case, there had been an assertion of claim of the appellant and silence as well as refusal in respect of the same by the respondent. The Court observed that a dispute had arisen regarding non- payment of the alleged dues to the appellant and, in that context, observed thus: -

> "A dispute arises where there is a claim and a denial and repudiation of the claim. The existence of dispute is essential for appointment of an arbitrator under Section 8 or a reference under Section 20 of the Act. See Law of Arbitration by R.S. Bachawat, first edition, page 354. There should be dispute and there can only be a dispute when a claim is asserted by one party and denied by the other on whatever grounds. Mere failure or inaction to pay does not lead to the inference of the existence of dispute. Dispute entails a positive element and assertion of denying, not merely inaction to accede to a claim or a request. Whether in a particular case a dispute has arisen or not has to be found out from the facts and circumstances of the case."

14. In Abdul Karim Wani and others (supra) the question arose whether the dispute mentioned in the contractor's application could have been referred to the arbitration at all. The majority came to hold that the claim raised by the plaintiff in his application was not covered by the arbitration clause and, therefore, was not permissible to be referred for a decision to the arbitrator. Be it noted, in the said case, the work under the contract had already been executed without any dispute. The majority also observed that in the absence of a repudiation by the Corporation of the respondent's right to be considered, if and when occasion arises, no dispute could be referred for arbitration. It further ruled that in order that there may be a

reference to arbitration, existence of a dispute is essential and the dispute to be referred to arbitration must arise under the arbitration agreement.

15. The principles laid down in the aforesaid cases were under the 1940 Act at the stage of appointment of arbitrator. In the case at hand, though we are dealing with a lis under the 1996 Act, yet we are to deal with the said facet as the learned Arbitrator has passed an interim award as regards the sustenance of the counter claim. In this regard, it is necessary to refer to the correspondences entered into between the parties and to appreciate the effect and impact of such communications. By letter dated 1.3.2005 the appellant, while referring to the letter dated 3.12.2004 issued by the respondent terminating the contract on the ground of alleged delay and default in completion of the project, without prejudice had made a request for payment of final bill in full and settle the claim made therein at the earliest. It was also suggested therein that if the respondent needed any additional information or material in support of the claim put forth, the appellant would furnish the same. On 18.3.2005 the respondent communicated to the appellant through its counsel that it would compute its losses, damages, costs, charges, expenses, etc. after the building work was over and claim the same from the appellant. The appellant vide letter dated 7.4.2005, through its counsel, intimated the respondent that it was not liable to pay any alleged losses, damages, costs, charges and expenses, allegedly suffered by the respondent. On 27.4.2005 by another communication an assertion was made about the losses suffered by the respondent. The respondent asseverated that it was not liable to pay to the appellant any compensation and damages or other amounts as claimed in the letter dated 1.3.2005 to the respondent. In fact, the respondent was compelled to terminate the civil contractor as per the recommendation of the Architects, M/s. Master & Associates, and the respondent had suffered huge losses and damages and had incurred heavy costs, charges and expenses for which the appellant was solely respondible. It was also mentioned in the letter that the respondent reserved its right to take appropriate steps against the appellant as per the agreement entered into between the parties as per law. As the factual exposition would unfurl, on 29.3.2006 the appellant, referring to its earlier communications dated 14.4.2004, 23.4.2004, 24.5.2004, 18.6.2004, 13.7.2004 and 1.3.2005, claimed for appointment of an arbitrator. On 17.4.2006 the respondent specified the claims under various heads and also claimed payment to be made within seven days failing which it will invoke the arbitration clause. To the said communication and another communication dated 21.4.2006 we shall refer to at a later stage while dealing with the other facet of submission. It may be noted here that on 9.5.2006 the appellant,

referring to letter dated 17.4.2006 whereby the respondent had raised its claims, stated as follows: -

> "Our clients deny that the claim made against you is false and frivolous. Our clients deny that any amount is due to you for the alleged breach of the aforesaid contract. Our clients deny that they have committed any breach of the aforesaid contract.
>
> xxx xxx xxx
>
> In view of what is stated hereinabove, our clients deny that they are liable to pay to you a sum of Rs.68,63,72,743.08 or any other sum."

