

Sufficient Cause: Not sufficient for setting aside an arbitral award

1. Introduction

Most contracts tend to veer toward arbitration as a dispute resolution mechanism. Once an award is pronounced, a losing party has a statutory right under section 34 of the Arbitration and Conciliation Act, 1996 (“**Act**”) to challenge it within a defined period. Situations can arise where the party is unable to file its challenge within the mandatory period of 3 months, prescribed under section 34(3) of the Act. The 3 months are triggered from the date of receipt of the award and the Act allows an extension of a further period of 30 days only. Once an award is to be challenged and where the prescribed period of 90 days lapses, it is common to move an application seeking condonation while explaining why the delay occurred. Such an application has to be moved during the additional 30 days. Different courts have examined the issue of delayed filing and, in some cases allowed or disallowed, depending upon the facts, the cause of delay and whether a case was made out that sufficient cause existed in justifying the delay.

Recently the Supreme Court (“**SC**”) examined the threshold issue of limitation in *Simplex Infrastructure Ltd. V. Union of India*¹ (“**Case**”) and assessed if administrative difficulties justify delaying challenge within the prescribed time.

This newsletter aims to analyse the aforesaid ruling of the SC.

2. Facts

Simplex Infrastructure Limited (“**Appellant**”) entered into an agreement with Union of India (“**UOI**”) for building 821 permanent shelters in the tsunami-hit Andaman and Nicobar Islands. The scope of work involved construction of single storied permanent shelters, including internal water supply, sanitary installation and internal electrification. During execution, some differences arose between the parties with regard to the performance of the construction contract, which were referred to arbitration. During the pendency of the arbitration, the Appellant filed an application for interim relief under section 9² of the Act before the High Court of Calcutta (“**HC**”) seeking an injunction on encashment of the bank guarantee. The outcome of those proceedings is not material in the present factual matrix.

On October 27, 2014, an award was passed by the arbitrator (“**Award**”) directing UOI to pay INR 99,698,355³ (about USD 1.42 million) along with simple interest at 10%. UOI received the award on October 31, 2014. Thereafter, on January 30, 2015, i.e. on the 91st day from the date of receipt of the award, UOI moved an application under section 34 of the Act before the District Judge, Port Blair (“**DJ**”) to set aside the award.

Almost a year after filing the application for setting aside the Award, on February 12, 2016, the DJ dismissed the application and held that it had no jurisdiction in light of section 42 of the Act. Section 42 is a non-obstinate clause which stipulates that when parties to an arbitration

¹ Civil Leave Appeal No. 186 of 2018 (SLP (C) No. 17521 of 2017) decided on December 5, 2018

² Section 9 states that an application for interim relief can be filed by a party anytime before or during arbitration

³ USD 1 = about INR 70

agreement approach a court for relief only that particular court shall have jurisdiction in all subsequent proceedings. In other words, the DJ held that UOI should seek its relief from the HC.

In view of the order passed by DJ, UOI filed an application before the HC under section 34 for setting aside the Award. The application was filed only on March 28, 2016, along with an application for condonation of delay of 514 days computed from October 30, 2015 i.e. the date of receipt of the award. UOI reasoned the delay on the ground that there was a *bona fide* mistake in filing the application before the wrong forum and that due to delay by UOI's counsel, the necessary formalities could not be complied with, within time. UOI also pleaded that the departmental office was located at Port Blair and it was time consuming process for obtaining permission from the circle office at Chennai. On April 27, 2016, HC allowed the application and condoned the delay of 514 days on the ground that sufficient cause was shown by UOI to explain the delayed filing. Aggrieved with aforesaid order of the HC, the Appellant filed an appeal before the SC.

3. The Relevant Law and Issues

Before dealing with the issues, it is necessary to set out the interplay of two different statutes. Section 5 of the Limitation Act, 1963 ("**Limitation Act**") provides for extension of prescribed period if sufficient cause⁴ is shown. There is no definition of sufficient cause but it has received a very liberal approach by courts. Based on such liberal approach parties have, time and again, sought shelter under section 5 to condone the delay even for flippant reasons. Section 14 of the Limitation Act provides for the exclusion of time spent on *bona fide* litigation before a court without jurisdiction. As per this section, the time during which an applicant has been prosecuting with due diligence against the same party for the same relief shall be excluded.⁵ Section 34 of the Act provides recourse against an arbitral award which may be made only in accordance with 34(2) and (3). Section 34(3) stipulates a time frame within which such recourse can be exercised which is within three months from the date on which the party making the application receives the award. As stated earlier, the proviso in 34(3) further extends the time by another 30 days on sufficient cause being shown by the party filing the application "but not thereafter."

The SC analysed, whether applications for condonation of delay under sections 5 and 14 can be extended to proceedings under the Act. Specifically, the SC dealt with the following issues -

- Does section 5 of the Limitation Act apply to proceedings under section 34 of the Act?
- Whether administrative difficulties would be a valid reason to condone delay?
- Can benefit of section 14 of the Limitation Act be extended to proceedings under section 34?
- Can a delay beyond the specific statutory limitation prescribed under section 34(3) be condoned?

