

Application of Law of Limitation in Computing Time Period Under Section 34(3) of the Arbitration & Conciliation Act, 1996

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INTRODUCTION

It is fairly known that the Indian Limitation Act, 1963 (the Limitation Act) constitutes “general law” for Time Periods and its computation. Section 29(2) of the said Act contains the fundamental rule that provisions of Limitation Act would apply for computation of time period prescribed by any special law only to the extent it is not expressly excluded.

The relevance of time period

An application to challenge arbitral award is made under section 34 of the Indian Arbitration and Conciliation Act, 1996 (the Arbitration Act) within the “time period” prescribed in sub-section (3) of section 34, i.e., within three months from the receipt of the award after the expiry of which the Court can permit a party to make the application within 30 days “but not thereafter”. A “time period” has been regarded as necessary for certainty and to ensure expeditious and effective resolution of disputes between the parties.

Express Exclusion Test

Should a rule of computation of time periods contained in the Limitation Act apply to section 34(3) of the Arbitration Act, 1996? To answer this question the Supreme Court has generally resorted to the test of “express exclusion”. The article briefly sets out the legal position about the computation of time limits and analyzes the manner which the Court has applied the express exclusion test.

LEGAL POSITION

Starting Point (the first day)

The time period for challenging an award commences only upon its proper receipt. An award would be regarded as properly received only if it is delivered in the manner prescribed by section 31 (5). This means when a “signed copy” has been delivered to the party. The delivery of an award constitutes an

important stage in the arbitral proceedings. The Supreme Court has held that “delivery of an arbitral award” is not a matter of formality but of substance; as it confers certain rights on the party. (see: *Union of India v. Tecco Trichy (2005) 4 SCC 239*)

“Within three months from.....”

There is an ordinary rule that where statutes, while prescribing time period, uses the expression “from”, it is an indication that while computing the period so prescribed the rule would be “to exclude the first and include the last day”. (see: *section 9 of the General Clauses Act*).

In the case of *State of Himachal v. Himachal Techno (2010) 12 SCC 210*, the Supreme Court extended this principle to section 34(3). Thus, the time period for filing an application under section 34 would commence “a day after the receipt of the award by the party.

The time in between

Once the time has begun to run, no subsequent disability or inability to institute a suit or make an application would “stop it”. This is a fundamental rule. (see: *section 9 of the Limitation Act*)

So after proper receipt of award, the time period for a challenge “begins to run”. Apart from the exception of section 33, it cannot be stopped. [section 34(3)]

The last day

The time period under section 34(3) expires after “three months”. The rule of construction of this period would be to not treat this period as 90 days, but actual period of calendar month. Thus, the period would expire in the third month on the date corresponding to the date upon which the period starts. In days it may mean “90 days or 91 days or 92 days or 89 days”. (*State v. Himachal Techno (2010)12 SCC 210*)

A rule for computation is that in case the last day of the time period expired on a day when the court is closed the proceedings will be instituted “on the day when the court reopens” (see: *section 4 of the Limitation Act, 1963*)

However, the Supreme Court has held that the benefit of this rule cannot be taken to prefer an application under section 34 after the expiry of the time period. (see: *Assam Urban Water v. Subhash Projects & Marketing (2012)2 SCC 628*)

The proviso to section 34(3): Additional 30 days

Section 34(3) *proviso* enables the party to make an application after the expiry of three months upon demonstrating that the applicant was “prevented by sufficient cause” from doing so. In such cases, the statute has conferred upon the court discretion to entertain the application within a period of 30 days “but not thereafter”.

To “prevent” means to thwart; to hinder or to stop. Thus, while ‘time period’ would never stop under any circumstances but certain circumstances may stop an applicant from making the application. If the court found those circumstances constituted “sufficient cause” it would permit the party to make the application.