16. Thus, the correspondences between the parties make it vivid that the claims made by the respondent were denied by the appellant on many a ground and, therefore, it would be inappropriate to say that there was inaction or mere denial. Therefore, in the obtaining fact situation, the principles stated in Major (Retd.) Inder Singh Rekhi (supra) and Abdul Karim Wani and others (supra) are not applicable.

17. The next aspect that has been highlighted by Mr. Venugopal is that the respondent had never, in the true sense of the term, invoked arbitration by appropriately putting forth specified claims. In this context, we may refer to the letter dated 29.3.2006 which would show that the appellant had asserted that the disputes and differences had arisen between the parties to the agreement and invoked the arbitration clause calling upon the respondent to appoint an independent unbiased arbitrator within 30 days from the receipt of the said notice, failing which they would be constrained to approach the designated Judge of the Chief Justice of Bombay High Court for appointment of an arbitrator under Section 11 of the Act. The respondent, vide letter dated 17.4.2006, sent through its counsel while stating that it was surprised to receive the demand made by the appellant with regard to the final R.A. bill dated 21.12.2004, clearly stated that the earlier letter dated 1.3.2005 had already been replied to vide letter dated 18.3.2005. In the said letter it was mentioned by the respondent that it had crystallized its claim amounting to Rs.68,63,72,743.08 and, be it noted, the said claim was made on various heads by the respondent. Reproduction of part of the said letter would be apposite: -

> "The final R.A. Bill sent by you is incorrect in many respects; one of them being that you have made claims based on works actually not done by you Nothing is due and payable by us to you against your final R.A. Bill. We call upon you to pay to us the aforesaid sum of Rs.68,63,72,743.08 within seven days of the receipt of this letter, failing which you will be liable to pay interest at the rate of 18% p.a. on expiry of seven days after receipt of this letter by you, till payment and/or realization. Please note that if the aforesaid payment is not made within seven days of the receipt of this letter, we will invoke the arbitration clause of the civil contract and refer the disputes to arbitration."

18. In this regard reference to letter dated 21.4.2006 written by the appellant is seemly. The relevant part of the said letter is as follows: -

> "We are instructed to inform you that our client was out of India in connection with the business tour and returned to India on 19th April, 2006. Our client thereafter has been extremely busy with the work of the Company. He has seen your letter dated 29th March, 2006.
>
> Please, therefore, ask your clients to note that our client will appoint an Arbitrator within 30 days from the date of his return to India."

19. These two communications make it clear that the respondent had crystallized the claims on various heads by letter dated 17.4.2006 and the appellant had agreed to appoint an arbitrator within thirty days. The heads that have been mentioned in the letter dated 17.4.2006 pertained to liquidated damages for delay in performance, cost of repairs and rework which had to be done by the respondent, differential cost of the works left over by the appellant and was completed by the respondent through other agencies, cost of direct consequential damages to the respondent due to defect in the work done by the appellant, cost of consultancy fees and other expenses, loss of profit for four years based on revenue generated per employee, etc. and outstanding mobilization advance remaining with the appellant. The total sum as mentioned in the letter was Rs.74,78,34,921.54. From the said amount monies retained by the respondent and monies received by the respondent as per the contract, i.e., Rs.6,14,62,178.46 were reduced. Needless to emphasize, the validity of the claims had to be addressed by the learned Arbitrator but the fact remains that the respondent had raised the claims by giving heads. Thus, there can be no scintilla of doubt that the respondent had particularized or specified its claims and sought arbitration for the same.

