LIMITATION PERIOD UNDER §37 OF THE ARBITRATION AND CONCILIATION ACT, 1996: A FAUSTIAN BARGAIN

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The Arbitration and Conciliation Act, 1996,('AA') was designed to settle disputes out of courts for quicker results. Logically extended, the judicial oversight of those must also be governed by the similar objective of a quick pace. With the introduction of the Commercial Courts Act, 2015, ('CCA') and its application to arbitral appeals, added speed should have been the easily-inferred objective. However, the provision in the AA for creating the right to appeals, namely, §37, has been bestowed with an interpretation that sedates pace. The provision does not speak about the most crucial aspect of a fast-paceddispute resolution, i.e. limitation. This paper highlights that the judiciary reads this silence as importing both a limitation period and a licence to condone delays against it from the prevailing general law. As just and equitable as it may seem, importing the latter runs counter to the prevailing law. The CCA has provided a hard cap for limitations, with no mention of condonation. While 'no condonation' is doubly suggested by the speedy intent of both the legislations alone, there exist more jurisprudential trends compelling this approach. The Limitation Act, 1963, ('LA') is a general law, which applies its exemptions only if they are invited or if promptitude is not the primary factor governing the special law. Neither is the case with the CCA. This legislation is territorially aggressive and is quick to shut out general laws from applying to its disputes. Moreover, the AA has generally pointed, site by site, where it behaves as a general law itself. This is wherever it cedesits procedural governance to the Code of Civil Procedure, 1908. At those sites, it then behaves like a general law unhesitatingly inviting another of its kind, and where a more wholesome application of the LA made sense. §37 is not one such site. This paper, therefore, argues that reading the availability of condonation for commercial-arbitral appealsis unjustified by every available legal metric.

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I. INTRODUCTION

§37 of the Arbitration and Conciliation Act, 1996,[1] ('AA') does not specify any period of limitation under which a party can file an appeal against the stipulated orders.[2] Of immense vitality, such orders include interim reliefs by-courts/tribunals or judicial decisions on an award.[3] Due to the silence on limitation, the condonation of delays has also been a mysterious subject. The inscrutable silence of §37 doesnot suggest an outright permissibility or prohibition of the same. Thus, began a tale of analytical struggles.

The first plausible solution was to simply juxtapose the provision with §5 of the Limitation Act, 1963 ('LA').[4] This provision allows condonation of delays in bringing a litigious matter to a court's notice. With obscurity in §37's text tying its hands down, the judiciary struggled to execute this solution.[5] The relative comprehensiveness of a cognate provision armed the judiciary to dole out a quick fix. It looked at the other provision where the judiciary similarly deals with an implication of the tribunal's action, i.e. §34 of the AA.[6] It provides for an appeal against a tribunal's award, alongside a discretion for the court to remand it

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[1] The Arbitration and Conciliation Act, 1996, §37.

[2] The orders that may be appealed may emanate from either, courts or arbitral tribunals, acting under the Arbitration and Conciliation Act, 1996. Such appealable orders, under §37, include those "[…] granting or refusing to grant any measure under section 9; setting aside or refusing to set aside an arbitral award under section 34, […] accepting the plea referred in sub-section (2) or sub-section (3) of section 16; or granting or refusing to grant an interim measure under section 17 […]."

[3] *Id*.

[4] The Limitation Act, 1963, §5.

[5] *Seeinfra*, Part II.A on "The Judgment".

[6] The Arbitration and Conciliation Act, 1996, §34.

for reconsideration. The grounds for the appeal require the presence of major defects delegitimising the entire process. These include the disputegoing beyond the scope of the arbitration clause, improper notice in the appointment of arbitrators, invalidity of the underlying agreement, and disputes or the tribunal's composition not in line with the agreement.[7] Apart from the above, the court may then also set an award aside if it comes across two other elements, regardless of them mentioned as grounds.[8] These are the existence of a high-level injury to public policy,or if the award is found to deal with a 'non-arbitrable' subject matter.[9] Order for each of the above seven groundsdeals with not/setting aside an award, which becomes appealable under §37.

A court under §34 may alternatively remand a matter so that the award is reconsidered and the defects are removed. This action is treated akin to a 'refusal to set aside the award', equally appealable under §37.[10] For either an appeal or a remand to occur, an application under sub-section (1) is necessary.[11] Through its sub-section (3), §34 comes with a nuanced setup dealing with the limitation for this application to be made. This has three elements to it. *Firstly*, it specifies the limitation period for the filing of petitions to be three months from the date of the award. *Secondly*, it permits a condonation in case of non-adherence to the specified limitation. *Thirdly*, it has specified a period of thirty days, within which such condonation may be sought. The nuanced framework sewed into §34 was taken as a bar on the application of the LA to it. As opposed to such rich details, §37 does not concern itself with any aspect of limitation at all. Since §37 is not its conceptual substitution in this regard, the judiciary readily applied the provision of condonation in the LA to it.[12]

Previously, the limitation period for §37was a bilateral concern of the AA and the LA. Albeit not precisely a clear-cut position, the limitation period and the availability of condonation wereonly a concern of the two laws. However, in 2015, the Commercial Courts Act, 2015 ('CCA')was introduced with an intent to procedurally govern certain features of the AA connecting to judicial hearings. The new law does spell out a limitation period for appeals under§37 of the AA. In parallel, it preserves the laconic provision's silence on other specifics, thus, convoluting the position around condonation and how it is to be sought. Specifically, the CCA does not speak about the condonation of any delay. More than that, it has no provision like §43 of the AA, which speaks about if and to what degree the LA

[7] The Arbitration and Conciliation Act, 1996, §34(2)(a).

[8] Alpine Housing Development Corpn.(P) Ltd. v. Ashok S. Dhariwal, 2023 SCC OnLine SC 55, ¶¶25-26.

[9] The Arbitration and Conciliation Act, 1996, §34(2)(b); *See* SsangyongEngg. & Construction Co. Ltd. v. NHAI, (2019) 15 SCC 131.

[10] A. Parthasarathy v. E. Springs Avenues (P) Ltd., 2022 SCC OnLine SC 719, ¶3; Union of India v. Madan Mohan Jain& Sons, 2019 SCC OnLine Raj 544, ¶¶13-17.

[11] The text of sub-section (1) stipulates this is a pre-condition only for setting aside the award, but is extended to the requests of remand by case law, *see* Kinnari Mullick v. Ghanshyam Das Damani, (2018) 11 SCC 328.

[12] *Seeinfra*, Part II on "The Bargain that is Borse".

applies to it.The more curious development is that despite the CCA's intrusion, the judiciary seems to have elected not to alter its position.[13] Hence, the limitation/condonation for commercial arbitral appeals has now become a trilateral issue. The introduction of a third law does nothing to address a concern with which the prior laws were struggling to begin with. Its application being an issue in itself, the CCA blurs the troubled zone even further.

The relevant statutory framework, albeit scattered,concerns the limitation on commercial-arbitral appeals and is detailed below. §3 of the LA states that all judicial proceedings must be time-bound.[14] It specifies how the limitation must be calculated, condoned, or deviated from, as per the LA's stipulations. As stated above, §5 of the LA provides for condonation of delays in legal proceedings. The text does not limit itself to delays against the time-frames imposed by the LA. §29(2)[15] of the LA appears to clarify this void. It states that even when the period of limitation is modified for and by the subject law, the remaining LA applies as is. Needless to state, this would include Articles 116 and 117[16] in the Schedule I annexed to it. Clauses (a) and (b) of Article 116 impose limitations of ninety and thirty days for an appeal in civil-commercial disputes to High Courts or other courts, respectively. Article 117 specifies it to be thirty days for intra-High Court appeals.

The AA provides a bridge for the LA's application to arbitral concerns by way of its §43.[17] It states that the LA may apply to arbitrations as it does to a court of law. With the CCA's introduction, §37 appeals from the AA, concerned with a commercial value of or above INR three lakhs,[18] came to be covered by the new law. §13(1A)[19] of the CCA being the responsible provision, it states that the appeal under §37, AA shall now lie to a commercial court set up by the CCA. It also specifies a limitation of sixty days, but does not speak about condonation of any delays. Apart from §13(1A), the CCA also signifies how it aims at expropriating the procedural concerns of the AA. This is by way of §10,[20] which states that all judicial concerns about arbitral-disputes shall, if above INR three lakhs, must be heard before its courts. Suggesting sharp exclusivity, it has §21,[21] which resolves conflicts with any other laws in favour of the CCA. The seemingly sharp exclusivity for an expedited dispute resolution seems aligned with the background the CCA possesses.[22]

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[13] *Seeinfra*, Parts II.A on "The Judgment", Part II.B on "Unarticulated Premises and the Gaps Therein", Part III.A on "The Tale of Hunting a Limitation Period for §37".

[14] The Limitation Act, 1963, §3.

[15] The Limitation Act, 1963, §29(2).

[16] The Limitation Act, 1963, Schedule I, Arts. 116, 117.

[17] The Arbitration and Conciliation Act, 1996, §43.

[18] The Commercial Courts Act, 2015, Explanation (i) to §2(1), §12.

[19] The Commercial Courts Act, 2015, §13(1-A).

[20] The Commercial Courts Act, 2015, §10.

[21] The Commercial Courts Act, 2015, §21.

[22] Sudhir Krishnaswamy & Varsha Mahadeva Aithala, *Commercial Courts in India: Three Puzzles for Legal System Reform*, Vol. 11(1), Journal of Indian Law and Society, 22-24 (2020).

However, the present judicial view contradicts this position. To condone delays in a framework rooted in promptituderesembles an ungainly trade by the courts, as occurs in a Faustian bargain. This entails acquiring something seemingly beneficial through avital sacrifice. The net result of such a trade, however, does more harm than good, contrary to what was intended. In installing condonation's availability for commercial-arbitral appeals, the judiciary acts detrimentally in the same sense. Delays in commercial disputes are not unforeseeable, and as such, it may be argued that the legislature ought to have accommodated the victims of unfortunate circumstances. Hence, the object of having the option to condone may be argued to be fair. However, planting such a remedy when the law has focussed on speed and has accordingly barred it, may generate negative implications. It opens floodgates for seemingly desirable tweaks against legal text, which, in accumulation, may crash the new regime down to the sedate pace of the past procedures. Hence, the offside here is sacrificing the intent of and compliance with the law, and does more damage than the benefit that accrues.

This paperdemonstrates the gaps over which the present position simply leaped, without the authority of law or jurisprudence. The substance of this position is presently traceable to *State of Maharashtra* v. *Borse Bros. Engineers & Contractors (P) Ltd.*('Borse').[23] Hence, the central concern of this paper inevitably revolves around the critique of Borse. The paper primarily argues that provisions of the LA extending or condoning limitation ought to be preferably staved off in cases of §37 appeals qualifying as commercial under the CCA.

The paper begins by explaining the present judicial position on the issue. Part II does so in two parts. *First*, it will initiate the readers into the subject at hand by encapsulating the context it was delivered in, and the court's unpacking of it in Borse. *Second*, it will then extrapolate the decision to extract its unarticulated premises. The paper will then proceed to submit three cumulative arguments against the position it will have described thus far.

Firstly, Part III will suggest that a strict bilateral analysis of the AA and the LA is unjustly ridden with judicial complexities. It will summarise the lethargic analyses towards §37 for discerning its limitation and their impact. Cumulatively, it highlights that there exists a judicial inertia in this position due to a callous disregard for the CCA's enactment. *Secondly*, Part IV will logically extend the suggestion made in Part III by undertaking the overdue trilateral analysis. It argues that the LA's provisions need to have the CCA's, and not the AA's, permissibility to apply to §37 appeals. It will show the negative status of the CCA's permissibility towards §5 of the LA.

Thirdly, Part V will advance the argument against an interpretation that favours the general law over the CCA. It will use the interactions between

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[23] State of Maharashtra v. Borse Bros. Engineers & Contractors (P) Ltd.,(2021) 6 SCC 460 ('Borse').

the CCA and the Code of Civil Procedure, 1908('CPC'),[24] to illustrate the same. It argues that the CPC is readily excluded from application to the CCA in cases of doubt. Part Valso advances an alternative argument. It will sum up all the other instances of judicially inferred limitations in the AA. This then reveals that the LA applies more unhesitatingly to those provisions of the AA which have or base their procedural checkpoints within the CPC. Part VI of the paper offers concluding remarks.

II. THE BARGAIN THAT IS BORSE

The prime argument this paper advances is that with the CCA in place, the issues pertaining to limitation under §37 of the AA have clear solutions. However, a review of the present judicial position is indispensable to such a discussion. This position, in turn, is entirely governed by the decision in Borse, which rules the roost due to a straightforward application of *stare decisis*. Sub-part II. A lays down the court's reasoning in dealing with the issue before it, and the law it formulates out of it. The court examined multiple, if contradictory, threads of reasoning before installing the position that now prevails as law. This sub-part will try to summarise the court's examination of them all and its conclusion. Sub-part II.B then excavates the unspoken foundations the court relies on in reaching its conclusions. It argues that the installed position on limitation and condonation at the stage of §37 of the AA is the logical outcome of the court's assumed premises. However, the outcome will be shown to be faulty, not because of the court's logical processing of those premises. Instead, the reason highlighted shall befaulty/ incomplete premises, to begin with.

