

## **LAW RELATING TO LIMITATION FOR CHALLENGING OF ARBITRATION AWARDS**

One of the main purposes of arbitration is to resolve commercial disputes within a reasonable time. To achieve this objective UNCITRAL Model law<sup>1</sup> provided for a very limited scope by providing a few grounds to challenge arbitration awards, since regular appeals won't help conclusion. Indian procedural law is Arbitration and Conciliation Act, 1996 (The Act) which got amended in 2015 and 2019, is similar to the said model law and has provided strict timelines to ensure faster resolution of disputes. The said Act provides for a time limit of 90 days limitation period for challenging an Arbitration award and the said limitation period can be extended by another 30 days, if the supervising court is of the opinion that there are sufficient reasons for the delay. In the case of State of Himachal Pradesh<sup>2</sup> Supreme Court of India held that three months means not 90 days, having regard to 12(1) of the Limitation Act and S.9 of the General Clauses Act, 1897 three months means actual three months. It also explained that the date of receipt of the award also should be excluded from the said calculation.

**Applicability of Limitation Act, 1963 for arbitrations** seated in India is specifically provided in Section.43 of the Act. To determine the limitation of a dispute, the Limitation Act, S.43 and S.21 of the Arbitration and Conciliation Act should be read together. This is because, S.21 defines the commencement of Arbitration proceedings and S.43 provides for the applicability of Limitation Act for arbitration proceedings. If an arbitration is not commenced, by issuing a notice for arbitration within the limitation period from the date of accrual of right to sue, then the claim will become a time barred claim.

**The starting point of Limitation to file the application to set aside the arbitration award** does not start from the date of arbitration award, it starts from the date of receipt of an arbitration award by the party. Moreover, the Supreme Court of India in State of Maharashtra<sup>3</sup> and in Tecco Trichy case<sup>4</sup> held that the Limitation under S.34(3) will start from the date on which the signed copy of the award was received by the party and not the counsel or agent. In the said cases, it was explained that the delivery of an arbitral award is not a mere formality and It is a matter of substance. It was further held that only after the stage under Section 31 has passed the stage of termination of arbitral proceedings within the meaning of S.32 of the Act arises. Supreme Court further held that, it is the duty of the arbitrators to send signed copies of the arbitration award to all the parties to the arbitration agreement to comply with S.31(5) of the Act. In a recent case the Division Bench of Bombay High Court in JSC Ispat Pvt Limited case<sup>5</sup> before allowing the application for condonation of delay, the High

<sup>1</sup> UNCITRAL Model law on Arbitration

<sup>2</sup> State of Himachal Pradesh Vs Himachal Techno Engineers (2010)12 SCC 210

<sup>3</sup> State of Maharashtra Vs ARK Builders (P) Limited (2011) 4 SCC 616

<sup>4</sup> Union of India Vs Tecco Trichy Engineers & Contractors (2005) 4 SCC 239

<sup>5</sup> JSC Ispat Pvt Limited Vs HDB Financial Services Ltd 2018 SCC Online Bom 538

Court went to the extent of calling for the records of the arbitrator and examined if the signed copies of the award were sent to the parties to the Arbitration agreement. Since there was no sufficient proof for any such delivery to the parties was available in the file of the arbitrator regarding the sending of the signed copies of awards, it condoned the delay in filing the application under S.34 of the Act.

**Condonation of Delay in filing an application to set aside an award invoking Limitation Act** is not permissible in Law. In the case of State of Himachal Pradesh<sup>6</sup> Supreme Court of India held that S.5 of the Limitation Act is not applicable to petitions under S.34 of the Act, since the Act provides for a special limitation. In Consolidated Engineering case<sup>7</sup> held that even though Section 5 is not applicable in S.34 applications, S.14 is applicable since it just excludes the time spent in a wrong forum and it does not extend the limitation period provided in the Act. Supreme Court of India in Simplex Infrastructure Limited case<sup>8</sup>, dealt with the issue of condoning the delay in challenging an arbitration award under section 34 of the Arbitration and Conciliation Act, 1996 and the possible application of Sections 5 & 14 of the Limitation Act. In the said Judgement, Supreme Court of India following its Judgment in Popular construction company<sup>9</sup> case held that the High Court erred in condoning the delay of 131 days on the ground that Union of India by mistake filed the application in the wrong forum and further delay was caused due to administrative difficulties, since Section 34 specifically provides a limitation of 3 months with a concession of 30 days' delay on sufficient reasons and not thereafter, to challenge an award.

**Condonation of delay in refiling of S.34 Applications after filing it within the limitation** is another issue faced by parties. In many cases, S.34 applications are filed in time but they are not refiled within the time prescribed by the Registry, in such a situation whether it should be treated as delayed filing or not is the question. In Northern Railway case<sup>10</sup> it was held that refiling of application after curing the defects in the S.34 application does not amount to fresh filing of application for counting Limitation and Limitation prescribed under S.34(3) is applicable only to initial filing of application challenging award under S.34. But this Judgment did not take into consideration the Delhi High Court Rules, that declares that if the refiling is not done within 30 days, it will be treated as a fresh filing. That issue seems to be not brought before the court. Hence, law relating to this point is required to be settled.

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<sup>6</sup> State of Himachal Pradesh Vs Himachal Techno Engineers (2010)12 SCC 210

<sup>7</sup> Consolidated Engineering Enterprises Vs Principal Secretary, Irrigation Department (2008)7SCC 169

<sup>8</sup> Simplex Infrastructure Limited Vs Union of India (2019)2SCC455

<sup>9</sup> Union of India Vs Popular Construction Company (2001) 8 SCC 470

<sup>10</sup> Northern Railway Vs Pioneer Publicity Corporation Private Limited (2017)11SCC 234