20. Keeping in view the aforesaid factual scenario we shall now proceed to appreciate what has been stated by this Court in Praveen Enterprises (supra). In the said case, the respondent therein had raised certain claims and given a notice to the appellant-therein to appoint an arbitrator in terms of the arbitration clause. As the appellant did not do so, the respondent filed an application under Section 11 of the Act and an arbitrator was appointed. The respondent filed its claim statement before the arbitrator and the learned arbitrator passed an award. In regard to the counter claims made by the appellant, the arbitrator awarded certain sum without any interest. An application under Section 34 of the Act was filed by the respondent challenging the award for rejection of its other claims and award made on a particular item of the counter claim. The civil court disposed of the matter upholding the award in respect of the claims of the respondent but accepted the objection raised by it in regard to the award made on the counter claim opining that the arbitrator could not have enlarged the scope of the reference and entertain either fresh claims by the claimants or counter claims from the respondent. The said judgment came to be assailed before the High Court which dismissed the appeal by holding that the counter claims were bad in law as they were never placed before the court by the appellant in the proceeding under Section 11 of the Act and they were not referred to by the court to arbitration and, therefore, the arbitrator had no jurisdiction to entertain the matter.

21. This Court posed two questions, namely, whether the respondent in an arbitration proceeding is precluded from making a counter claim, unless (a) it had served a notice upon the claimant requesting that the disputes relating to that counter claim be referred to arbitration and the claimant had concurred in referring the counterclaim to the same arbitrator; and/or (b) it had set out the said counterclaim in its reply statement to the application under Section 11 of the Act and the Chief Justice or his designate refers such counter claim also to arbitration. Thereafter, the Court referred to the concept of "reference to arbitration" and, analyzing the anatomy of Sections 21 and 43 of the Act and Section 3 of the Limitation Act, 1963, opined thus: -

> "Section 3 of the Limitation Act, 1963 specifies the date of institution for suit, but does not specify the date of "institution" for arbitration proceedings. Section 21 of the Act supplies the omission. But for Section 21 there would be considerable confusion as to what would be the date of "institution" in regard to the arbitration proceedings. It will be possible for the respondent in an arbitration to argue that the limitation has to be calculated as on the date

on which statement of claim was filed, or the date on which the arbitrator entered upon the reference, or the date on which the arbitrator was appointed by the court, or the date on which the application was filed under Section 11 of the Act. In view of Section 21 of the Act providing that the arbitration proceedings shall be deemed to commence on the date on which "a request for that dispute to be referred to arbitration is received by the respondent" the said confusion is cleared. Therefore, the purpose of Section 21 of the Act is to determine the date of commencement of the arbitration proceedings, relevant mainly for deciding whether the claims of the claimant are barred by limitation or not."

22. Thereafter, addressing the issue pertaining to counter claims, the Court observed as follows: -

> "20. As far as counterclaims are concerned, there is no room for ambiguity in regard to the relevant date for determining the limitation. Section 3(2)(b) of the Limitation Act, 1963 provides that in regard to a counterclaim in suits, the date on which the counterclaim is made in court shall be deemed to be the date of institution of the counterclaim. As the Limitation Act, 1963 is made applicable to arbitrations, in the case of a counterclaim by a respondent in an arbitral proceeding, the date on which the counterclaim is made before the arbitrator will be the date of "institution" insofar as counterclaim is concerned. There is, therefore, no need to provide a date of "commencement" as in the case of claims of a claimant. Section 21 of the Act is therefore not relevant for counterclaims. There is however one exception. Where the respondent against whom a claim is made, had also made a claim against the claimant and sought arbitration by serving a notice to the claimant but subsequently raises that claim as a counterclaim in the arbitration proceedings initiated by the claimant, instead of filing a separate application under Section 11 of the Act, the limitation for such counterclaim should be computed, as on the date of service of notice of such claim on the claimant and not on the date of filing of the counterclaim."
> [Italics is ours]

23. Mr. R.F. Nariman, learned senior counsel appearing for the respondent, submitted that the case of the respondent comes within that exception because it had raised its claims on various dates and crystallized it by letter dated 17.4.2006 and had sought arbitration also. It is his submission that the learned single Judge had incorrectly understood the exception carved out in the aforesaid case and has

opined that the date of filing of the counter claims, i.e., 26.9.2011 is the pertinent date. It is urged by him that the Division Bench has correctly determined the date to be 17.4.2006. Mr. Venugopal, learned senior counsel, has disputed the said position by relying upon Section 3 of the Limitation Act which stipulates the limitation to be mandatory.