A. THE JUDGMENT

In Borse, a three-judge bench of the Supreme Court was sitting in appeal over three judgments delivered by the High Courts of Delhi, Bombay, and Madhya Pradesh. The difference was in the application of a precedent on condonation of delay in the filing of appeals under §37, AA read with §13(1A), CCA.

Previously, in *NV International* v. *State of Assam*[25] ('*N. V. International*') the Supreme Court had approved the applicability of Article 116of the LA to stipulate a limitation period of ninety days for an appeal under §37.[26] The provision's text is explicit in applying to appeals from suits under the CPC. Sub-clause (a) provides a limitation of ninety days if the appellate court is a High Court. Sub-clause (b) imposes a limitation of thirty days if the appeal goes to any other court. It was of the further view that this period is not conclusive in calculating limitation. It held that the justifiability of any delay will be investigated only if

[24] The Code of Civil Procedure, 1908.
[25] *NV International* v. *State of Assam,* (2020) 2 SCC 109 ('NV International').
[26] *Id.*, ¶¶1, 4.

it does not exceed thirty days after the expiry of that period.[27] The court had made a negative comparison of §34(3) with §37of the AA to reach this conclusion.§34 provided for both a limitation period as well as an additional grace period allowing a delay of about thirty days.[28]

Following *Union of India* v. *Varindera Constructions Ltd.*,[29] ('Varindera'), the court limits§5's applicability to only a delay in filing by thirty days, thus, importing the proviso to §34(3) to §37. Varindera had stated that in the absence of express stipulation, the reasonable presumption would be that the appellate court is governed by the same restrictions as the court it sits over in appeal.[30] *N. V. International* justified retaining this cap on the grace period to ostensibly preserve the intent of a speedy arbitration.[31] Summing up the essence of the case,the limitation period was stipulated to be 120 days (of which ninety days was the baseline period and thirty days of conditionally permissible delay).

In Borse, the M.P. High Court had differed from the High Courts of Bombay and Delhiin interpreting it. The latter had refused to condone the delay beyond the period stipulated by *N. V. International.*[32] Contrarily, the M.P. High Court in *MP Poorv Kshetra Vidyut Vitran Co. Ltd.* v. *Swastik Wires*[33] ('Swastik') declared that *N. V. International* was *per incuriam* for disregarding a binding precedent. The precedent Swastik found itself and *N. V. International* bound to was *Consolidated Engg. Enterprises* v. *Irrigation Deptt.*[34] ('Consolidated Engg.').[35] Consolidated Engg. had found §43 of the AA as a cure to the vacuum in legislation's §37.[36] The provision's sub-section (1)[37] applies LA to arbitration procedures

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27 *Id.*,¶4.

28 The Arbitration and Conciliation Act, 1996, §34.

29 Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111.

30 *Id.*, ¶4.

31 *NV International*, *supra* note 25, ¶4.

32 Borse, *supra* note 23, ¶3.

33 *M.P. Poorv* Kshetra Vidyut Vitran Co. Ltd. v. *Swastik Wires,* (2020) SCC OnLine MP 3003 ('M.P. Poorv'); Subsequently overruled, *see*Borse, *supra* note 23.

34 Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169 ('Consolidated Engg').

35 *M.P. Poorv*, *supra* note 33, ¶12.

36 *Seesupra* Part II.A on "The Judgment".

37 "For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 2", *see* The Arbitration and Conciliation Act, 1996, §43(2); "Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper", *see* The Arbitration and Conciliation Act, 1996, §43(3); "Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted" *see* The Arbitration and Conciliation Act, 1996, §43(4).

as LA applies to the courts of law. It took §43(1), AA to mean as extending all the features of LA to AA.[38] This was denoted by its text and almost no exclusion of the LA by the AA's provisions.[39]

However, sites like §43(2)-(4) and §34(3) countered this view by proposing a departure from the LA in their texts.[40] They provide implications pertaining to limitations not sourced from the LA. But these few departures could not render a declaration to the contrary to be inapplicable.[41] These were found excludedsince special law was overriding general law at those specific sites. Yet, this implied that the AA only intended very select departures from the LA.[42] The court was of the view that the LA specified timelines for courts functioning under the CPC, which the judiciary did even when exercising powers under the AA.[43] Hence, if §43(1) equated arbitral processes with judicial proceedings, LA was completely imported to the AA.[44] Notably, the decision dealt with applying §14 and not §5 of the LA to §37, AA, the relevance of which shall be discussed later.[45] Swastik finds Consolidated Engg. to be binding, and found that it went unnoticed by *N. V. International* in violation of *stare decisis*.[46] Resultantly, the High Court in Swastik further held that condonation of delay can occur for any number of days.[47] In effect, the High Court found the capping of the permissible period of delay under §5, LA as baseless.

The issue before the Supreme Court was whether *N. V. International* was valid law.[48] In case of its invalidity, the court needed to confirm the limitation period for appeals under §37 and whether a delay could ever be condonable.[49] Interestingly, it framed issues in a way that made out the validity of *N.V. Internationalas* its supreme concern. However, it only commented on the precedent after settling the issue of condonation of delay.

In effect, the court undertook only a limited analysis as regards the applicability of §5, LA to appeals under §37. It first dealt with the appeals under §37, AA not reaching the specified value threshold as per §2(1)(i) of the CCA, i.e. it must involve a dispute of or greater than a sum of INR three lakhs. The calculation of it varies as per dispute.[50] It includes the money and interest till the filing of a case if the dispute is about the recovery of money. Else, it would include the

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[38] Consolidated Engg., *supra* note 34, ¶¶20, 23, 45.
[39] *Id.*, ¶¶23, 42.
[40] *Id.*, ¶¶42, 53.
[41] *Id.*, ¶¶20, 23, 42.
[42] *Id.*, ¶¶23.
[43] *Id.*, ¶¶21, 41.
[44] *Id.*, ¶¶20, 23, 42, 45.
[45] *Seesupra* Part II.A on "The Judgment".
[46] *M.P. Poorv*, *supra* note 33, ¶¶10-12.
[47] *M.P. Poorv*, *supra* note 33, ¶¶10-12.
[48] Borse, *supra* note 23, ¶2.
[49] *Id.*, ¶3.
[50] The Arbitration and Conciliation Act, 1996, §12.

monetary value of the movable/immovable property and/or the right emanating therefrom. For arbitration, it is discerned by looking at the values claimed in both the claim and the counter-claim. Hence, this was the first preliminary check to be cleared by a commercial-arbitral appeal.

The appeal has to further satisfy §10 and §13 of the CCA. This implies that the appeal should satisfy the jurisdictional requirement of being a commercial dispute lying before a commercial court[51] and then also of being a valid commercial appeal[52]. Upon this cumulative satisfaction,§29(2) of the LA would come into play. This provision applies the LA if its application is not explicitly excluded by the concerned special law. Only an operative assumption in *N.V. International*, Borse explicitly found no such bar built into §37 of the AA.[53] Accordingly, Article 116(a) of the LA shall apply to check if the appeal is filed within ninety days of the passage of the §34 order. If the court under §34 was a bench of the High Court or any other court, the applicable provisions of the LA would be Articles 117 and 116(b), respectively.[54]

The court seems to take the CCA's novel and circuitous framework as a likely cause for genuine delays.[55] For it, details on the condonation, of something as inevitable as delays, serves to further the speedy intent of laws like the AA.[56] It applied§5 of the LA to condone delays as an appropriate remedy to tackle any unjust delays.[57] It reasoned that a tool to screen and condone delays is *first* equally aligned with the aim of a speedy arbitration,[58] and *second* within the confines of judicial review.[59] Notably, it declined a suggestion to homogenise all kinds of §37 appeals by applying the singular limitation specified by Article 137,[60] LA. This provision specifies a limitation of three years for all silent provisions. The court conceded that a variegated timeline changing with the kind of appellate court may be arbitrary.[61] However, it had no right to disturb the legislature's enactment due to disagreement or inconvenience.[62] It also felt that the condonation of delays under Articles 116 and 117 of the LA serves the speedy intent of the AA better.[63] While it does not go into detail, the plausible reason could be that these provisions specify the limitation spanning only a couple of months. Whereas, Article 137 fixes a relatively longer limitation, running into years.

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[51] The Commercial Courts Act, 2015, §10.
[52] The Commercial Courts Act, 2015, §13(1A).
[53] Borse, *supra* note 23, ¶¶23, 34.
[54] *Id*., ¶¶24, 25, 27.
[55] *Id*., ¶¶25, 26, 58.
[56] *Id*., ¶¶27, 32.
[57] *Id*., ¶27.
[58] *Id*., ¶¶27, 32.
[59] *Id*., ¶¶27-28.
[60] The Limitation Act, 1963, Schedule I, Art. 137.
[61] Borse, *supra* note 23, ¶25.
[62] *Id*.
[63] *Id*., ¶27.

In its next leg of analysis, it had to consider applying §5 of the LA to arbitral appeals of the specified value. It noted that the limitation for appeals touching the threshold of the specified value is governed by the specification in §13(1-A) of the CCA.[64] It provides that sixty days is the limitation period for appeals pertaining to arbitral disputes of values greater than or equal to INR three lakhs. In the court's view, this specification of a limitation stood on a different footing than the one provided under §34(3) of the AA. It stated that the AA also provided for a grace period after the limitation in the proviso to §34(3).[65]§13(1-A) of the CCA, like §37 of the AA, was silent on this aspect,[66] i.e., both the provisions are silent on whether a delay is condonable and if so, the specifics of it. While not explicitly stated, the court is extending the pre-existing position on condonation in §37, AA to §13(1-A) of the CCA.

The court stated that this vacuity is also not filled by any other provision in the CCA.[67] The closest contenders, considered and dismissed,[68] were its §14 and §16. The former sets a time limit on a commercial court to settle a dispute, while the latter invites limited application of the CPC[69] to the CCA. The court held §14, CCA to be 'directory' after a review of its text.[70] Whereas, the proviso to §34(3), AA is mandatory in nature.[71] The court, thus, seemed to be stating that this would be a misplaced conflation. No mandatory obligation in §13(1-A), CCA like §34(3), AA could be read through a directory provision. Through §16, CCA it also considered the relevant provision[72] of the CPC that sets a non-condonable time limit to file a written statement.[73] While it held this mandate under the CPC to be mandatory, it deemed importing the same to the silent§37 as inappropriate.[74] This is because the mandate in the CPC did not come solely by a capped limitation and a capped grace-period for delays. Instead, it was their combination with text that erased a right on their cumulative breach.[75] For the court, a capped limitation and a capped period for delay may still be directory,[76] and did not necessarily mean the right to continue proceedings is closed on their breach.[77] If such a mandatory

64 Borse, *supra* note 23, ¶¶25-26, 33.

65 *Id.*, ¶43.

66 *Id.*, ¶¶33-35.

67 *Id.*, ¶39.

68 *Id.*, ¶35.

69 The Code of Civil Procedure, 1908.

70 Borse, *supra* note 23, ¶35.

71 "Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter" (emphasis added); *See*Borse, *supra* note 23, ¶35.

72 The Code of Civil Procedure, 1908, Order V, Rule 1.

73 Borse, *supra* note 23, ¶36.

74 *Id.*, ¶¶35-37.

75 *Id.*, ¶36.

76 The usage of a mandatory tenor in the text of a law does not make it mandatory. It is its combination with a following consequence in case of non-compliance, *seeinfra* Part IV.B, on "The 'Hard Cap' in the Commercial Courts Regime".

77 Borse, *supra* note 23, ¶39.

nature was read into §37, AA, the judiciary would be supplying the provision's breach with a consequence.[78] Presumably,this would involve the right to appeal getting evaporated if delayed. This was not expressly intended by the legislature, and the court could not do what the legislature had not done.[79]

Borse wraps up its conclusion by undertaking further structural analysis of two provisions in the AA and the LA. It looks at §43, AA to state that the provision invites the application of LA to arbitration-related proceedings, regardless of them being in a court or a tribunal.[80] It links it with §29(2) of the LA.[81] This provision states that LA applies to any law or its provisions wherein LA is not expressly excluded. The court was of the view that an absolute exclusion of §5, LA would only come when a limitation provision in the special statute covers the ground 'completely'.[82] That is, only if it provides for both the limitation and bars and for condonation of delay, can it exclude LA by implication. The court had already established the absence of an equivalent to the proviso to §34(3), AA in §37, AA.

Hence, the court applies§5, LA to all appeals under §37. It had concluded sobeforeverifying the legitimacy of N.V. International. It was only subsequently that it brusquely held the said precedent to be *per incuriam*. It justified its view by citing three grounds.[83] *Firstly*, N.V. International did not refer to the CCA in reaching its ratio. This is erroneous, since the CCA exclusively governs the procedural aspects of commercial-arbitral appeals.[84] Arguably, that results in a bar on condonation of delays, for it provides only a limitation and does not invite the LA at all in its text. *Secondly*, the court cited its immediate reasoning to disregard the case insofar as it had hesitated to read a provision to condone delay for appeals filed under§37. *Thirdly*, it found the fixation of thirty days as the grace period under§5, LA as baseless. It also stated that the uniform baseline period of ninety days cannot be supposed for all the appeals when the proviso to §13(1-A), CCA expressly specifies sixty days for a fraction of those.

