

Dispute Resolution Hotline

January 09, 2019

DON'T LOSE THE RIGHT! ARBITRAL AWARDS MUST BE CHALLENGED WITHIN STRICT TIMELINE

- An application to set aside arbitral award must be made within the strict statutory timeline. This time limit cannot be extended thereafter by using the leeway of "sufficient cause" under the Limitation Act, 1963.
- Time spent bona fide in a court without jurisdiction could be excluded while computing the statutory period to challenge an award, subject to conditions under Section 14 of the Limitation Act.
- Administrative difficulties involving construction contracts is not a valid reason to condone delay for challenge to arbitral award.

INTRODUCTION

The Supreme Court, in its recent judgement in *Simplex Infrastructure v. Union of India*,¹ interpreted the applicability of Section 5 ("extension of prescribed period in certain cases") and Section 14 ("exclusion of time of proceeding bona fide in court without jurisdiction" of the Limitation Act, 1963 ("**Limitation Act**") to the Arbitration and Conciliation Act, 1996 ("**A&C Act**"), particularly with respect to challenge to arbitral award under Section 34 of the A&C Act.

The Supreme Court clarified that Section 34 of the A&C Act excludes the application of Section 5 of the Limitation Act, thereby barring an extension beyond the statutory three- month period and the extendable 30-day outer limit. However, it held that Section 34 does not exclude the application of Section 14 of the Limitation Act where time spent bonafide in courts without jurisdiction could be excluded while computing the statutory period for challenge.

FACTS

Simplex Infrastructure Ltd. (Appellant) entered into a construction contract with Union of India (Respondent) for building 821 permanent shelters in the tsunami-hit Andaman and Nicobar Islands. As differences arose in performance, the parties were referred to arbitration. An award was passed directing the Respondent to pay INR 9,96,98,355 along with interest. The Respondent received the award on October 31, 2014. On January 30, 2015, the Respondent preferred an application to the District Judge, Port Blair, under Section 34 of the A&C Act for setting aside of the arbitral award.

However, during the pendency of the arbitration, the Appellant had filed an application for interim relief under Section 9 before the High Court of Calcutta. On February 12, 2016, the District Judge, Port Blair dismissed the application on the ground of lack of jurisdiction. It held that since an application was filed previously before the High Court of Calcutta, parties should have approached the same court with any subsequent application.²

Subsequently, on March 28, 2018, the Respondent filed an application for setting aside the arbitral award before the High Court of Calcutta under Section 34 of the A&C Act. The High Court of Calcutta allowed the application while condoning a delay of 514 days - on the ground that sufficient cause was shown. The order of the High Court of Calcutta was appealed before the Supreme Court.

ISSUES BEFORE THE SUPREME COURT

Whether the High Court of Calcutta was justified in condoning a delay of 514 days by the Respondent in filing the application for setting aside of the arbitral award under Section 34?

JUDGMENT

Applicability of Section 5 of the Limitation Act

The Supreme Court conducted a careful analysis of the language of Section 34 of the A&C Act providing for a specific time limit for challenge. In conjunction, it analyzed the provisions of the oft-used Section 5 of the Limitation Act, 1963.

Section 5 of the Limitation Act empowers courts to grant an extension of the prescribed period for an appeal or application subject to its satisfaction. The Respondent argued that the alleged delay of 514 days can be condoned pursuant to Section 5 of the Limitation Act as there was sufficient cause for delay.

The Supreme Court interpreted Section 34 of the A&C Act to ascertain its legislative intent. Section 34(3) of the A&C Act prescribes a specific statutory limitation. An application for setting aside of an arbitral award should be made within three months of the date of receipt of arbitral award. The proviso to Section 34(3) allows this period to be further extended thirty days "*but not thereafter*" on sufficient cause being shown by the party filing the application. The Supreme Court held that the words "*but not thereafter*" in Section 34 make it abundantly clear that the timeline cannot be further extended by Courts even if sufficient cause is shown by the parties. In this regard, the Supreme Court relied on its judgment in *Union of India v. Popular Construction Company*.³ In this judgment, the Supreme Court had held that Section 29(2) of the Limitation Act⁴ would apply, which gives primacy to the timeline specified in a special law, such as the A&C Act, over the timeline specified under the Limitation Act. Therefore, Section 5 of the

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“administrative difficulties” running in the Central or State Government. This places the government at an equal pedestal with the other private party in construction contracts involving arbitration. This judgment serves as a cautionary tale, to parties and to Courts alike, to respect statutorily mandated timelines. Further, it serves as significant guidance to formulate and interpret the language of special statutes in order to rule out an all-pervasive application of the Limitation Act to special procedural timelines.

– Bhavana Sunder, Kshama A. Loya & Vyapak Desai

You can direct your queries or comments to the authors

¹ Civil Leave Appeal No. 1186 of 2018 (SLP (C) No. 17521 of 2017). Decided on December 5, 2018.

² “42. Jurisdiction.—Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.”

³ (2001) 8 SCC 470

⁴ “29. Savings... (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.”

⁵ (2008) 7 SCC 169

⁶ *Mer Panda Vejunandbhai v. Hardasbhai Parbatbhai*, AIR 1992 Guj 122; *Mohammad Ashfaq v. State Transport Appellant Tribunal*, 1977 SCR (1) 563.

⁷ *B.K. Educational Services Private Limited v. Parag Gupta and Associates*, 2018 SCC OnLine SC 1921.

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