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STAY OF AWARD AND INTEREST LIABILITY DURING PERIOD OF STAY

Introduction

The subject of this article is two-fold:

- i The procedure for stay of an award under the provisions of the Arbitration and Conciliation Act, 1996 (said Act).
- ii Liability concerning the interest component when the operation of the award is stayed.

A. Introduction

- 1 When disputes between parties are referred to arbitration, the arbitral tribunal decides on the issues and passes an award that is deemed to be final and binding like a decree of a court.
- 2 After an award is passed, the party who is dissatisfied with the award may file an application under section 34 of the said Act. Section 34 provides for an opportunity to challenge the award on the grounds available thereunder.
- 3 Until such challenge is pending before a court the party may avoid execution by praying for stay of the operation of the award.
- 4 Before the amendment of 2015 to the said Act, the award could be automatically stayed when it was challenged under Section 34.
- 4 Since the amendment, the challenge would now have to be coupled with a separate application under section 36(2) of the said Act for seeking a stay on the award.

B. Stay of an award

- 1 Section 36(2) states that a challenge under section 34 shall not by itself render the award unenforceable unless a separate application for that purpose has been made and the court grants stay in accordance with the provisions of section 36(3).
- 2 Section 36(3) states that court may order stay of operation of the award “subject to such conditions as it may deem fit.”
- 3 The new regime under the said Act, post amendment of 2015 has granted discretionary powers to a court in matters of deciding on the award.

- 4 The words “...Court may...” and “subject to such conditions” under section 36(3) convey the clear intent of the legislature to grant powers to the court to decide on whether or not an award shall be stayed and if yes, on what conditions. The court may impose such conditions as it may deem fit.

C. Deposit of amount while filing section 34 petition

- 1 Where a party deposits the awarded amount while filing a section 34 petition, it would not be a ground for assumed or automatic stay on the award. The party in such case would still have to file a “separate application” praying for stay on the award and the court may on satisfaction of such condition grant stay.
- 2 In the absence of a separate application under section 36(2) or an order of the court allowing the stay, the stay on the basis of the deposited amount would be inferred as an automatic stay which has been done away with in light of the 2015 amendment as well the decisions of the Supreme Court including in *Board of Control for Cricket in India vs. Kochhi Cricket (P) Limited (2018) 6 SCC 287*. The court held that the era of automatic stay was over.
- 3 In *Pam Developments Private Limited vs. State of West Bengal (2019) 8 SCC 112*, the Court stressed on the requirement of furnishing security, the complete discretion of the court, though judicially guided and the power of court to subject the stay to such conditions as it may deem fit. The court observed that an unconditional stay would defeat the very purpose of arbitration.
- 4 In *Union of India vs. Amitava Paul (2015) SCC OnLine Cal 872* the court held that the purpose of granting stay and imposing conditions is to balance the equities between the parties.
- 5 With such view it may be said that depositing of the awarded amount may make the process of seeking stay easier for a party who does so, however, the same shall not have the effect of stay on the award unless an order of the court affirms the same.



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- 6 Thus, an award shall become unenforceable only on an order of stay passed by a competent court.
- 7 Order XLI Rule 5 the Code of Civil Procedure, 1908 (CPC) provides that mere filing of an appeal shall not operate as stay of the decree but the appellate court may “order” stay of execution “for sufficient cause”.

D. The interest liability during the period of stay

- 1 When an award consists of an interest component, whether such liability continues to accrue till the date of payment even during the period of stay on the operation of the award or the interest would cease to accrue during such period.
- 2 The said Act is silent on this question.
- 3 Section 31(7) permits the arbitral tribunal to include interest on the sum of the award unless otherwise agreed by the parties, however, section 34 provides no provision which would determine the liability in relation to the interest component when the award is stayed.
- 4 The question on the effect of depositing of amount by the award-debtor for stay of the award arose before the Delhi High Court in *Delhi Development Authority vs. Bhai Sardar Singh & Sons (2009) SCC OnLine Del 519*.
- 5 In this case, the decretal amount had been deposited before the court during the pendency of an appeal (under the Arbitration Act, 1940).
- 6 After the final adjudication, the deposited amount was to be released in favour of the award-holder. The award-holder made an application for interest on such amount during the pendency of the proceedings. The award-debtor disputed the same on the ground that since the award/decreed was stayed during the intervening period, liability on interest cannot be said to have accrued.
- 7 The court relied on Order XXI Rule 1 of CPC which provides for the modes in which the payment may be made against a decree.

- 8 It was observed that mere depositing of an amount before the court other than the executing court could not amount to payment of the awarded sum and interest shall only cease to run after the payment has been made.
- 9 The court held that interest liability shall be deemed to be alive even during the period of deposit of the amount or during stay and the award-debtor cannot claim that the interest had stopped accruing during such period.

E. Conclusion

- 1 The current position in relation to the interest component of the award during the period of stay of operation of such award is unclear, especially when the view in *Delhi Development Authority* case, as discussed above, was taken under the 1940 Act.
- 2 Since the amendment of 2015 under the said Act, the courts have not decided on such proposition. However, in the question of whether or not the total awarded sum would include interest component, the courts have taken different views, majorly depending on the facts of the case.
- 3 Thus, in similar circumstances, i.e., when the question of stay of an award is involved, the courts may take a view on the basis of the facts of the case and the conditions being imposed in terms of section 36(3).
- 4 Since the issue has not been decided by the Court of law under the new Arbitration Act, the ratio of the *Delhi Development Authority* case, as discussed above will be a guiding factor. Further issue which the courts will have to consider is that when the Award Debtor deposits the amount in court, the Award Debtor is deprived of the use of the money and as such such deposit should or should not accrue interest.