Pertinently, the court dispelled one other crucial argument to favour the seamless application§5, LA. The decision in *P. Radha Bai* v. *P. Ashok Kumar*[85]('P. Radha') had last confirmed the doctrine of 'unbreakability' in Indian arbitration. Succinctly put, the concept espouses minimal, and only statutorily permissible, exclusion of time in calculating limitation.[86] This was strictly discussed in the context of calculating the lapse of time for §34 of the AA. The court

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78 *Id*.
79 *Id*.
80 *Id*., ¶¶23-24.
81 *Id*; Borse, *supra* note 23, ¶38.
82 Borse, *supra* note 23, ¶¶39, 43.
83 *Id*., ¶43.
84 *Seeinfra* Part IV.A on "The Substantive- Procedural Dichotomy".
85 P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445, ¶¶36.2-36.3.
86 *Id*., ¶¶36.3, 37.

reasoned that the principle's applicability to §34(3) is justified, given the proviso therein granted only a limited favour to an additional lapse of time.[87] Borse refused to extend the principle to §37, finding no conceptual substitution of §34(3) in its text. Without much elaboration, it appended this conclusion with the argument that bodily grafting of §34(3) into §37 would be legislative, and an inappropriate tinkering with an appellate provision.[88]

Hence,N. V. International was held as *per incuriam*.§5 of the LA was applied to appeals under §37, AA read with §13(1-A), CCA. The periods of limitation would differ depending on the court from which the impugned judgment comes, and the commercial value involved.

B. UNARTICULATED PREMISES AND THE GAPS THEREIN

Proposedly, there are clear premises for Borse's reasoning to apply §5 in the absence ofa 'completeness in limitation'. Akin to Varindera, the court finds the algebraic formulation in §34, AA as dispelling §5, LA. Since the text of §37 lacked this bar, both the cases impliedly deem it as exposed to the application of §5, LA.

Furthermore, the court adheres to what may be referred to as a standard of 'express exclusion'. Put simply, this standard which the author posits the court follows,appears to have two elements. *Firstly*, a provision in the AA explicitly addresses the concerns regarding limitation. Illustratively, it must make an express reference to the period of limitation. *Secondly*, the provision's concern must be sufficiently nuanced to tackle limitation effectively, such as by addressing/specifying more than one facet of limitation. For instance, §34(3) addresses both the computation and extension of limitation. If both these elements exist, the LA is excluded from applying to the said provision in the court's view. Hence, this exclusion comes about only in the presence of a complete package. As stated previously, that is not met in the case of §37, AA and§13(1-A), CCA in the eyes of the court.

In fact, the court limitedly indulged itself in noting a conflict between the AA and LA regarding the appeals with the specified value. It had further noted the decision in BGS SGS SOMA JV v. NHPC,[89]('BGS')which held that the CCA overrides both AA and LA in procedural concerns.[90] However, the LA was nevertheless taken to apply.[91] By citing *BK Educational Services (P) Ltd.* v. *Parag Gupta & Associates*[92] ('B. K. Educational'), which deals with the Insolvency and

[87] *Id.*, ¶¶32.1, 32.3.
[88] *Id.*, ¶51.
[89] BGS SGS Soma JV v. NHPC Ltd., (2020) 4 SCC 234.
[90] Borse, *supra* note 23, ¶¶33, 41.
[91] *Id.*,¶¶41-42.
[92] B.K. Educational Services (P) Ltd. v. Parag Gupta, (2019) 11 SCC 633 ('B.K. Educational').

Bankruptcy Code, 2016[93] ('IBC'), it reasons that non-obstante clauses such as §21, CCA exist to limit the LA only where specified.[94] Otherwise, such clauses cannot be taken to upset the general laws prior to them, and which deal with the finer details that govern limitations.[95] Hence, the very mention of limitations meant that the LA applies till excluded.[96]

This reasoning is flawed, for the IBC has a provision[97] that invites the LA to apply as far as practicable. The CCA lacks this feature. This reasoning removed, the only valid argument throughout the judgment against the 'substantive-procedural' dichotomy getseliminated. Hence, the CCA's exclusive hold over procedural concerns ought to have been complied with. Matters of limitation are well accepted to be a procedural concern.[98] The procedural law concerning the substantive right captured by §37 of the AA is the CCA.[99] Arguably, then, the court effectively disregarded this position in reaching the conclusion it reached for Borse. To reiterate for convenience, it perceived a gap in §37, which was otherwise addressed in §34 of the AA. It then checked if the CCA had a provision to tackle this 'infirmity'.In doing so, it only looked at its§13(1-A), §14 and §16.

§13(2) and §21 were arguably more implicative in this regard, but were not factored in by the court.[100] Both provisions render the court's reasoning to read the LA as applying to §13(1-A) to be futile. As stated above, Borse relies on B.K. Educational to dismiss §21, CCA as a barrier to the LA.[101] Borse states that non-obstante clauses cannot subvert the aim of having a clear-cut framework to implement limitation periods.[102] This reasoning apart, Borse's application of §5, LA is grounded in the reasoning that the concurrent intent of 'speed' in both the CCA and the AA is better secured if the LA is not displaced for governing delays.[103] As argued previously, the first line of reasoning is flawed since the CCA deviates from the IBC in not inviting the LA. But the impropriety of Borse to draw from B.K. Educational is greater for there also exists §13(2), CCA. This provision stipulates a strict adherence to all components of §13, CCA. Contrarily, B. K. Educational deals with the non-obstante clause[104] and §60(6) in the IBC.[105]

93 The Insolvency and Bankruptcy Code, 2016.

94 Borse, *supra* note 23, ¶41; B. K. Educational, *supra* note 92, ¶41.

95 Borse, *supra* note 23, ¶41.

96 *Id.*,¶¶41-42.

97 The Insolvency and Bankruptcy Code, 2016, §238-A.

98 NNR Global Logistics (Shanghai) Co. Ltd. v. Aargus Global Logistics (P) Ltd., 2012 SCC OnLine Del 5181, ¶¶15, 18-20; B. K. Educational, *supra* note 92, ¶22.

99 Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715, ¶17 ('Kandla'); M.G. Mohanty v. State of Odisha 2022 SCC OnLine Ori 1070 ('M.G. Mohanty'); GaurangManguesh Suctancarv. SoniaGaurangSuctancar, (2021) 2 ICC 799 (Bom HC) ('Gaurang').

100 See supra Parts II.B on "Unarticulated Premises and the Gaps therein", and *infra*Part III on "Interplay of the Arbitration and Limitation Acts".

101 Borse, *supra* note 23, ¶41.

102 *Id*.

103 *Id*., ¶58.

104 The Insolvency and Bankruptcy Code, 2016, §238-A.

105 *Id*., §60(6).

§60 of the IBC provides the procedural nuances about how the courts under the IBC must operate.[106] Sub-section (6) specifies a certain relaxation of the limitation for appeals governed by the remaining section. However, §60, IBC has no 'strict-adherence clause' akin to §13(2), CCA.

The second line of reasoning about meeting a concurrent intent is equally flawed. Proposedly, it is better attained if the CCA's texts in §13(2) and §21, CCA, are read to mean that no delays are condonable, to begin with. Thus, §13(2) and §21, CCA, hold a vital place in this regard, and Borse had no valid reason to disregard their implication. However, Borse found the silence of §37, AA mirrored by the CCA. Accordingly, it applied the LA to commercial-arbitral appeals. The court premised its conclusion on the collective reading of two provisions of the AA (§37 and §43) and two of those in the LA (§5 and §29). In effect, it was applying the LA to the CCA because the AA was found to be silent on a certain procedural aspect.

It is argued that the AA's silence on matters of limitation is inconsequential insofar as the CCA applies to it. The CCA eclipses the AA in procedural matters of commercial arbitration.[107] Consequently, §43 of the AA has to factor in the CCA in cases of such an eclipse. Either the *status quo* may be maintained if the CCA specifies so, or has to be revised. Both require adequate justifications. However, the court does not sufficiently address §43's limited application to instances where the CCA applies. As will be later demonstrated, the procedural management of a commercial appeal under §37 is strictly an affair for§13(1-A) of the CCA.[108] When the CCA lacks a provision like §43 of the AA, the import of §5, LA ought to have been more reasoned. Even otherwise, the silence of the CCA on a particular procedural aspect is more laden with implications than the one in the AA. In this light, the rigidity of an unanalytical judicial position is disconcerting. Presently, Borse remains unchallenged and has not been scrutinised for this gap. Instead, it is being applied mechanically by courts dealing with applications under §5, LA for appeals under §37, AA read with §13(1-A), CCA.[109]

III. INTERPLAY OF THE ARBITRATION AND LIMITATION ACTS

Borse did not emerge in a legal vacuum. The silence in §37 of the AA was an issue prior to the enactment of the CCA. However, what was forged from its silence was the same as was concluded despite the CCA's presence. This part does not simply highlight this homogeneity in the judicial position on this issue both preceding and following the CCA. The larger intent is to show Borse's lack of legitimacy for an additional reason. Preceding the CCA, the judicial analysis of

[106] *Id.*, §60.
[107] Kandla, *supra* note 99, ¶17; M.G. Mohanty *supra* note 99; Gaurang *supra* note 99.
[108] See infra Part IV.A on "The Substantive-Procedural Dichotomy".
[109] State of Chhattisgarh v. Mahalingashetty and Co. Ltd., 2022 SCC OnLineChh 623.

the LA on §37, AA was flawed, to begin with. The judicial disregard of the newest legislation only carried the flawed analysis over, culminating in a silent Borse. Hence, sub-part III.A first describes the history of reading a limitation into §37, AA. It will reveal that the basic legal standards to import the LA's §5 are not met in the provision's case. Sub-part III.B follows this up by arguing that Borse has two misgivings, *first* its own flawed analysis as discussed in Part II.A, and *second* preserving a flawed analysis from the past. Overall, this Part will argue that irrespective of the CCA's implication, the lacking perspicacity of Borse on two fronts alone makes it an inchoate decision.

A. THE TALE OF HUNTING A LIMITATION PERIOD FOR §37

Arguably, the CCA constitutes to be a conclusive procedural code for domestic commercial arbitrations reaching courtrooms. The scope of this argument is strictly about the interaction of §37, AA with §13(1-A), CCA. However, this first begs the question: what was the procedural ground covered by §37 *per se*? Thus, it is necessary that §37's standalone procedural completeness is first discerned, independently of the CCA's impact on it.

This examination was notably initiated by the Bombay High Court in *ONGC* v. *Jagson International*[110] ('Jagson'). Therein, the absence of a similar provision such as §34(3) in §37 was taken as very deliberate.[111] The court felt compelled to reach this conclusion given that the legislature had otherwise specified timelines in the AA, wherever necessary. Apart from §34, the instances cited therein included that of §11,[112]§13,[113] and §16[114] of the AA. Hence, the court construed the silence under §37 as a deliberate feature to avoid §43, AA and not a thoughtless gap to invite the LA.[115] In an extreme interpretation, it was held that there was no limitation in filing such appeals.[116] Pertinently, the applicability of §5 of the LA was not an issue before the court.

Further, the Supreme Court in Borse had also undertaken a similar structural analysis. In taking note of provisions in the AA with stipulated timelines, it had gone much farther than Jagson in terms of specificity. It took note of §9(2),[117] §11(4),[118] §11(13),[119] §13(2)-(5),[120]§29A,[121]§29B[122] and §33(3)-(5)[123] of the

[110] ONGC Ltd. v. Jagson, 2005 SCC OnLine Bom 814 ('ONGC').
[111] *Id.*, ¶¶14-15.
[112] The Arbitration and Conciliation Act, 1996, §11(13).
[113] *Id.*, §13(2).
[114] *Id.*, §16(6).
[115] ONGC, *supra* note 110, ¶¶14-15.
[116] *Id.*
[117] The Arbitration and Conciliation Act, 1996, §9(2).
[118] *Id.*, §11(4).
[119] *Id.*, §11(13).
[120] *Id.*, §§13(2)-13(5).
[121] *Id.*, §29A.
[122] *Id.*, §29B.
[123] *Id.*, §§33(3)-33(5).

AA.[124] Coincidentally, none of those pack the stipulated timeline with any express provision tackling the condonation of delay. However, Borse reached the conclusion which was diagonally opposite to the one in Jagson. It held the lack of specificity to be a signal to invite the LA's application.[125] Interestingly, one implication of Borse is that §5, LA ought to become applicable to the many provisions it cited for structural analysis.