24. On a careful reading of the verdict in Praveen Enterprises (supra), we find that the two-Judge Bench, after referring to, as we have stated hereinbefore, Sections 21 and 43 of the Act and Section 3 of the Limitation Act has opined, regard being had to the language employed in Section 21, that an exception has to be carved out. It saves the limitation for filing a counter claim if a respondent against whom a claim has been made satisfies the twin test, namely, he had made a claim against the claimant and sought arbitration by serving a notice to the claimant. In our considered opinion the said exception squarely applies to the case at hand inasmuch as the appellant had raised the counter claim and sought arbitration by expressing its intention on number of occasions. That apart, it is also perceptible that the appellant had assured for appointment of an arbitrator. Thus, the counter claim was instituted on 17.4.2006 and hence, the irresistible conclusion is that it is within limitation.

25. Presently to the alternative submission of Mr. Venugopal, learned senior counsel for the appellant. It basically pertains to the nature, scope and gamut of applicability of the exception carved out in Praveen Enterprises (supra) for the purpose of saving a counter claim being barred by limitation. The learned senior counsel would submit that the respondent had crystallized its claims by letter dated 17.4.2006 amounting to Rs.68,63,72,743.08 whereas in the counter claim dated 26.9.2011 filed before the learned Arbitrator amounts to Rs.333,73,35,026/- which is impermissible. In essence, the submission of Mr. Venugopal is that the claims which were not raised in the letter dated 17.4.2006 have to be treated as being barred by limitation. Mr. R.F. Nariman, learned senior counsel for the respondent, on the contrary, has referred to paragraph 11 of the Praveen Enterprises (supra) to buttress his submission that when all the disputes are referred to the arbitrator, he has the jurisdiction to decide all the disputes, i.e., both the claims and counter claims. That apart, the respondent had reserved its rights to quantify the claim. In this regard, he has also drawn inspiration from McDermott International Inc. (supra) wherein this Court has stated that while claiming damages, the amount therefor is not required to be quantified, for quantification of a claim is merely a matter of proof. Mr. Nariman has also commended us to the decision in Bharat Sanchar Nigam Limited and another v. Motorola India Private Limited[8] wherein

it has been ruled that the question of holding a person liable for liquidated damages and the question of quantifying the amount to be paid by way of liquidated damages are entirely different. Fixing of liability is primary while the quantification is secondary to it.

26. In our considered opinion, the aforesaid decisions do not render any assistance to the proposition canvassed by the learned senior counsel for the respondent. We are inclined to think so on two counts. First, in Praveen Enterprises (supra) the Court has carved out an exception and, while carving out an exception, has clearly stated that the limitation for "such counter claim" should be computed as on the "date of service of notice" of "such claim on the claimant" and not on the date of final counter claim. We are absolutely conscious that a judgment is not to be read as a statute but to understand the correct ratio stated in the case it is necessary to appreciate the repetitive use of the words. That apart, if the counter claim filed after the prescribed period of limitation before the arbitrator is saved in entirety solely on the ground that a party had vaguely stated that it would be claiming liquidated damages, it would not attract the conceptual exception carved out in Praveen Enterprises (supra). In fact, it would be contrary to the law laid down not only in the said case, but also to the basic principle that a time barred claim cannot be asserted after the prescribed period of limitation.