It is beyond cavil that the discretion of the court to permit an application beyond the original period cannot extend beyond 30 days being the statutory outer limit for exercise of discretion. (see: *Union of India v. Popular Construction (2001)8 SCC 470*)

The distinction between “extension of time” and “computation of time”

While time does not stop running, it can be excluded from the computation. The rule of computation of time period recognizes the concept of “exclusion of time” under certain circumstances: and so far the Supreme Court has permitted parties, to take recourse to section 14 of the Limitation Act, 1963 and exclude from computation the time spent in *bonafide litigious activity* in other words “mistaken remedy” or “selection of a wrong forum”. (see: *Consolidated Engineers v. Principal Secretary (2008) 7 SCC 169*)

However, when a party sought exclusion of time by taking recourse to the plea of fraudulent inducement available under section 17 of the Limitation Act, 1963. The Supreme Court held that once the party has properly received the award the right to challenge comes within their knowledge and no fraudulent act of another party can be made an excuse for excluding the time from computation.

Where fraud has been practised at the time of delivery the award would not be considered as having “properly received”. (see: *P. Radhabai & v. P. Ashok Kumar (2018)13 SCALE 60*)

THE PRINCIPLE OF “EXPRESS EXCLUSION”

The Supreme Court has applied the principle of express exclusion the following manner:

By reference to language of section 34(3) of the Arbitration Act

In *Popular Construction (supra)* the Supreme Court held that the expression “but not thereafter” found in *proviso* section 34(3) expressly excluded the applicability of section 5 of the Limitation Act.

In *P. Radhabai (supra)* the Supreme Court while emphasizing on the expression “had received the arbitral award” found that applicability of section 17 was “expressly excluded”. It also held that extending the benefit of section 17 of the Limitation Act would “do violence” to the provision of section 34 (3).

Interestingly in *Himachal Techno (supra)* the Supreme Court emphasized on the expression “from the date” found in section 34(3) applied the presumptive rule of interpretation found in section 9 of the General Clauses Act. It therefore held that that the Arbitration Act did not exclude the application of section 12 of the Limitation Act, 1963 which is similar to section 9 of the General Clauses Act. However, the Supreme Court failed to notice the expression “period of limitation” found in that section, which necessarily restricts the applicability of section to those periods which are prescribed by schedule to the Limitation Act, 1963.

By reference to the Limitation Act

In *Assam Urban Water Supply (supra)* the Supreme Court refused to extend that benefit of section 4 of the Limitation Act on the ground that the section was meant only for the time period prescribed by the Limitation Act and time period under section 34(3) stood outside its purview. To arrive at this conclusion the Supreme Court resorted to the definition “period of limitation” found in section 2(j) of the limitation act.

It is noteworthy that the above decision was delivered two years after the judgment in *Himachal Techno (supra)*.

Principles of equity

It is pertinent to note that in *Consolidated Engineers (supra)* the Supreme Court laid on two factors: first was the distinction between extension of time and exclusion of time, as explained above and *secondly* on the principle of equity. On these scores the Supreme Court held that section 34(3) did not excluded applicability of section 14 of the Limitation Act, 1963.

CONCLUSION

It is clear that where the Supreme Court has applied the express exclusion principle with reference to the language of section 34(3) and Limitation Act the answer about applicability has been in the negative. On two occasion- while applying section 12 and section 14- the Supreme Court has answered the question affirmatively. It would be in consonance with the object of arbitration law- efficient and expeditious adjudication of disputes- to avoid calling in aid the principle "underlying the provisions" of the Limitation Act and read into fixed time periods of section 34(3); benefits of principle of computation found in the Limitation Act.

After all the Supreme Court in *Yeshwant Deora v. Walchand AIR 1951 SC 16* had held that "rules of equity have no application where there are definite statutory provisions specifying the grounds on the basis of which alone suspension or stoppage of running of time can arise. While courts are necessarily astute in checkmating or fighting fraud, it should equally borne in mind that statutes of limitation are statues of repose".

This is a noteworthy principle.