Coming back to the primary concern, the difference in approaches taken by Jagson and Borse is explained by the intervening decision in Consolidated Engg. This decision also, much like Jagson, predated the enactment of the CCA. The court was determining the applicability of §14, LA in calculating a time-lapse under §34(3).[126]§14 of the LA is another 'ameliorating' provision like its §5. A successful application of it excludes the time invested in good faith prosecution whilst calculating limitation.[127]

As discussed in Part II.A, Consolidated Engg. found the said provision from the LA to be applicable. It resolved the issue by liberally reading §43, AA as a strong magnet for the LA, i.e. the former was said to attract the latter's application to the greatest possible degree.[128] It was stated that the LA was nowhere expressly excluded *in toto* in the AA.[129] §43 was said to carry with it an in-built presumption that the LA will apply as is to arbitral proceedings before the court.[130] Elaborating further, it was said that the provision's main objective was its application of the LA to arbitral stages preceding the judicial ones.[131] This was taken as emblematic of the LA's strong applicability to special laws, failing which LA's §3 would be rendered otiose.[132] Elaborating further, the concurring judgment describesthe AA as containing only a few departures from the LA, mostly in the form of different timelines.[133] Additionally, it held that the applicability of the ameliorating §4 to §24 of the LA should always be preferred in cases of doubts.[134]

The court in Consolidated Engg. then lays down a proposition that becomes a foundational premise in Borse, i.e. the relevant provision of the general law should be explicitly barred by the special law's provision.[135] More specifically, §14 of the LA was nowhere expressly barred by §34 read with§43, AA.[136] In light

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[124] Borse, *supra* note 23, ¶27.
[125] *Id.*, ¶¶33-34, 41-42, 54-55.
[126] Consolidated Engg., *supra* note 34, ¶¶7, 10.
[127] The Limitation Act, 1963, §14.
[128] Consolidated Engg., *supra* note 34, ¶¶20, 23.
[129] *Id.*, ¶20.
[130] *Id.*, ¶23.
[131] *Id.*
[132] *Id.*, ¶20.
[133] Consolidated Engg, *supra* note 34, ¶42.
[134] *Id.*, ¶¶20, 27, 40, 43.
[135] Also reiterated in Assam Urban Water Supply and Sewerage Board v. Subash Projects and Mktg. Ltd., (2012) 2 SCC 624, but by collectively reading §§2(j) and 4 of the Limitation Act, 1963.
[136] Consolidated Engg., *supra* note 34, ¶27.

of this reasoning, the court applies§14 of the LA to the petitions under §34. The core reasoning of the majority seems to be that if the limitation is sourced from the LA, so should the exemptions. To convey this as the reasonable interpretation of the AA-LA framework, it made an illustration out of §37, AA.[137] The provision's complete silence on any aspect of limitation could not have been taken that the LA was excluded.[138] For, that would mean no limitation for utilising §37 existed, the court asserts.[139]

The only reasonable interpretation, then,would be to reada limitation-period into §37, AA through the LA.[140] However, any period of limitation from the LA could be borrowed from it only because the LA obligates all proceedings to have one.[141] That is,it is dueto §3 in the LA that provisions such as §37, AA can be made time-bound and the intent of the AA, preserved. While §3, LA creates and applies limitations for judicial proceedings, it equally enables amelioration for the same.[142] Hence, when a provision in the special law covers no aspect of limitation, §3 of the LA brings the entire LA, including limitation and relaxations, to it.[143] Else, if it does cover certain specifics, §3 of the LA can supply all but those aspects from the LA.[144]

Consolidated Engg's suggestion of applying all of LA to §37, AA was converted into a holding by the Bombay High Court in *ONGC Limited v. Dinamic Corpn.*[145] It stated that the applicable limitation would depend upon the court from which the appeal arose.[146] As stated earlier, Articles 116 and 117, Schedule I of the LA apply different limitations depending on whether the appeal is to/within a High Court or to a different court.[147] The court stated that the application of limitation would similarly check the appellate court for §37, AA.[148] The court took the application of §5 of the LA to all the appeals as a given.[149]

As Part II.A discussed, Consolidated Engg. has been vitally relied upon by Borse. It is then notable that Consolidated Engg. had rejected a decision of equal bench-strength, wherein §5 of the LA was refused to be applied to §34, AA. In *Union of India* v. *Popular Construction Co.*[150] ('Popular Construction Co.'), the Supreme Court had determined the proviso to §34(3) as a hard cap against 'any'

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137 Consolidated Engg., *supra* note 34, ¶38.
138 *Id.*
139 *Id.*
140 *Id.*
141 *Id.*, ¶40.
142 *Id.*
143 *Id.*, ¶¶40, 43.
144 *Id.*
145 *ONGC Ltd. v. DinamicCorpn.,* 2012 SCC OnLine Bom 1540.
146 *Id.*, ¶¶2, 6, 9.
147 See*supra* note 3.
148 *Id.*
149 *Id.*, ¶10.
150 Union of India v. Popular Construction Co., (2001) 8 SCC 470.

extension of limitation.[151] That is, it seems to state that in providing a singular and restricted relaxation to the limitation, §34 of the AA is denotative, i.e. it signals that it does not intend for the LA's ameliorative provisions to apply at all. The decision is relevant for it is taking a different approach to how AA imports ameliorating provisions from the LA. Both precedents seem to contradict each other. It was in *Simplex Infrastructure Ltd.* v. *Union of India*[152] ('Simplex') where the court reconciles Consolidated Engg. With Popular Construction Co.[153] Simplex suggests that the provisions in the AA must be tested clause-by-clause to check whether any provision from the LA is excluded. Illustratively, §34(3) excludes §5, LA by stating that no condonation may be permitted other than the limited exception it carved. However, it does not touch the subject with which §14, LA deals with. As such, §14, LA was intended to apply but §5, LA was not. Hence, Simplexholds that some express manifestation of a bar must exist.[154]

This is a notable shift in standard from Consolidated Engg. The case of Consolidated Engg. seemed to suggest that the excluding provision must mention/compel an inference about which provision of the LA is dispelled. Whereas, Simplexseems to require some sign about what is to be excluded. If the same logic extends to §13(1-A) and §(2) of the CCA, which provide for a limitation and then ban the slightest deviation from it, the LA appears to be wholly barred. An express manifestation of a bar against LA to this site of the CCA, exists in the second subsection. However, Simplex was nowhere discussed in Borse.[155] The decisions discussed in this Part predate the enforcement of the CCA as well as Borse. They only mechanically applied §5, LA at the stage of §37, AA.[156] Consolidated Engg. came with more reasoning, but suggested the same position. It requires that there be a conclusive bar to any provision from the LA sought to be applied. However, the standard it espouses for AA's interaction with the LA finds a counter in Simplex. The standard for exclusion is much lower than the one suggested by Consolidated Engg. That is, the LA must be read as excluded on the slightest sign of such an intent. Yet, Borse reaches the conclusion of the older decisions. In doing so, it relies on Consolidated Engg., at the expense of Simplex. It borrowing from the said cases and retaining the position is proposedly doubtful, for it was differently placed –unlike the decisions discussed in this Part, it had to deal with the novel CCA.

B. AN ENDURING RIGIDITY: THE CONCERN WITH BORSE

After the CCA came into force, the Supreme Court pertinently handled this issue in a case apart from Borse, namely in *Varindera. As stated in Part*

[151] *Id.*, ¶8.
[152] Simplex Infrastructure Ltd. v. Union of India, (2019) 2 SCC 455.
[153] *Id.*, ¶¶11, 14.
[154] *Id.*
[155] For the sake of clarity, all three decisions, namely, Consolidated Engg., Popular Construction and Simplex, emanated from division benches.
[156] Pub. Works Department Rajasthan v. Bhawan Va Path Nirman (Bohara), Special Leave to Appeal (Civil) No. 19790/2012; Jyoti Sarup Mittal v. Abhiyan Coop. Group Housing Society Ltd., Civil Appeal 6922 of2015, Order dated September 9, 2015 (Supreme Court).

II.A, it verbatim grafted §34(3) into §37 of the AA.[157] The proffered justification was that an appeal denotes the continuation of the proceeding initiated in the court of the previous instance.[158] Akin to N. V. International, this decision expressly ignored the impact of the CCA for this analysis.

Subsequently, N.V. International preserved the crux of *Varindera* in substance, but gave it a different form. The primary concern in N.V. International was additionally determining the validity of condonation of delays at the stage of §37, AA and not just specifying the limitation period. *As mentioned in Part II.A,* N.V. Internationalretained the same arithmetic as *Varindera (ninety + thirty days)*. However, it had effectively applied Article 116(a) from the LA to determine the uniform baseline period of ninetydays, as opposed to reading§34(3) as the source.[159] As stated previously, it problematically held the ninety-day period as uniformly applicable to both inter and intra-court appeals, ignoring the nuances noted by the Bombay High Court. Akin to *Varindera,* it did not even mention the CCA in its analysis. For the thirty-day grace period, it followed *Varindera* by mirroring the proviso to §34(3).[160] But the very source of this grace period was explicitly made out to be §5, LA.[161]

It is submitted that the first problem with Borse emanates from it adopting the core reasoning of Consolidated Engg. To preclude a provision of the LA from applying to the AA, the decision originated the standard of 'express exclusion'. Previously, *Hukumdev Narain Yadav* v. *Lalit Narain Mishra*,[162] gave a very sound rationale for establishing a significantly lower 'exclusion standard'. The decision was in the context of the LA conflicting with the Representation of People Act, 1951.[163] It had also espoused a standard of express exclusion, but only for a select few provisions of the LA. It had cleaved the provisions of the LA into two neat categories, computation and extension.[164] It expressly lumped §4 to §24, LA[165] in the latter category, and called them as relatively lacking in compulsion.[166] It reasoned that§29(2), LA selectively refers to computation, and not extension, of limitation.[167] As opposed to the Consolidated Engg. line of decisions, it then stated these to be subject to an 'implied exclusion' standard.[168]

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[157] Union of India v. Varindera Constructions Ltd., (2020) 2 SCC 111, ¶4.
[158] *Id*.
[159] *N.V. International*, *supra* note 25,¶¶*1-4*.
[160] N.V. International, *supra* note 25,¶3.
[161] *Id*., ¶4.
[162] HukumdevNarain Yadav v. Lalit Narain Mishra,(1974) 2 SCC 133 ('Hukumdev'); This position was followed by cases such as Gopal Sardar v. Karuna Sardar, (2004) 4 SCC 252 and Fairgrowth Investments Ltd. v. Custodian, (2004) 11 SCC 472;Tacitly disagreed with inMukri Gopalan v. CheppilatPuthanpurayil Aboobacker, (1995) 5 SCC 5.
[163] The Representation of People Act, 1951.
[164] Hukumdev, supra note 162, ¶17.
[165] The Limitation Act, 1963, §§4-24.
[166] Hukumdev, *supra* note 162, ¶¶17-18.
[167] *Id*., ¶¶18-19.
[168] *Id*., ¶17; Similar position taken inPallavSheth v. Custodian, (2001) 7 SCC 549.

Admittedly, the 'implied exclusion' standard may not be strictly binding with regard to the interaction of the AA and the LA. However, it applies due to the judicial reading of the exhaustiveness of the AA. As noted in *Fuerst Day Lawson* v. *Jindal Exports Ltd.*[169] ('Fuerst'), the AA is a self-contained and an exhaustive code. It was consequently stated that in matters of procedural grey areas, an approach of 'negative import' needs to be adopted.[170] This approach, it seems to suggest, means that two cumulative tests shall be used to read the AA's text. *Firstly*, a provision not explicitly mentioned should be preferably deemed as impermissible.[171] *Secondly*, the legal implications provided by the AA must be strictly followed.[172]

It is argued that applying Fuerst's 'negative import' approach and the position on §29(2), LA, an implied exclusion of §4 to §24, LA should be preferred. The grey area concerned is the complete silence in §37 of the AA. As per Fuerst's first test, it then excludes both the computation and extension provisions of the LA. In parallel, Fuerst's second test compels that §43, AA must be equally adhered to. This provision applies the LA to arbitration-related proceedings as it does to judicial proceedings not concerned with the AA.[173] The latter follows the standard developed for §29(2) of the LA. As iterated, this standardlays down that only a computation provision shall apply, despite an implied exclusion. Whereas, the extension provisions must crumble. Since§5, LA is an extension provision,[174] the implied exclusion of §37, AA filters it out but lets a limitation period from the LA pass through. However, Borse applies a limitation period as well as an extension provision to §37, AA.[175] In effect, it bestows§5, LA with the same compulsive force as LA's computation provisions. In other words, it does not apply the LA as it does to courts, thus, deviating from the text of §43(1), AA. Thereby, it violates Fuerst's second test.

Regardless of the above, the interpretation of only importing a limitation is more aligned with catalysing arbitration, the core intent of the AA. Approached either way, the deeper problem highlighted in this Part is the judiciary's inexplicable rigidity. Demonstrably,the position on §5, LA remains largely unperturbed despite the CCA's enactment. Notable cases from Consolidated Engg. to Borse apply §5, LA unabatedly to §37, AA. The Jagson approach is admitted to be extreme insofar as it suggested no limitation for filing appeals under §37. In that light, the import of the LA to govern permissible periods of appeal and delay is not by itself problematic. However, no case deeply scrutinises the implication of the CCA on §5, LA. Borse only tweaks the period of limitation for the largest

[169] Fuerst Day Lawson Ltd. v. Jindal Exports Ltd., (2011) 8 SCC 333.

[170] *Id.,* ¶¶84, 89.

[171] *Id.,* ¶¶89-91.

[172] *Id.***,** ¶¶75, 89.

[173] Consolidated Engg, *supra* note 34, ¶23.

[174] Hukumdev, *supra* note 162**, ¶¶17-18.**

[175] *Seesupra* Part II.A on "The Judgment".

fragment[176] of §37 appeals considering§13(1-A), CCA. However, Borse inherits its predecessor's holes in reasoning. As discussed, its application of §5, LA revolved around inferences drawn from §37's text.