27. Mr. Nariman, learned senior counsel, has also contended that the counter claims filed before the learned Arbitrator is an elaboration of the amount stated in the notice and, in fact, it is an amendment of the claim of the respondent which deserved to be dealt with by the learned Arbitrator. In this context, we may refer with profit to the ruling in K. Raheja Construcitons Ltd. and another v. Alliance Ministeries and others[9] wherein the plaintiff had filed a suit for permanent injunction and sought an amendment for grant of relief of specific performance. The said prayer was rejected by the learned trial court. A contention was canvassed that the appellant had not come forward with new plea and, in fact, there were material allegations in the plaint to sustain the amendment of the plaint. The Court observed that having allowed the period of seven years to elapse from the date of filing the suit, and the period of limitation being three years under Article 54 of the Schedule to the Limitation Act, 1963, any amendment on the grounds set out, would defeat the valuable right of limitation accruing to the respondent. The said principle has been reiterated in South Konkan Distilleries and another v. Prabhakar Gajanan Naik and others[10] and Van Vibhag Karamchari Griha Nirman Sahkari Sanstha Maryadit (Registered) v. Ramesh Chander and others[11].

28. In Revajeetu Builders and Developers v. Narayanaswamy and sons and others[12], while laying down some basic principles for considering the amendment, the Court has stated that as a general rule the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

29. In the present case, when it is absolutely clear that the counter claim in respect of the enhanced sum is totally barred by limitation and is not saved by exception carved out by the principle stated in Praveen Enterprises (supra), we are unable to agree with the view of the Division Bench of the High Court that the counter claim, as a whole, is not barred by limitation. Thus analysed, the counter claim relating to the appeal which deals with civil contracts shall be restricted to the amount stated in the letter dated 17.4.2006, i.e., Rs.68,63,72,178.08, and as far as the other appeal which pertains to air-conditioning contract, the quantum shall stand restricted to as specified in the letter dated 21.3.2006, i.e., Rs.19,99,728.58.

30. At this juncture, we may, for the sake of completeness, deal with the justifiability of the interference by the Division Bench in the award passed by the learned Arbitrator. It has been urged by Mr. Venugopal, learned senior counsel for the appellant, that the view expressed by the learned Arbitrator being a plausible interpretation of the contract the same did not warrant interference. We have already analyzed at length how the interim award is indefensible as there has been incorrect and inapposite appreciation of the proposition of law set out in Praveen Enterprises's case. In Rashtriya Ispat Nigam Limited (supra) this Court has opined that the learned Arbitrator had placed a possible interpretation on clause 9.3 of the contract involved therein and hence, the interference was exceptionable. In the present case, the factual matrix and the controversy that have emanated are absolutely different and hence, the principle stated in the said authority is not applicable. Thus, we unhesitatingly repel the submission of the learned senior counsel for the appellant that the award passed by the learned Arbitrator did not call for any interference.

31. Consequently, both the appeals are allowed in part, the judgment of the Division Bench in Appeals Nos. 7 of 2013 and 8 of 2013 is modified and the interim award passed by learned Arbitrator as regards rejection of the counter claims in toto stands nullified. The learned Arbitrator shall now proceed to deal with the counter claims, as has been indicated hereinabove by us. Needless to say, we have not expressed any opinion on the merits of the claims or the counter

claims put forth by the parties before the learned Arbitrator. The parties shall bear their respective costs.

[1] Arbitration Petition No. 570 of 2001 decided on 4.12.2001. [2] (2012) 12 SCC 581
[3] (2003) 5 SCC 705
[4] (2012) 5 SCC 306
[5] (2006) 11 SCC 181
[6] (1988) 2 SCC 338
[7] (1989) 2 SCC 701
[8] (2009) 2 SCC 337
[9] 1995 Supp (3) SCC 17
[10] (2008) 14 SCC 632
[11] (2010) 14 SCC 596
[12] (2009) 10 SCC 84