

7<sup>th</sup> May, 2020

# THE CRISIS OF COVID-19 ON ARBITRAL PROCEEDINGS



Amit Meharia

Managing Partner, MCO Legals

LLB (Hons) King's  
College London

Solicitor (Supreme Court of  
England & Wales)

## Expertise:

Corporate Due Diligence &  
Corporate/Commercial Arbitration

✉ amit.m@mcolegals.co.in



Gargi Barkakati

Associate, MCO Legals

B.A., LLB

Bangalore University

LLM (Business Law)

Amity University

## Expertise:

Corporate Due Diligence and  
Corporate/Commercial Arbitration

✉ gargi.b@mcolegals.co.in

## A. Introduction:

- <sup>1</sup> The situation of complete lockdown in the country to prevent the spread of pandemic, i.e., COVID-19 has resulted in also stoppage of Arbitration Proceedings.
- <sup>2</sup> The timeline for completion of the Arbitral Proceedings is envisaged under Section 29A of the Arbitration and Conciliation Act, 1996 (in short “**the Act**”), which states:
  - <sup>a</sup> An Arbitral Award has to be passed within a period of 12 months from the date of completion of the pleadings under Section 23 (4) of the Act.
  - <sup>b</sup> Section 23 (4) provides that the pleadings are to be completed within a period of 6 months from the date the Arbitral Tribunal enters upon the reference.
  - <sup>c</sup> Section 29 A read with Section 23 (4) provides a total time frame of 18 months (i.e. 12 + 6 months) to pass an Award [Shapoorji Pallonji and Co. Pvt. Ltd. v. Jindal India Thermal Power Limited in O.M.P.(MISC.) (COMM.) 512/2019; dated 23.01.2020].
  - <sup>d</sup> The said period of 18 months can be further extended by another 6 months with the consent of both the parties. However, thereafter the same can be extended only by the Hon’ble Court having jurisdiction.
  - <sup>e</sup> If, the Arbitral Award is not passed within the extended time, the mandate of the Arbitrator stands terminated, unless a Court of competent jurisdiction grants further extension.
- <sup>3</sup> The scheme of Section 29A of the Act is to ensure completion of the Arbitral proceedings, in a time bound manner.
- <sup>2</sup> The implication of the time schedule as provided under Section 29A had led to numerous difficulties, not only for the litigants and their counsels but also for the Ld. Arbitrators on account of nation-wide lockdown, who were faced with the dilemma of adhering to the timelines on one hand with prevention of the spread of COVID-19 on the other hand.
- <sup>3</sup> However, the Hon’ble Supreme Court taking note of the crisis on account of lockdown came to the rescue in *Suo Motu Writ Petition (Civil) No. 3/2020*, in “*Re: Cognizance For Extension Of Limitation*” [2020 SCC OnLine 343] (in short “**Writ Petition**”) with respect to limitation in filing of petitions/applications/appeals/suits/other proceedings, etc. before Courts/Tribunals, vide Order dated 23.03.2020:
  - <sup>a</sup> The relevant portion is re-produced herein below:

“To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.”
  - <sup>b</sup> Period of limitation prescribed under the Limitation Act or any special statute whether condonable or not, automatically to stands extended with effect from 15.03.2020 until further Orders.
  - <sup>c</sup> Therefore, the clock of limitation froze on 15.03.2020 and shall commences only when the Hon’ble Supreme Court passes any further orders in the Writ Petition.
- <sup>4</sup> The Order dated 23.03.2020 passed by the Hon’ble Supreme Court is with respect to the limitation as may

## B. Time Schedule for Arbitration in times of COVID-19:

- <sup>1</sup> COVID-19 pandemic has definitely disarrayed all the timelines for arbitration proceedings in India, especially the domestic arbitrations.

be prescribed in Limitation Act, 1963 and/or other statutes including special statutes

<sup>5</sup> On 29.03.2020, the Indian Commercial and Arbitration Bar Association was constrained to request the Hon'ble Chief Justice of India to extend the order dated 23.03.2020 to the timelines under Section 29A of the Arbitration Act.

<sup>6</sup> The Hon'ble Supreme was again approached vide Application being No. I.A. 48411 of 2020 (in short "**said Application**") in the Writ Petition with the prayer "To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996".

<sup>7</sup> Vide Order dated 06.05.2020 passed in the said application (in short "**Order dated 06.05.2020**"), the Hon'ble Supreme Court was pleased to pass the following directions:

<sup>8</sup> **The relevant portion is re-produced herein below:**

".....it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown."

<sup>9</sup> Period of limitation under Arbitration Act shall stand extended from 15.03.2020 till further orders are passed.

<sup>10</sup> **Hence reading Order dated 06.05.2020 along with 23.03.2020, the following may be concluded:**

- <sup>a</sup> Orders as applicable to Arbitration Act
- <sup>b</sup> Orders are not limited to any particular section of Arbitration Act
- <sup>c</sup> The Arbitration Act is a special statute and as such is covered under the said order. Hence provisions section 23 (4) or 29A or 34 or 37 etc. will be covered.
- <sup>d</sup> With effect from 15.03.2020, is any limitation period is under process, the same is suspended till further orders are passed by the Hon'ble Supreme Court.
- <sup>e</sup> Tough the application was specifically made in reference to section 29A of the Arbitration Act, the Hon'ble Court while passing the order did not limit the same to section 29A. The Order covers all situation of limitations as may be contemplated under the Arbitration Act e.g. section 23 (4) or 29A or 34 or 36 etc.
- <sup>f</sup> The second paragraph of the Order dated 06.05.2020 appears to be in contradiction to the first paragraph (as set out above). By the first para, the Hon'ble Court, gave a blanket order, inter alia, suspending all situations of limitation as contemplated under the Arbitration Act, with effect from 15.03.2020, till further orders. Once the said order is made, a situation where limitation expired after

15.03.2020 is irrelevant because the limitation has already been suspended.

<sup>11</sup> The Orders dated 23.03.2020 and 06.05.2020 passed by the Hon'ble Supreme Court has afforded to significant relief to all stakeholders.

<sup>12</sup> No particular and specific orders shall be necessary to be passed by Arbitrators for extension of time or otherwise for filing of pleadings, etc.

<sup>13</sup> In view of the scenario, once normalcy returns and proceedings commence, the delicacies of the timelines as stated in Arbitration Act, should be properly handled with:

<sup>a</sup> Parties must seek to obtain a date of hearing from the Learned Tribunal, preferably within 15 days from the opening of the lockdown.

<sup>b</sup> At first hearing, parties should calculate the period which is to be excluded and present the same to the learned Tribunal, to enable the Tribunal to pass necessary orders in light of the orders passed by the Hon'ble Supreme Court. The copies of the Orders dated 23.03.2020 and 06.05.2020 must be brought on record.

<sup>c</sup> For the appeals/applications that are to be filed before the Hon'ble Court under Section 34, 36 or 37 etc., a time period be calculated and attached with the appeals/applications along with the Orders dated 23.03.2020 and 06.05.2020 of the Hon'ble Supreme Court.