When a catalyst-procedural law[177] is added to the larger framework, a continued comparison of §34 and §37, AA to reach a conclusion about condonation would be inchoate. Illustratively, this would be flawed since the CCA lacks a provision such as §43(1), AA. Applying a position in which §43, AA was a crucial factor[178] could not have been done without reasons. Yet, this is what Borse does. Further, this is signified by the implication of P. Radha. Therein, §17 of the LA was refused to be applied to compute lapse of limitation under §34(3).[179] The provision specifies the point of inception for limitation in cases of fraud or mistake. The case followed the express exclusion standard. The case inexplicitly follows the logic in Simplex –it searched for some, yet specific, red signal against §17, LA within §34, AA. It stated that the latter provided a specific starting point for calculating limitations. This was the date of receipt of the award.[180] If §17 of the LA were to be applied, the point of initiation would shift to the instance when fraud is discovered by one of the parties. It refused such a judicial overwriting of§34(3).[181]

Notably, the text of §37, AA does not reveal any such point of initiation. Consequently, Radha's logic may suggest applying §17, LA to all the §37 appeals. However, §13(1-A), CCA specifically provides the trigger-point of limitation as starting from the date of the impugned order.§17 of the LA applying to appeals of the specified value under the CCA would be an uneasy proposition. Either a revision should be the subject of a focused analysis, or there should exist a justification for preserving the *status quo*. The CCA's implications on the interplay of §37, AA and the LA cannot be simply taken for granted. Hence, a hard stop against §5, LA is a proposition that could have been better addressed in Borse. Thus, a significant analytical pivot is amiss due to the reckless disregard of the CCA. Borse continued to view §5 of the LA as an exclusive conflict between the AA and the LA. It will now be proposed that the CC Astaves off provisions on the extension of limitation.

IV. THE THIRD INGREDIENT: THE IMPLICATIONS OF THE COMMERCIAL COURTS ACT

So far, the paper has discussed the courts' inclination to apply the LA to §37, AA. The latter's silence on limitation has been made out to be the root cause for this conclusion. However, the intrusion of the CCA should have

[176] Borse, *supra* note 23, ¶33.
[177] See supra Part III.A on "The Tale of Hunting a Limitation Period for §37".
[178] *Seesupra* Part II.A on "The Judgment".
[179] P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445, ¶¶33.2, 37, 39, 42.
[180] *Id*.
[181] *Id*., ¶36.2.

led the courts to reconsider its position. The reason is that the CCA was made to address §37 of the AA among other provisions from across legislations on civil-commercial disputes.[182] This development, along with the CCA's larger intent to speed up addressing disputes over which it would have jurisdiction, has a single implication.[183] Namely and arguably, the limitation period for disputes covered by the CCA ought to be strictly viewed.

This Part makes the afore said argument cumulatively. Sub-part IV.A will discuss that the courts have recognised the CCA as completely taking over the AA in procedural concerns. It will show that the crux of the CCA's overlap with the AA is so that it streamlines the procedural facet of commercial-arbitrations reaching courts. Even if there were a procedural facet to the AA, it gets eclipsed to the degree the CCA applies to it. Sub-part IV.B drives home the point that the limitation period of §37, AA is then an exclusive concern for the CCA. Given the CCA's text forecloses the acceptance of delays, the appeals under §37, AA must toe the legislative line.

A. THE SUBSTANTIVE-PROCEDURAL DICHOTOMY

The CCA's enactment compelled a relook of the AA's seemingly procedural provisions. Fuersthad already declared the AA as a very exhaustive and self-contained code. The discussion considering the CCA notably began in *Kandla Export Corpn.* v. *OCI Corpn.* ('Kandla').[184] Therein, the Supreme Court had to determine the more precise limits of Fuerst, given that the CCA had emerged and was actively tinkering with the procedural nuances of the AA. This sub-part will argue that the decisions establish a clear position, that the CCA's enactment squarely boxes §37, AA in the substantive category of laws. This implies that the only valid reference for determining limitation in such appeals would be the CCA. It is argued that discerning the applicability of LA to §37, AA should exclusively involve an analysis between LA and the CCA.

Kandla, like Fuerst, was dealing with a provision that dealt with international arbitration. Nevertheless, it conducted a comprehensive structural exercise overall to determine the interplay between the AA and the CCA. The case preceded the amendment[185] which inserted sub-section (1-A) between §13 of the CCA and its proviso, both of which remained wholly unaltered by it. Hence, its remarks about the proviso to the present §13(1-A) carry heavy significance. The issue urged was whether an appeal could lie under §13(1), CCA even if it was barred under §50, AA.[186] *Inter-alia,* §50 declares a court order on the enforcement

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[182] *See supra* Part III.A on "The Tale of Hunting a Limitation Period for §37".

[183] *Id.*

[184] Kandla,*supra* note 99.

[185] The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018.

[186] Kandla, *supra* note 99, ¶¶1, 13.

of foreign awards as appealable.[187] The portions of the decision which refer to §37, AA are directly relevant. The court turned to §37, AA to recognise a high standard of exclusivity built into §13(1), CCA.[188] The provision selectively cites §37 of the AA as appealable under it. The court reasoned that by way of the proviso, the Parliament wanted to clarify that what was not appealable under §37 could not be brought into the fold of §13(1), CCA.[189] In other words, the provision was seen to be only qualifying the generality of §13(1-A).[190] The court also mused that this could be the case due to the 2015 amendment[191] to §37, AA incidentally brought about at the same time as the CCA's enactment. The amendment had declared §8,[192] AA as non-appealable under §37. Thus, the reference to §37, AA in §13(1), CCA was said to be reiterating the same bar.[193] This latter reasoning was subsequently adopted by the Kerala and Delhi High Courts for declaring§8, AA as non-appealable under the CCA.[194]

Hence, Kandla summarised the existence of a reference to §37, AA in a proviso to §13(1-A), CCA to communicate as thus. The proviso in the CCA referring to §37, AA was held to be effectively declaring the CCA to be a mere forum of appeal.[195] It gleaned the legislative intention behind the CCA to be straightforward, i.e.§13(1-A) of the CCA shall completely govern any procedural concerns of §37, AA.[196] In other words, any procedural steps/specifications mentioned in the text of §37, AA shall stand nullified if the CCA applies to the dispute. It factored in the 'negative import' approach of Fuerst, which had declared §50 to be final unto itself.[197] It reasoned that since the CCA intends to expedite proceedings, §13 of the CCA cannot possibly be read to denude this declaration of Fuerst.[198] The court's reasoning is proposed to be technically sound. Failing such an interpretation, the CCA would otherwise be re-openinga possibility of an appeal for a closed right.

Subsequently, BGS converted Kandla's remarks into a binding precedent for §37, AA.[199] Therein,§13(1-A), CCA was sought to be relied upon as a residuary appeal provision.[200] §37, AA's text did not seem to cover the ground of appeal.[201] The court declined to accept this argument. Approving Kandla's obiter, it stated that the 'substantive right to appeal' emanates independently from §37,

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[187] The Arbitration and Conciliation Act, 1996, §50.
[188] Kandla,*supra* note 99, ¶¶13, 14, 21.
[189] *Id.*, ¶¶14-15, 21.1.
[190] *Id.*, ¶13.
[191] The Arbitration and Conciliation(Amendment) Act, 2015.
[192] The Arbitration and Conciliation Act, 1996, §8.
[193] Kandla, *supra* note 99, ¶21.
[194] Oommen Thomas Panicker v. Monica Constructions,2021 SCC OnLine Ker 3617.
[195] Kandla Export Corpn. v. OCI Corpn., (2018) 14 SCC 715, ¶¶22-23.
[196] *Id.*, ¶17.
[197] *Id.*, ¶19.
[198] *Id.*, ¶¶19-20.
[199] BGS SGS Soma JV v. NHPC, (2020) 4 SCC 234, ¶19.
[200] Kandla, *supra* note 99, ¶4.
[201] *Id.*

AA.[202] The CCA was held to be only a procedural handler, and not a source, for this right.[203]

It is pertinent to note that a provision on appeal has always been considered to be a substantive concern.[204] Traditionally, 'limitation' has been stated to be a procedural concern. The underlying reasoning is that limitation is only a factor in the enforcement of a substantive right.[205] It does not generate any further rights, but only determines the governance of a pre-existing right.[206]

However, the essence of the 'substantive-procedural dichotomy' in the context of the AA and the CCA is best illumined by the Orissa High Court in *M.G. Mohanty and* v. *State of Odisha* ('Mohanty')[207] and the Bombay High Court in *Gaurang Mangesh Suctancar*v. *Sonia Gaurang Suctancar*[208] ('Mangesh').

In Mohanty, the concerned State Government had designated a certain court as apposite for hearing commercial-arbitration petitions.[209] The designated court was inferior to the grade of a Principal Civil Court. Notably, the latter happens to be the lowest-graded court mentioned in the definition of 'courts'[210] for the purposes of the AA. Under the designation, a court transferred pending commercial-arbitration petitions to the assigned court.[211] This transfer order became the subject of a judicial challenge. It was contended that §21 of the CCA was to be applied to overcome a conflict between the designation of courts under the AA and the CCA.[212] The court crucially distilled the previous rationales of Kandla and BGS. It held that there can be no collision if a substantive-procedural dichotomy truly exists.[213] In other words, the court seems to be stating that procedural provisions of the AA stand eclipsed insofar as they conflict with the CCA.

The court in Mohanty borrowed support from the factually similar Mangesh. Therein, the Bombay High Court held that the permissibility to change the forum of adjudication is a procedural phenomenon.[214] Given the substantive-procedural dichotomy, this was held to be singularly a concern for the CCA.[215] Hence, both courts held that the designation of fora does not lead to any perceiv-

[202] *Id*., ¶¶12, 13.
[203] *Id*.
[204] GarikapatiVeeraya v. N. Subbiah Choudhry, AIR 1957 SC 540.
[205] Thirumalai Chemicals Ltd. v. Union of India, (2011) 6 SCC 739.
[206] NNR Global Logistics (Shanghai) Co. Ltd. v. Aargus Global Logistics (P) Ltd., 2012 SCC OnLine Del 5181.
[207] M.G. Mohanty, *supra* note 99.
[208] Gaurang, *supra* note 99.
[209] M.G. Mohanty, *supra* note 99, ¶4.
[210] The Arbitration and Conciliation Act, 1996, §2(1)(e).
[211] M.G. Mohanty, *supra* note 99, ¶5.
[212] *Id*., ¶¶30, 37.
[213] *Id*., ¶¶53-54.
[214] Gaurang, *supra* note 99, ¶¶55, 70, 78, 100.
[215] *Id*., ¶¶63, 69.

able conflict between the AA and the CCA.[216] Consequently, §21 of the CCA does not come into play. Thus, both courts held that any procedural specification of the CCA should be taken as definitive. There is no need to analyse the provisions of the AA addressing the same subject. As such, the designation was held as procedural, implying that it is both valid and retrospective.[217]

Therefore, both decisions denote that the substantive-procedural boundaries always keep the CCA and the AA in a state of harmonised equilibrium. The court in Mohanty reinforces this approach to an equilibrium-oriented dichotomy with an additional reason. It states that the AA had the undisputed objective of speeding up arbitration.[218] However, the CCA shared the same objective. Arguably, the CCA was thus viewed as aiming at what may be termed as a 'further catalysis' of commercial-arbitral proceedings. Mohanty hints this is a compelling reason why seemingly non-substantive issues should be readily categorised as determinations for the CCA.[219] This harmonised view of both the CCA and the AA makes way for a clear-cut procedural governance.

However, the cases discussed in Parts II and III disregarded this substantive-procedural dichotomy discussed herein. They confined their analyses to the silences in the text of§37 of the AA, a provision conferring substantive rights. The focus of the deeper scrutiny ought to have been the CCA, the procedural law in this case.

B. THE 'HARD CAP' IN THE COMMERCIAL COURTS REGIME

Part IV.A argued that the cases discussed in Parts II and III did not devote any scrutiny to the CCA as the procedural handler of the AA. This sub-part argues that the contrary would have led to the discernment of a hard cap on the limitation period,effectively shielding it from §5, LA.

The crux of the rigid ceiling on the time limit in §34 was largely drawn from the presence of the following phrase in the proviso to its sub-section (3) – "but not thereafter".[220] Along with the presence of an arithmetically specified period of limitation, this was taken to be precluding §5, LA from applying. In §13(1-A), CCA, an arithmetic figure of sixtydays is similarly specified for appeals of a specified value. This stipulation is immediately followed by §13(2), which states that non-adherence to the provisions of the CCA would disqualifyan attempted appeal.[221] Arguably, §13, CCA has expressly shown complete intolerance for the slightest deviation from itself.

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216 M.G. Mohanty, *supra* note 99, ¶53.

217 *Id.*, ¶¶36, 53.

218 *Id.*, ¶¶41, 53, 54.

219 *Id.*, ¶54.

220 Union of India v. Popular Construction Co., (2001) 8 SCC 470, ¶¶7, 12.

221 The Commercial Courts Act, 2015, §13(2).

Even viewed through the prism of procedural law, §13 of the CCA stands out for being definitively mandatory in nature. In *State of Bihar & Ors. v. Bihar Rajya Bhumi Vijas Bank,*[222] *the Supreme Court settled the debate on what constitutes a mandatory provision in the context of deciding the same for §34(5), AA.* In settling a large set of conflicting precedents across statutes, it had laid down a twin test for determining the same.[223] This test involves looking for a penal consequence and the power of wresting a vested right, in the concerned provision. If both exist, the provision would be mandatory in nature.[224] As stated above, §13, CCA does both wherein any deviation from its §13(1-A) disqualifies an appeal under §37, AA. This penal consequence amounts to the forfeit of a substantive right to appeal granted by the AA. Hence, §13 of the CCA and its constituent subsections are submitted to be mandatory. As a consequence, the sixty-day limit under §13(1-A) is proposed to be non-condonable.