⁴ It means that there is an explanation of delay in filing to the satisfaction of the court

⁵ See section 14(2) of Limitation Act

4. Finding and Analysis by SC

4.1 Applicability of section 5 to section 34: The SC relied upon *Union of India v. Popular Construction Company*⁶ where it held that: “As far as the language of Section 34 of the 1996 Act is concerned, the crucial words are “but not thereafter” used in proviso to sub-section (3). In our opinion, this phrase would amount to express exclusion within the meaning of Section 29(2) of the Limitation Act, and would therefore bar the application of Section 5 of the Act. Parliament did not need to go further. To hold that the court could entertain an application to set aside the award beyond the extended period under the proviso, would render the phrase “but not thereafter” wholly otiose. No principle of interpretation would justify such a result.”

Section 29(2)⁷ of the Limitation Act would apply in cases where a time period has already been prescribed in some other statute. This provision gives importance to the statutory timeline specified in a special law i.e. the Act here. Simply put, it bars the application of section 5 of the Limitation Act to proceedings under section 34. The Act is a special law which provides its own limitation within which the award has to be challenged. In other words, the SC held that section 5 cannot be applied to condone the delay in filing an application under section 34.

4.2 Administrative difficulties is a valid reason or not: The UOI argued that the delay which was caused due to inevitable administrative difficulties of obtaining directions from higher officials would be a sufficient cause for delay in filing a section 34 application. UOI also relied upon *Union of India v. Tecco Trichy Engineers & Contractors*,⁸ wherein the HC rejected the application under section 34 holding it as barred by limitation. This finding was subsequently reversed by SC who condoned the delay on the ground that service of the award on the General Manager in a huge organisation like the railways could not be taken as sufficient notice. It took the position that in large organisations that have different divisional heads in various departments, it is necessary that copy of the award should be received by someone having knowledge of the proceedings.

However, in *Simplex* the SC held that as there is no dispute with respect to who received the arbitral award and, therefore, the judgment relied upon by UOI was immaterial. The SC stated that administrative difficulties with respect to securing permission from the office at Chennai cannot be considered as a sufficient cause and no court shall entertain any application filed beyond the statutory period, even if it may be by a government body.

4.3 Benefit under section 14: The other argument by UOI was protection under section 14 of the Limitation Act. In the present case, UOI filed an application under section 34 before DJ on January 30, 2015 and which was dismissed on February 12, 2016 for lack of jurisdiction. The proceedings lasted a little over 12 months i.e., 379 days. Thereafter, UOI moved a section 34 before the appropriate court i.e. HC along with an application for condonation of delay seeking protection under section 14 in order to exclude the period of 379 days as UOI was prosecuting the proceedings in good faith.

Having regard to the legislative intent of the provision and relying on other SC precedents, it was held that section 14 would apply to proceedings under section 34, if it is shown that the

⁶ (2001) 8 SCC 470 at Para 12 and 14

⁷ Section 29(2) excludes application of Limitation Act in cases where period of limitation is prescribed under such other special or local law

⁸ (2005) 4 SCC 239

applicant was pursuing other proceedings diligently and in good faith, under a belief that the court had subject-matter jurisdiction. This effectively means that the court will consider the genuine mistake and give the benefit i.e. exclude the time spent in the first court proceedings from the subsequent one. In view of the aforesaid, benefit of section 14 was extended to UOI. However even after providing the benefit and excluding 379 days, there was still a delay of 131 days which could not be condoned in view of the statutory limitation under section 34(3).

4.4 Specific statutory period under section 34(3) is absolute: The language of 34(3) is express, unequivocal that an application for setting aside of an arbitral award can only be made within three months from the date on which the party making the application receives the award. The proviso in section 34(3) further extends the time by another 30 days on sufficient cause being shown by the party filing the application “but not thereafter”.

The SC held that the words *but not thereafter* in section 34(3) make it abundantly clear that the timeline cannot be extended by courts even if sufficient cause is shown by the parties. So where benefit of section 14 was extended and 239 days was excluded, SC held that delay of 131 days cannot be condoned in view of section 34(3). In view of the aforementioned, the SC held that the HC was not justified in condoning the delay of 514 days by UOI in filing the application under section 34 of the Act and accordingly, set aside the order dated April 27, 2016.

The SC took the correct view and gave benefit of section 14(2) but still UOI’s application was disallowed. 131 days includes 120 days (90 + 30) permissible by statute. So, in effect, the actual delay was only of 11 days for which the justification of administrative difficulties was rejected. The SC has sent a strong message with this judgment which will ensure that statutory timeline under such special laws are respected by applicants.

5. Conclusion

In India, it is very common to file applications seeking condonation of inordinate delays which courts allow normally by merely imposing a nominal cost. This judgment by the SC strengthens the interpretation of section 34(3) of the Act and ensures that time limit is considered to be sacrosanct not only by parties, but also by courts. By interpreting the language of special statutes, the SC has set the tone to discourage the practice of filing unnecessary applications under section 5 of the Limitation Act and thereby preserve the sanctity of arbitration awards. This judgment will help in ensuring timely and effective adjudication of disputes under the Act and, hopefully, nip frivolous delay reasons in the bud. Applicants need to be vigilant in challenging the award within the time prescribed under 34(3), failing which sufficient cause would not be sufficient enough in setting aside the award.

Author

Urvika Suri