

Impact Of Covid-19 On Mandatory Timelines Under The Arbitration & Conciliation Act,1996



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INTRODUCTION :

*An unprecedented situation because of “Covid-19 / CORONA Virus”, which being more serious than an Epidemic has taken the form of a **PANDEMIC at a global level** therefore causing a major **disruption** in the Arbitration matters as of March 2020. The Pandemic has warranted Emergency steps by Central Government to declare a **LOCK-DOWN at a National level** till April 14th 2020 which now stands extended up to May 3rd 2020 at-least.*

The Pandemic has resulted in a financial meltdown. Even countries with low number of cases infected by the virus are running the risk of a financial collapse of the country as they are maintaining a lockdown to promote social distancing by way of self isolation.

In an effort to arrest the Pandemic, by way of 'flattening the curve' of the number of infected cases, from causing damaging concerns in India our honorable Prime Minister has on **23rd March, 2020** announced a nationwide lockdown. The above lockdown has brought our already over encumbered Judiciary to a near complete halt.

In accordance to the lockdown, the courts are functioning on only matters pertaining to extreme urgency and are relying heavily on video conferencing for the hearings.

On 23rd March, 2020, while taking suo-moto cognizance of the disruption caused by the Pandemic and the hardship that the litigants were facing with respect to the period of limitations under the Arbitration &

Conciliation Act 1996, honorable Supreme Court of India passed an order to the respite as summarized herein below:

In this regard, the order passed by three-Judge Bench comprising of Chief Justice SA Bobde and Justices L Nageswara Rao and Surya Kant reads,

"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."

The Supreme Court has come to aid to the litigants by extending the period of limitation for court proceedings, however the order dated 23.03.2020 does not relax the mandatory and non-extendable timelines prescribed under special laws, which do not relate to filing of cases in Courts and Tribunals, and have to be strictly followed.

In view of this difficulty, **(ICABA)- Indian Commercial and Arbitration Bar Association** has requested the honorable Chief Justice of India that it may be considered that the timelines may stand extended / excluded and the parties need not approach the Court/Authority/Tribunal(s) for seeking such extensions :

Proposed extension/exclusion

In respect of Arbitration and Conciliation Act, 1996 : An automatic extension/exclusion in respect of all pending arbitrations where the timeline as prescribed under section 29A has elapsed and/or is likely to elapse for the entire period of the lockdown w.e.f. 15.03.2020

ICABA has requested the honorable Supreme Court of India to appreciate the fact that "as and when the Courts become fully functional, they will be inundated with such applications, which is clearly not the ideal situation. As and when these concerned parties approach the

Court/ Authority/ Tribunal, it will have a snowballing effect, adding to already existing burden and backlog due to the lockdown".

IMPACT ON ON-GOING ARBITRATION'S :

Section 29A was inserted in the Act by way of the Arbitration and Conciliation (Amendment) Act, 2015, and was brought in with intent to preventing unnecessary delay in passing of the arbitral award thus leading to adjudication of the dispute by the Arbitral Tribunal expeditiously.

Section 29A inter alia provides for the time period to be extendable by another 6 months with the consent of parties and thereafter any further extensions can only be granted by the concerned court, either prior to or after the expiry of the time period, failing which the mandate of the arbitral tribunal shall terminate.

After the expiry of 18 months (12 months plus 6 months of extension), the Arbitral Tribunal becomes functus officio, and cannot either conduct any proceedings and neither can it pass any Award till the time either of the parties or jointly file an application before the concerned court within a reasonable period.

Considering a situation where in an arbitration proceeding, the arguments stands concluded, however, the Arbitral Tribunal was unable to pass the final award within any of the aforementioned periods, in such a scenario a party could approach the Court with an application for extension of time and additional time could be granted to the Tribunal for the passing of the final award as deemed prudent by the Court, in absence of which the mandate of the Arbitral Tribunal would terminate.

Therefore in view of the various facts as stated herein above there is an urgent need to have ***an automatic extension/exclusion in respect of all pending arbitrations where the timeline as prescribed under section 29A has elapsed and/or is likely to elapse for the entire period of the lockdown w.e.f. 15.03.2020.***

RECOMMENDATION :

The LOCK-DOWN was initially announced upto April 14th 2020 which now stands extended upto May 3rd 2020 to prevent further outspread of

the Pandemic. Should the time line be extended further by the central government it may result in more confusion in regard to the mandatory compliances and timelines as prescribed under the law. There being no executive or judicial order extending / relaxing the timelines automatically, especially in cases of domestic and international arbitrations proceedings, it may result in termination of mandate of various Arbitral Tribunals, which will lead to an irreparable loss to the litigants.

Due to the disruption by way of a lockdown in the country, the courts are unable to have in person hearing and therefore rendered non functioning except to hearing urgent matters and therefore cannot be approached by litigants for seeking any such extensions.

In view of the above, therefore, all Arbitration Institutes like “ICA” (Indian Council of Arbitration) or “CIAC” (Construction Industry Arbitration Council) or “IITArb” (Indian Institute of Technical Arbitrators) or “DIAC” (Delhi International Arbitration Centre) should not only request the honorable Supreme Court of India for ***an automatic extension/exclusion in respect of all pending arbitrations where the timeline as prescribed under section 29A has elapsed and/or is likely to elapse for the entire period of the lockdown w.e.f. 15.03.2020 or any such time that may further be extended by the central government but also request all their Empanelled Arbitrators on all their on-going Arbitrations*** to pass a blanket orders or issue statements thereby automatically suspending / relaxing the mandatory timelines as provided by the Arbitration & Conciliation Act, 1996 till such time the LOCK-DOWN is revoked.

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