As stated in Part II.A, Borse had held this to be the nature of Order VIII, Rule 1 read with Order V, Rule 1 CPC.[225] The court drew a negative comparison to declare §37, AA as lacking the same mandatory tone in its text. Its reasoning did not analyse the nature of §13(1-A), CCA, which comes across as mandatory due to the reasons cited above.

It is submitted that the procedural exhaustiveness of the CCA with the mandatory nature of its §13 obliterates the central holding of Borse. The decision had applied§5 of the LA to §37 appeals reaching the CCA's threshold of 'specified-value'.It is these appeals that are covered by the sixty-day limitation,exclusively,under the CCA. Since §13(2), CCA is mandatory and procedural in its tenor, a strict approach that helps eliminate what is not written, is appropriate.[226] Pertinently, it is a procedural handler for a self-exhaustive code, which is the AA. For procedural laws which relate to such exhaustive codes, an exclusion of unwritten provisions of the LA requires a simple indication, i.e. they need only specify a limitation period different from that of the LA.[227]

It is true that §29(2), LA states that a new limitation period in another statute shall be treated as if it belonged from the LA. However, the larger aim of such complete laws is to strictly cover the aspects of a certain domain of the law.[228]

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[222] *State of Bihar* v. *Bihar Rajya Bhumi Vijas Bank Samiti,* (2018) 9 SCC 472 ('Bihar Rajya'); Siddharth Ratho & Tanisha Khanna, *Supreme Court of India 'Rules Out' the Rulebook in Favor of Substantive Rights,* Kluwer Arbitration Blog, September 21, 2018, available at http://arbitrationblog.kluwerarbitration.com/2018/09/21/supreme-court-of-india-rules-out-the-rulebook-in-favor-of-substantive-rights/ (Last visited on May 8, 2022).

[223] Bihar Rajya, *supra* note 222, ¶16.

[224] *Id.*

[225] Borse, *supra* note 23, ¶¶35-37.

[226] Borse, *supra* note 23, ¶¶14, 21.

[227] CST v. Parson Tools and Plants, (1975) 4 SCC 22, ¶¶10-15 ('CST'); L.S. Synthetics Ltd. v. Fairgrowth Financial Services Ltd., (2004) 11 SCC 456, ¶38 ('L. S. Synthetics').

[228] L.S. Synthetics, *supra* note 227, ¶38.

Procedural provisions concerned with complete codes focus on speed,[229] and minimise references to sources from outside of it.[230] Proposedly, a separate limitation in the statute seems to be the legislature's convenient means to declare its intent. Namely, it is the applicability of the LA's parameters to compute the given limitation, but not extend, pause, or condone it.[231] If a provision in a statute affixes limitation for a particular legal implication but does not provide for any amelioration, it intended to block the latter.[232] While not asserted judicially, the corollary is easy to fathom, i.e. this does away with listing, in tedious detail, all the provisions of the LA bearing a non-computational nature. Arguably, looking for a reference for each provision of the LA in the statute's provision shall contradict this intention.

In this rich context, 'express reference to exclude the LA' means that the same ought not to be an inference, but somehow palpable from the statute's text.[233] In the present case, this condition is met by §13(2), CCA. Hence,it is proposed that §5, LA is excluded by a specific mention of a limitation period in the case of commercial-arbitral appeals. Such a reference invites the group of computational provisions, and excludes extension provisions. Thereby, an analysis of whether the statutory provision cites/excludes any extension provision from the LA by name is irrelevant.

Nevertheless, the persuasive force of its rationale lies in its alignment with the discussion in Part III.A. The outcome it suggests neatly confluences with those of Fuerst/Kandla's argument of a 'clean dichotomy' and the Mohanty/ Mangesh 'equilibrium/catalyst' argument to shut out procedural imports by the AA. Proposedly, the result is a clear exclusion of§5, LA in the cases of commercial-arbitral appeals of a specified value, on two counts.

Firstly, an exclusion sits better with the 'further catalysing' objective of the CCA, as well as its intention to govern sections of the AA exclusively on the procedural front. Speedy resolution from a court results in shorter blockage of business capital for an investor.[234] The CCA aimed to ensure this, to build confidence about the continued utilisation of such capital and spurring investments.[235] Apart from the reasons stated above, §10(2) read with §6 and §7 of the CCA vest it with an exclusionary jurisdiction over commercial appeals.[236] §10(2) transfers the original jurisdiction of High Courts over domestic arbitration to their commercial

[229] CST, *supra* note 227, ¶13.

[230] L.S. Synthetics, *supra* note 227, ¶38.

[231] CST, *supra* note 227, ¶¶12, 13, 15.

[232] Bhagwandas B. Ramchandani v. British Airways, 2022 SCC OnLine SC 939, ¶¶69, 70, 73, 81.

[233] *Id.*, ¶69.

[234] Law Commission of India, *Proposals for Constitution of Hi-tech Fast – Track Commercial Divisions in High Courts*, Report No. 188, 142 (December 2003) available at https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081069-1.pdf (Last visited on May 19, 2023).

[235] *Id.*

[236] Delhi Chemical and Pharmaceutical Works (P) Ltd. v. Himgiri Realtors (P)Ltd.,2021 SCC OnLine Del 3603, ¶¶28, 39.

divisions. §7 obligates the commercial divisions to adjudicate all suits and applications of a commercial nature. §6 specifies that this obligation applies to any of such disputes arising throughout the concerned states, and does away with the original jurisdictions of lower courts in the process. Such a nuanced diversion of original jurisdictions signifies the intent to make the CCA a singular source of procedure for commercial *lis*.[237] *Secondly*, the ameliorating provisions of the LA may continue to apply to arbitrations not falling under this category. To this degree, no conflict may be said to exist and the two acts can be read harmoniously by way of inferring such an exclusion.

The Supreme Court's obiter in *Brahampal* v. *National Insurance Co.*,[238] has better elaborated the means to attain the goal of the second assertion. The issue was whether §5, LA could apply to delay in the refiling of appeals under the Motor Vehicles Act ('MVA'), 1988.[239] The relevant provision[240] on appeals specified the permissible tenure for filing. Additionally, it contained a proviso that permitted condonation of justifiable delay. The court factored in the beneficial nature of the enactment and a prior precedent[241] for its analysis. The court concluded that an interpretation favourable to the victim ought to be preferred.[242] The court distilled this principle to formulate a more prehensile formula. To attain this objective, it stated that provisions conferring substantive rights are to be read strictly.[243] Whereas,its procedural stipulations must be read liberally.[244] Hence, "sufficient cause" in the relevant provision was construed liberally.[245] It pertinently remarked that this approach is exclusive to beneficial legislations, and is not applicable to expedited commercial disputes under the AA and CCA.[246]

The court did not elaborate on this remark. However, breaking down the same to find a concrete assertion can be easily attempted. The converse of this decision's ratio could only lead to two possible interpretations. *Firstly*, the procedural stipulations in the CCA maybe read as strictly as the substantive ones under the AA. *Secondly*, and alternatively, it could be stating that only the procedural stipulations ought to be read strictly. Approached either way,the provisions of the CCA ought to be construed strictly.[247]

To summarise, the substantive-procedural dichotomy is only a starting point for analysing the conflicts between the AA and the CCA. Mohanty and

[237] *Id*.

[238] Brahampal v. National Insurance Co., (2021) 6 SCC 512.

[239] The Motor Vehicles Act, 1988.

[240] The Motor Vehicles Act, 1988, §173.

[241] Vimla Devi v. National Insurance Co. Ltd., (2019) 2 SCC 186.

[242] Brahampal v. National Insurance Co., (2021) 6 SCC 512, ¶¶8, 9, 14.

[243] *Id*., ¶¶14, 20.

[244] *Id*.

[245] *Id*., ¶¶17, 19.

[246] *Id*., ¶20.

[247] The decision in Ambalal Sarabhai Enterprises Ltd. v. K.S. Infraspace LLP, (2020) 15 SCC 585 held something similar, but not in so many words. *See* discussion *supra* note25.

Mangesh find harmonious equilibrium as the desired end-result of the intended-split of concerns. As Mohanty seems to hint, the best means to approach that goal is to prefer an interpretation that adds to the 'further catalysing' objective of the CCA. Applying these precepts, it is seen that limitation falls squarely in the lap of the CCA for being a procedural concern. Since procedural stipulations of the CCA are to be construed strictly, there is only one possible interpretation of its provisions, i.e. a mere speck of procedural stipulation in the CCA should exclude the unmentioned procedural parts of the LA. Further buttressing this assertion is§13's mandatory tone.

The application of the harmonious-dichotomy approach will have nuanced technicalities as far as different types of commercial-arbitral appeals are concerned. For instance, Mangesh gleans the intent of the 2018 amendments[248] to be the expeditious resolution of disputes of a lower commercial value.[249] Faster resolution of these disputes was made out to be the greatest booster for an investment-spurring atmosphere.[250] According to Mangesh, then,§5, LA ought not to be applied to them as well. In any case, the 'specified value appeals' should be kept away from §5, LA. This is because the CCA explicitly provides for a limitation for such appeals. Taking either approach, the CCA necessarily impacts the position on applying §5, LA to §37, AA.

Hence, keeping both the categories of appeals as equally susceptible to §5, LA appears to bean unjust proposition. More centrally, Borse does not respect the equilibrium-oriented dichotomy insofar as it reads limitation in §37, AA.

V. TAKEAWAYS FROM THE OTHER GENERAL LAW

This Part attempts to capture how the AA-CCA combine has interacted with a general law other than the LA. An investigation of it will reveal whether an interpretive exercise should incline towards displacing the LA's application to them in cases of doubt. The nub of the argument is that the CCA tugs the AA away from general laws such as the CPC. Extended, the LA's provision should not be assumed to apply when not provided for.To explicate this submission, subpart V.A describes how the CPC only nudges, and does not govern, the CCA's application. It submits that the CCA triumphs over the CPC in a conflict, on the premise of its intent to streamline traditional litigation. This priority is preserved when the AA must choose procedural routes from between the CPC and the CCA, for the same reason. At best, this portion argues, the AA-CCA combinemay look at the CPC in unclear circumstances and avoid the general law's procedure. It makes the point that the same treatment should be meted out to other general laws conflicting with the CCA.

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[248] The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts (Amendment) Act, 2018.

[249] Gaurang, *supra* note 99, ¶91.

[250] *Id*.

Sub-part V.B will cover an alternative argument to submit that the LA cannot apply to the specific case of §37, AA. It argues that the unhesitating application of the LA to select cites of the AA occurred by way of an explicit mention or a suggestion. This reference in such sites is not to the LA directly, but to the CPC. The CPC, in turn, has a more uninhibited access to the ameliorating provisions from the LA. The judiciary's premise appears to be that the nature of import gets transformed in such a scenario, i.e. the import of the LA is not by special laws such as the AA or even the CCA, rather, the import is of one general law (the LA) by another (the CPC). Hence, the standards that filtered ameliorating provisions from applying to *lex specialis*, squeeze through to apply at some sites within the AA. This part then concludes that§37 of the AA is an outlier to this pattern for it does not concern the CPC for its operation at all.

A. THE CPC MAY ONLY GUIDE THE STRICTER CCA

The CPC is a general law, akin to the LA. As will now be asserted, the CCA occasionally relies on the CPC for operational clarity. However, this subpart argues that this utilitarian invocation of the CPC has always required the latter to first clear a very high threshold. Proposedly, the same standard should apply in discerning the applicability of the LA to CCA.

The above-asserted standard emerged naturally in standalone conflicts between the CPC and the CCA. In *Ambalal Sarabhai Enterprises* v. *K.S. Infraspace LLP*[251] ('Ambalal')the court was asked to conclusively decide whether the dispute arising from the mortgage and conveyancing of land is 'commercial' in nature. The court held such disputes to be falling outside of §2(1)(c), CCA.[252] The text of the provision was deemed as laden with intent.[253] It was held that it strictly requires the immovable property to be regularly associated with trade or commerce.[254] It found one of the indications for this exclusivity in §16 of the CCA.

