

# Dispute Resolution Hotline

April 21, 2023

## TIMELINE TO SEEK SETTING ASIDE OF ARBITRAL AWARDS ARE INVIOABLE: SUPREME COURT

### INTRODUCTION:

In a recent judgment passed in Bhimashankar Niyamita Vs. Walchandnagar Industries Ltd.<sup>1</sup>, the Supreme Court of India effectively reiterated that even if the extended period for filing a challenge against an arbitral award falls within a designated court vacation, there exists no opportunity to file immediately on reopening of the court. The said judgment operates as a stark reminder that timelines for filing a challenge to an arbitral award are sacrosanct and even days on which the courts are closed will not be permitted to be excluded in counting the timelines.

### FACTS:

An arbitral award was passed on August 24, 2016. Section 34(3) prescribes a period of 90 days within which an application under Section 34 of the Act (i.e. for setting aside the arbitral award) may be filed. A further extension of 30 days is permissible, upon showing cause.

In the instant case, the period of 90 days expired on November 24, 2016. No application was filed by the aggrieved party within the said 90 days. The further 30 days expired on December 24, 2016; this date fell within the winter vacation of the court and consequently, the court was closed.

The aggrieved party filed the application for setting aside the award alongwith an application showing cause for the delay before the trial court on the reopening day i.e. January 02, 2017.

The trial court rejected the said applications on the ground that such delay was not condonable under the Act. An appeal was filed against the said order before the High Court which was dismissed. An appeal was therefore filed before the Supreme Court of India, which also, relying on its own previous order in Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Limited<sup>2</sup>, upheld the orders of the trial court and the high court and went on to dismiss the appeal.

### PRACTICAL BACKGROUND:

In India, courts typically have pre-set calendars which details the various vacations that are scheduled throughout the year. In addition to numerous public holidays, courts also have winter/Christmas vacations, summer vacations, Diwali vacations etc. In addition, there may be other vacations set out for specific courts as may be customary. Some of these vacations may even stretch from a week to even a month or so. While the court's registry may operate during these vacations and be open for filing, they do not operate at full capacity and infact, there are also days where they are completely closed and not open to filing. To ensure that litigants are not prejudiced due to this, the Limitation Act, 1963 and the General Clauses Act, 1897, have certain provisions, which are reproduced for convenience.

Section 4<sup>3</sup> of the Limitation Act, 1963, provides for a situation where the expiry of limitation falls when a court is closed; it specifically states that in such case, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Section 10<sup>4</sup> of the General Clauses Act, 1897, provides for the manner of computation of time and states that when an act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open.

In Assam Urban Water Supply, the Supreme Court took a view that the benefit of Section 4 of the Limitation Act applied only to the initial period of 90 days and that the additional 30 days which were given to file the application showing cause did not fall within the definition of the 'period of limitation'.

### ANALYSIS:

This case is a stark reminder that timelines for filing of an application for setting aside of an arbitral award under the Arbitration & Conciliation Act, 1996, are not extendable, even in cases where the courts themselves are closed due to vacations.

In India, such vacations come several times in each calendar year and there may well be cases where the timelines granted to file such an application may fall within such designated vacation periods where the registry of the courts are closed.

It therefore becomes imperative for litigants to keep such practical challenges in mind and ensure that filings are

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<sup>1</sup> Civil Appeal No. 6810 of 2022 in SLP (C) No. 11216 of 2022;

<sup>2</sup> (2012) 2 SCC 624;

<sup>3</sup> **4. Expiry of prescribed period when court is closed.**—Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

Explanation:- A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

<sup>4</sup> **10. Computation of time.**—(1) Where, by any <sup>48</sup>[Central Act] or Regulation made after the commencement of this Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of the prescribed period, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court or office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Indian Limitation Act, 1877,<sup>49</sup> applies.

(2) This section applies also to all <sup>50</sup>[Central Acts] and Regulations made on or after the fourteenth day of January, 1887.

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