The CCA's enactments were accompanied by parallel amendments[255] to the CPC. These amendments collectively carved out grooves within the CPC with which the CCA could lock its gears on a utilitarian basis. According to the court, this parallel regime within the CPC emphasised the CCA's intent of speedy adjudication.[256] When the threshold of a 'commercial dispute' is satisfied, the CCA and the complimentary portions within the CPC override the generic provisions in the CPC.[257] The CCA's objective of speeding up commercial-arbitral disputes further compelled the court to conclude that the standard of what constitutes commer-

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[251] AmbalalSarabhaiEnterprises Ltd. v. K.S. Infraspace LLP, (2020) 15 SCC 585 ('AmbalalSarabhai').
[252] *Id.*, ¶39.
[253] *Id.*, ¶¶16, 31, 35, 36, 37, 42.
[254] *Id.*
[255] The Commercial Courts Act, 2015, Schedule; The amendments introduced Orders XIII-A and XV-A to the CPC. In parallel, they amended its Orders V, VIII and XX.
[256] AmbalalSarabhai, *supra* note 251, ¶¶33-36.
[257] *Id.*, ¶¶29, 35.

cial disputes was to be kept very high.[258] As explained in the concurring judgment by R. Banumathi J., this is best attained when there exists a difference between the ordinary procedure of the CPC and the special regime of the CCA.[259] Accordingly, the immovable property was held to be inevitably a concern of frequent commercial dealings, and not a subject of rare transfer.[260]

The assertive nature of the CCA as against the CPC may further be gleaned from cases additionally involving arbitration. To begin with, the AA relies upon the CPC for determining procedural checkpoints. For instance, the procedure to initiate an arbitration under §11, AA requires judicial clarity.[261] The Supreme Court imported the principles developed under the old Arbitration Act of 1940.[262] It declared that 'cause of arbitration' shall be an equivalent of 'cause of action' as understood in the generic civil-procedural domain.[263] While not referred to explicitly, it was inevitably referring to the principles under §20, CPC. It was reasoned that the mechanical attempts of successful appointment of arbitrators cannot be the trigger.[264] Instead, it was the larger circumstances that permit the parties to invoke arbitration that initiate the process of arbitration.[265] This is presently the 'bundle of facts' test deployed to discern the 'cause of action' under the CPC. It covers the factual aspects that give a plaintiff the grounds to successfully file a lawsuit and a right to relief.[266]

Hence, the operational procedure is provided for by the CCA itself. It is only to determine its mechanical functioning that the said law refers to the general law for guidance. The decisions do not cross an unspoken healthy boundary by importing provisions of the CPC applicable to §20, CPC. Decisions that import §5, LA to appeals under §37, AA read with§3(1-A), CCA transgress this veryborder. They do not use the LA to help make sense of a limitation-based aspect in the CCA, but rather read the LA's text into it. The limitation for appeals under §37, AA is provided for by the CCA. The consequence of its breach is also provided for by §13(2), CCA. Arguably, the LA could only be utilised to learn how the computation of that given period is to be done. As opposed to the same, the LA's text in its entirety was imported to the CCA. The wholesale application of provisions not specified by the CCA vitiates the boundary between itself and general law. Pertinently, a respectful adherence to such a boundary is illustrated by case law on the interaction of §5, LA with §34(3), AA. As put forth earlier, §34(3), AA is taken

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[258] *Id.*, ¶13.

[259] *Id.*, ¶¶13, 22.

[260] *Id.*, ¶36.

[261] The Arbitration and Conciliation Act, 1996, §11.

[262] Panchu Gopal Bose v. Port of Calcutta, (1993) 4 SCC 338.

[263] BSNL v. Nortel Networks (India) (P) Ltd.,(2021) 5 SCC 738; Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.,(2020) 14 SCC 643.

[264] Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd., (2020) 14 SCC 643,¶¶21, 23.

[265] *Id.*, ¶¶15, 16, 17, 23; BSNL v. Nortel Networks (India) (P) Ltd.,(2021) 5 SCC 738, ¶¶16, 20, 49.

[266] Church of Christ Charitable Trust and Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706, ¶13; A.B.C. Laminart (P) Ltd. v. A.P. Agencies, (1989) 2 SCC 163, ¶12.

to bar the said provision.[267] It provides for a different condonationthan is available in §5, LA. Yet, the judicial principles around §5, LA are used to assess the legality of condonation-applications under §34(3), AA.[268] This does not involve the application of the provision, but only instructive aid from standards on what constitutes "sufficient cause".[269] The source of condonation and the confines of §34(3), AA are not departed with.[270]

Furthermore, the provisions of the CCA have to be given a strict reading to imply exclusivity, so as to mitigate the *lis* that can be brought under it.[271] The less clogged commercial courts are, the greater the pace of adjudication.[272] Arguably, a strict reading is possible only if attempted appeals are subject to and is qualification under the following sub-section (2), as discussed earlier. Such a strict reading implies §13(2), CCA to be forfeiting the right to appeal if §13(1-A) is not adhered to. In other words, sub-section (2) may be said to be a penal consequence to non-adherence of sub-section (1-A).

The decision in *Pranathmaka Ayurvedics* v. *Cocosath Health Products*[273] demonstrates the adherence to the 'strict approach' advanced herein. The Kerala High Court was approached against the admission of an application for an interim measure under §9, AA.[274] Except, the approach was made under Article 227 of the Constitution.[275] It was contended that the appropriate remedy would have been to file an appeal under §13(1), CCA.[276] This assertion was opposed by the citation of the provision's marginal heading.[277] It was urged that the CPC has the sole mechanism for addressing challenges to decrees under its Order XLIII.[278] The court noted that the substantive right to appeal against §9, AA was conferred by §37(1)(b), AA. §13(1), CCA was treated as being only the procedural repository of that right.[279]

[267] Union of India v. Popular Construction Co., (2001) 8 SCC 470, ¶¶8, 12; Consolidated Engg, *supra* note 34, ¶20.

[268] DDA v. Ajab Singh & Co.,2022 SCC OnLine Del 2236, ¶¶16, 18, 24, 25, 27, 33, 34; The case deals with an application filed under §5, LA for an implication pertaining to §34, AA. The court, in obeisance with precedents, read §34(3), AA as strict and mandatory. Hence, it treated the application as if it were filed under §34(3), AA. It then applies the standards of §5, LA to determine if the reasons for delay were 'sufficient'.

[269] *Id.*, ¶¶18, 24, 27.

[270] DDA v. Ajab Singh & Co.,2022 SCC OnLine Del 2236.

[271] AmbalalSarabhai, *supra* note 251, ¶¶13, 22.

[272] *Id.*, ¶13.

[273] PranathmakaAyurvedics v. Cocosath Health Products, 2020 SCC OnLine Ker 5476 ('PranathmakaAyurvedics').

[274] *Id.*, ¶¶1, 3.

[275] *Id.*, ¶6.

[276] *Id.*, ¶¶1, 8.

[277] The marginal heading in the CCA reads as follows, "Appeals from decrees of Commercial Courts and CommercialDivisions."

[278] PranathmakaAyurvedics, *supra* note 273, ¶21; The Code of Civil Procedure, 1908, Order XLIII.

[279] PranathmakaAyurvedics, *supra* note 273, ¶¶20, 25.

Desh Raj v. *Balkishan*,[280]('Desh Raj') went a step further in readily excluding a general part of the CPC from its parts integrally nested with the CCA. The amended Order VIII, Rule 1, CPC set a new limitation for written statements, which was made non-condonable by the amended Order V. This led a few decisions[281] to clash about the rigidity of the limitation under Order VIII, Rule 1. This decision suggests that the amendments forged two parallel regimes within the CPC.[282] For written statements in commercial suits, the deadline for its submission was taken to be mandatory.[283] The unaltered text was previously held to be directory, and was now specified .[284] This was in turn predicated upon the existence of Rules 9 and 10present in the later part of Order VIII.[285] Desh Raj takes this position as still existent within the CPC, but readily displaced when the new commercial regime clashes with it.[286]

A much more direct clash between the CCA and the CPC reinforced the precise borders of this boundary. The Bombay High Court in *Resilient Innovations (P)Ltd.* v. *PhonePe(P)Ltd.*,[287] was asked to determine whether an order under Order XXIII, Rule 1(3)[288] of the CPC is appealable under §13(1), CCA.[289] The provision deals with orders regarding the permissibility of a plaintiff withdrawing a suit to initiate one afresh. The courtstates that the marginal heading of §13, CCA refers to 'decrees' inconsequentially.[290] The choosing of this heading and the non-obstante clause in §13(2) collectively indicated something contrary to the court. The two collectively portrayed a singular intent to exclude judgments from Letters Patent jurisdictions.[291] In parallel, §13(1) explicitly makes 'judgments' appealable under it. The CCA borrows[292] the definition of the same from the CPC. The CPC takes judgments to include both decrees and orders.[293] Noting the same, the court takes the impugned order as appealable under the CCA and not the CPC.[294] Thus, the court completely delinks §13, CCA from the CPC while borrowing its definitional component for its operation. The mere resemblance in phraseology did not

[280] Desh Raj v. Balkishan, (2020) 2 SCC 708 ('Desh Raj').
[281] Axis Bank Ltd. v. Mira Gehani, 2019 SCC OnLine Bom 358; Oku Tech (P) Ltd. v. Sangeet Agarwal, 2016 SCC OnLine Del 6601.
[282] Desh Raj, *supra* note 280, ¶11.
[283] SCG Contracts (India) (P) Ltd. v. K.S.Chamankar Infrastructure (P) Ltd., (2019) 12 SCC 210, ¶¶16-18; The Code of Civil Procedure, 1908, Order V, Rule 1.
[284] Salem Advocate Bar Assn. v. Union of India, (2005) 6 SCC 344.
[285] *Id.*, ¶¶20-21.
[286] Desh Raj, *supra* note 280, ¶¶11, 13, 14; Interestingly, this 'parallel regime' approach is reinforced by the judicial position on written statements to arbitral counter-claims. Order VIII, Rules 6(A), 6 (D), 6 (E) and 6(G) treat such counter-claims akin to a civil-suit plaint. Hence, this invites the 'regular' directory timelines to written statements against the same. See CSCO LLC v. Lakshmi Saraswathi Spintex Ltd., Arb. OP (Com. Div.) No.157 of 2022 (Mad HC).
[287] Resilient Innovations (P) Ltd. v.PhonePe(P) Ltd., 2022 SCC OnLine Bom 521 ('Resilient').
[288] The Code of Civil Procedure, 1908, Order XXIII.
[289] Resilient, *supra* note 287, ¶1.
[290] *Id.*, ¶30.
[291] *Id.*, ¶¶23-24.
[292] The Commercial Courts Act, 2015, §2(2).
[293] The Code of Civil Procedure, 1908, §2(9).
[294] Resilient, *supra* note 287, ¶¶24, 33-34.

denote to the court as if the CCA is bodily lifting the procedural governance of the CPC.

The same position is discerned from the collective reading of an elaborately reasoned decision of the Delhi High Court. The decision in *Delhi Chemical and Pharmaceutical Works (P) Ltd.* v. *Himgiri Realtors (P) Ltd.*[295] was concerned with the execution of arbitral awards and the appeals against them.[296] The CPC provides for the execution of decrees very explicitly under its Order XXI. No equivalent of it is found in the CCA. This led to a contention that arbitral awards should follow the CPC to determine both jurisdiction and procedural governance for their execution.[297] Logically extended, it was further contended that given the executing court ought to be the one as per the CPC, the appeal would also be governed by the CPC as opposed to §13, CCA.[298] The court declined to accept this view.[299] It relied upon §10(2) read with §6 and §7 of the CCA to denote the enactment's exclusive jurisdiction over commercial "applications or appeals".[300] It further stated that even if Order XXI of the CPC is to be referred to, its Rule 11(2) makes it clear that the plea of execution is to be presented in the form of applications.[301] Execution applications relating to commercial disputes, which may include arbitral awards, were thus held to be provided for by the CCA.[302]

Thus, the CPC is readily submissive in a clash with provisions not moulded for smoothening the operation of the CCA. It is this standard of easy exclusion that ought to apply to the LA as well. Thereby, in case the limitation is specified or determined by the aid of the CCA, other provisions of the LA governing limitation cannot be bodily lifted. §13(2) of the former is otherwise rendered otiose. Akin to that of the CPC, the generality of the LA is reserved for cases/ arbitral proceedings not covered by the CCA. Reading unreferenced provisions of the LA into the commercial-arbitral procedures managed by the CCA, dilutes the latter's purpose.

B. NO LINKS WITH THE CPC, NO CONDONATION

The tale of Borse specifying the limitation for §37 is in no way a unique phenomenon. The judiciary has been reading unwritten limitations in other

[295] Delhi Chemical and Pharmaceutical Works (P) Ltd. v. Himgiri Realtors (P) Ltd.,2021 SCC OnLine Del 3603.

[296] *Id*., ¶1.

[297] *Id*., ¶11.

[298] *Id*.

[299] *Id*., ¶¶31, 33, 36, 37, 39, 40, 41; The court also threaded through by applying the contention that it is the CPC which is determinative of a decree's execution. It cites the text of §38, CPC, which states that execution is the domain the same court that decreed the suit. Hence, even by traversing the contention of the Respondents, the issue was reaching the same end. Albeit, as the cited paragraphs demonstrate, the primary factor was the court's view of the CCA overriding the CPC in this regard is the CCA's text.

[300] *Id*., ¶¶28, 39.

[301] *Id*., ¶39.

[302] *Id*., ¶¶39, 42.

silent sites of the AA. However, Borse immediately becomes an aberration insofar as the judicial method of reading such limitations is concerned.

Apart from the ones specified for §37, AA, there exist the following judicially read limitations and/or condonationsforsilent provisions –

Provision in the AA	**Limitation Period**		**Applicability of §5, LA**	**Source of limitation**
	Ordinary	**Commercial**		
§8[303]	Ninety days[304]	120[305]	Permissible[306] (treated as such)	Order VIII, Rule 1, CPC[307]
§11(6)[308]	Three years[309]	Three years[310]	Permissible[311] (treated as such)	Article 137, LA[312]
§23(1)[313]	-	-	No; §23(1) of the AA itself applies to condone delays.[314]	§23(1), AA
§47 and §49[315]	Three years[316]	Three years[317]	Permissible[318]	Article 137, LA[319]

A further analysis of the decisions responsible for the above-tablereveal CPC to be the primary analytical factor for the judiciary. The other common factor appears to be the object of expediency in arbitration.

The Delhi High Court in *SSIPL Lifestyle (P)Ltd.* v. *Vama Apparels (India) Private Limited* ('SSIPL') carved out the limitation for §8, AA. The

303 The Arbitration and Conciliation Act, 1996, §8.
304 SSIPL Lifestyle (P)Ltd. v. Vama Apparels (India) (P)Ltd., (2020) SCC OnLine Del 1667, ¶30 ('SSIPL').
305 *Id.*
306 *Id.*, ¶¶7, 9.
307 Id., ¶¶12, 16-30.
308 The Arbitration and Conciliation Act, 1996, §11(6).
309 Geo Miller & Co. (P) Ltd. v. Rajasthan Vidyut Utpadan Nigam Ltd.,(2020) 14 SCC 643, ¶21 ('Geo Miller'); BSNL v. Nortel Networks (India) (P) Ltd.,(2021) 5 SCC 738, ¶¶14, 53.1 ('BSNL').
310 *Id.*; Geo Miller, supra note 309, ¶21.
311 *Id.*, ¶34.
312 *Id.*, ¶20; BSNL supra note 309, ¶¶14, 53.1.
313 The Arbitration and Conciliation Act, 1996, §23(1); This deals with the time-frame within which arbitrating parties may file their pleadings before the tribunal.
314 Wanbury Ltd. v. Candid Drug Distributors, 2015 SCC OnLine Bom 3810, ¶¶43, 48.
315 The Arbitration and Conciliation Act, 1996, §§47, 49; Both provisions pertain to international arbitration. §47 specifies the evidence required with an application for enforcing a foreign award. §49 converts a foreign award into a deemed decree of the Indian court enforcing it.
316 Union of India v. Vedanta Ltd., (2020) 10 SCC 1, ¶¶30, 50, 50.1 ('Vedanta').
317 *Id.*
318 *Id.*, ¶77.
319 *Id.*, ¶¶30, 50, 50.1.

limitation of filing a §8 application is predicated on the CPC, as is illustrated by its following phrase, "[…] not later than the date of submitting his first statement on the substance of dispute […]"The decision premises its analysis in the intent of the 2015 amendments.[320] These amendments had introduced §29A and §29B in the AA. They had additionally inserted a limitation period into the text of §9, AA. In other words, the court gleaned an overall intent of expediting arbitration by introducing deadlines for different stages. Thus, it leaned in favour of interpreting the time limit for §8 to further reify that intent.[321] To do so, it supposed an equivalence between "first statement on the substance of dispute"[322] and a written statement as governed under Order VIII, Rule 1, CPC.[323]

For§11(6), AA, the court again toed a similar compulsion of expediency in *Geo Miller & Co. (P) Ltd.* v. *Rajasthan Vidyut Utpadan Nigam Ltd.* and *BSNL* v. *Nortel Networks (India) (P) Ltd.* As discussed in the preceding sub-part V.A, it established a clear trigger point for the limitation under §11(6) by supposing a fictional equivalence with the CPC. For an identifiable end-point for the said period, the court deemed fit to apply the residual Article 137, LA.[324]

The court in *Government of India* v. *Vedanta Limited*,[325] does the same to find limitation periods for §47 and §49, AA. It was stated that the court will operate under the AA in exercising these jurisdictions.[326] The concerned court further considers execution applications as 'deemed decrees' under the CPC due to *first* procedural convenience[327] and *second* a close resemblance to executable decrees under CPC.[328] Both being applications, the court justified applying Article 137 to them, as its text covers "any other applications".Notably, the text of §5, LA excludes deemed decrees. However, the court treats§47 and §49 only a deeming fiction for the operation of the CCA, and not strictly the ones under the CPC.[329]

§23(1), AA was also aligned with the position under the CPC. Albeit, the guidance on the CPC was aberrantly inexplicit, as it was when the standards of 'cause of action' were imported to the AA.[330] The provision allows the respondent in an arbitration to file a statement of defence. This, it states, is to be done within the time prescribed by the tribunal, and these obligations are prefixed by the word "shall". The Bombay High Court in *Wanbury Ltd.* v. *Candid Drug Distributors*[331]

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[320] The Arbitration and Conciliation (Amendment) Act, 2015; SSIPL Lifestyle (P) Ltd. v. Vama Apparels (India) (P) Ltd., 2020 SCC OnLine Del 1667, ¶¶15, 18, 27, 30, 31, 36.
[321] *Id.*
[322] The Arbitration and Conciliation (Amendment) Act, 2015, §8.
[323] SSIPL, *supra* note 304, ¶¶26, 28, 31.
[324] Geo Miller, *supra* note 309, ¶20; BSNL *supra* note 309, ¶14.
[325] Vedanta, *supra* note 316.
[326] *Id.*, ¶¶65-67.
[327] *Id.*, ¶77.
[328] *Id.*, ¶¶61-66.
[329] *Id.*, ¶69.
[330] *Seesupra* Part V.A on "Takeways from the Other General Law".
[331] Wanbury Ltd. v. Candid Drug Distributors, 2015 SCC OnLine Bom 3810 ('Wanbury').

('Wanbury') relied on a structural analysis of the AA to reject the provision's nature as 'mandatory'.[332] The court states that the non-adherence to this timing does not bear a consequence for the respondents in such cases.[333] Additionally, the power to relax such an obligation ought to vest with the tribunal, for two reasons. *Firstly*, §23(1), AA was held as procedural in nature by its text and purpose.[334] As such, an interpretation that did not perturb any of the parties' substantive rights, was preferable.[335] The unstated implication was that a directory reading of it would allow both parties to be heard. *Secondly*, holding it mandatory would eliminate room for the tribunal to construct its procedure for each case.[336] This would contradict the intent of the statutory power bestowed on it by §19, AA.[337]

Hence, the time to file the statement of defence was held to be directory, and thus, condonable.[338] This is precisely the position held for the CPC, where it allows the filing of written statements.[339] Order VIII, Rule 1 provides that the written statement may be filed within the timeline fixed by the court. The obligation to file in that time-frame comes along with the phrase "shall". The provision was held to be procedural, both for its text and its location in a procedural law.[340] No consequences were found for non-adherence to it.[341] Again, this interpretation was found to be ensuring a means to preserve the substantive rights of the parties.[342] Otherwise, a mandatory reading would generate a new substantive right for the claimant.[343]

Lastly, Order VIII itself[344] and the CPC in general, gave a lot of room to the court to mould the procedure as it deemed fit.[345] Order VIII was held as directory, and condonation was deemed a permissible feature. Thus, the exact principles were mirrored with respect to the AA. Albeit muted in the decision, the similarity of the corresponding provisions made for an easy bridge to import principles from the CPC. Otherwise, in specifying limitations for both §8 and §11(6), few decisions[346] mechanically entertained applications under §5, LA. There exists no analysis for the same in those, whatsoever.

In parallel,condonation of delay is specified twice by the text of AA. The first illustration is, indubitably, the proviso to §34(3). Additionally, §23, AA

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332 *Id.*, ¶47.
333 *Id.*, ¶¶42-43.
334 *Id.*, ¶¶41, 46-47.
335 *Id.*, ¶¶42, 48.
336 *Id.*, ¶¶47.
337 *Id.*
338 *Id.*, ¶¶43, 48.
339 Kailash v. Nanhku, (2005) 4 SCC 480, ¶46.
340 *Id.*, ¶¶25, 27, 28, 30, 32-33, 46(iv).
341 *Id.*, ¶33.
342 *Id.*, ¶36.
343 *Id.*
344 *Id.*, ¶32.
345 *Id.*, ¶¶28, 32-33.
346 SSIPL, *supra* note 304, ¶¶7, 9; Geo Miller, *supra* note 309, ¶34.

has permitted the tribunal to determine the reasonableness of any delay in filing of claims/counter-claims under sub-section (3). Wanburyread this provision with §32(2), AA to reach this conclusion, and disregarded §5, LA in the process.[347] These are two instances of express powers of discretionary condonation of delay under the act. The courts have readily inferred the exclusion of §5 LA in both the cases. This, then, provides the context to scrutinise the text of §43(4), AA, which reads as thus,

> "Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted." (emphasis supplied)

It is noted that the provision refers to a court that has set aside an award. That is, it refers to a court acting under §34. It then states that the time-lapse between the commencement of arbitration and the delivery of a §34 order be excluded in accordance with the LA. In other words, §43(4), AA seems to specifically mention the application of a principle akin to when§14, LA applies to §37, AA.[348]

Collectively, this overview is very demonstrative of certain trends. The court has unquestioningly applied §5, LA to provisions of the AA which have their limitation premised in/indirectly derived from the CPC. Presumably, the courts do not suppose a conflict if the special law (the CCA) is not a factor in determining limitation, but only a subject of it. In parallel, §37 provides for the specific application of only one ameliorating provision on extension. The same is found to exist in §43(4) of the AA itself. If the court refused to apply §5, LA for 29(1), AA, it ought to follow the same for §37. Unlike the limited instances described in this Part, §37, AA does not derive or base its limitation in the CPC. Hence, no precedential support exists for the position taken by Borse, even in its confined analysis of the AA and the LA.

VI. CONCLUSION

The present position of law permits the application of an 'extension' provision from the LA to appeals under §13(1-A), CCA. Demonstrably, this is unjust in the context of commercial arbitrations. Two legislations brought in to collectively expedite a sub-set of litigation cannot be readily inferred as incorporating provisions which pause/extend lapse of time. The problematic position does not emanate wholly from Borse.

[347] Wanbury, *supra* note 331, ¶¶43, 48.
[348] *See supra* Part II.A on "The Judgment".

Regardless of the CCA in place, the presence of a detailed limitation clause in §34, AA led judicial analyses to be lazy. They collectively denote a 'step-brotherly' treatment of §37, AA as they plaintively categorise it as containing thoughtless gaps. However, a richer multi-provisional analysis shows silences in the provision as deliberate and conclusive.

Factoring in the CCA's impact leads to a deeper scrutiny of this position, better revealing its fault-lines. The enactment appropriates the procedural field exclusively for itself. Given this position, the limitation for commercial appeals under §37, AA ought to have been discerned by a singular reference to the CCA. To rely upon the interplay between the AA and the LA to figure out the procedural minutiae is wholly baseless. With the CCA in place, the sources of substantive-procedural obligations stand sharply divided. The CCA overrides any procedural stipulation that existed within the AA. Since involving the LA's condonation provision was judicially sourced from the AA's text, it could have continued only if the CCA permitted it. Unlike §37, AA which was completely silent and depended on supplied readings of limitation, the CCA mentions a timeline without offering any discretion. Since it is the CCA which holds decisive authority, this development must be read as a hard deadline. Alternatively, the CCA is a catalysing procedural law which is to be interpreted strictly. This would involve a selective import of 'computation' provisions at the expense of 'extension' provisions.

Additionally, Borse's wholesale borrowing from a general law misses another legislative dichotomy brought about by the CCA. The CCA is susceptible to the provisions of general laws when operational clarity requires the same, or when it cites specific reference. The provisions of the general law which do not fall into either category, cannot be readily applied. This position is demonstrable from the interaction of the CCA with the CPC.

At best, the CCA may only import some definitional clarity from the CPC to better understand itstext. Else,when the judiciary hits a hazy feature of the CCA, it notes its possible/prevailing interpretation under the CPC and rules it out as one for the CCA. This demonstrates that general laws with elements that sedate and multiply litigation are easily disregarded in favour of the CCA. The emphasis is to evolve exclusivity out of the CCA's application, not covered by the general law. The LA's ameliorating-provisions constitute general law and are traditional in nature, and the CCA should shear the AA off them.

Simultaneously, there exist other instances where the LA was read into other silent provisions of the AA. However, all these 'other' provisions were seen to be predicating their operation on the CPC. That is, their texts direct the interpreter's attention to the CPC, by words or suggestion. For the judiciary, it was the AA integrating traditional, general, law and all the applicable standards, for convenience. For if the AA intended to displace the traditional litigation mechanisms at those sites, it would have omitted any reference or similarity to the CPC.

In such a case, the said provision was behaving like general law. It was not a case of special law invoking general law, riddled with the impediments of higher standards required for such an import. However, §37, AA has no such operational dependency on the code. To keep the judicial reasoning consistent, it must be read as a provision of a special law intended to be an aberration from pre-existing mechanisms. In the absence of a justification, Borse's deviation in this regard has no judicial basis.

Hence, the issue of applying extension provisions of the LA to appeals under §37, AA read with §13(1-A), CCA seems to be trilaterally barred. The conflict between the AA and the LA hints as much. The CCA's entry in the framework rocks the inference of such an import even further. The CCA's treatment of the CPC follows the same principle, unless some operational checkpoint lies in the latter. The position espoused by Borse and similar authorities is, thus, lacking. Its conclusions need further justifications and analysis. The paper's discussion reveals that the logical way out would be a total reversion of Borse's position so as to preserve the CCA's procedurally supreme position. Hence, §5, LA cannot be justifiably read as applying to commercial-arbitral appeals at present.