

Covid 19: Supreme Court saves the day on limitation

The article focuses on the supreme court order increasing the period of limitation due to the recent outbreak.

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Covid-19 has put the world in disarray. Whilst there was a gradual buildup i.e. step-wise restrictions being imposed in certain areas over a period, which impacted day-to-day life and the ability to effectively perform one's functions, India now faces a 21-day complete lockdown. In such a situation, litigants are, quite understandably, anxious about preserving limitation in respect of their matters.

With the gradual onset of the impact of Covid-19, the Supreme Court and several High Courts in India started taking up urgent matters using video-conferencing. This was done to ensure that access to justice remained available, albeit in urgent cases.

This also avoided a complete shutdown of the legal system. With the announcement of lockdown yesterday, even urgent cases may not be taken up for hearing. In fact, the Supreme Court has adjourned all matters listed for hearing through video conferencing on March 25, 2020.

On March 23, 2020, the Supreme Court passed an order, inter alia, taking into account the difficulties that may be faced by the litigants across the country on account of the Covid-19 pandemic and extending the limitation ("Supreme Court Order"). This includes limitation for petitions, applications, suits, appeals and all other proceedings under the general or special law both under central and/ or state legislations. This is a welcome move by the Supreme Court and has been passed invoking their inherent power under Article 141 and 142 of the Constitution of India and is binding on all courts in India. The step is unheard of and is use of the Supreme Court's overarching powers, to ensure justice does not suffer.

What is limitation?

Limitation entails fixing or stipulating a time frame for initiation of a legal action. Section 2 (j) of the Limitation Act, 1963 ("**Limitation Act**"), defines '*period of limitation*' as period of limitation prescribed for any suit, appeal or application under the schedule to the Limitation Act, which covers a range of claims and their timelines.

What does the order say?

- The period of limitation in all the proceedings in respect of Courts/ Tribunals, irrespective of the limitation prescribed under the general or special laws, whether condonable or not, shall stand extended with effect from March 15, 2020, till further orders.
- The Supreme Court will consider this issue again after four weeks.

What happens to proceedings under the Bankruptcy Code?

Both, National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”) have issued separate notifications that the period of limitation for filing appeal before the NCLAT shall stand extended in terms of the Supreme Court’s order. Therefore, all cases and the timelines prescribed under the Insolvency and Bankruptcy Code, 2016 (“**Bankruptcy Code**”) will stand extended.

For example, the timeline to file a claim by a financial creditor or an operational creditor, and the consequent timelines prescribed during the corporate insolvency resolution process will also stand extended.

In addition, the Government has also clarified that due to emerging financial distress faced by most companies on account of Covid-19, the threshold of default under Section 4 of the Insolvency Code has been increased from one lakh rupees to one crore rupees, in order to safeguard the medium and small-scale enterprises.

It has also been notified that if the current situation does not improve by April 30, 2020, they may consider suspending the operation of Sections 7, 8, 9 and 10 of the Bankruptcy Code by six months, which prescribes the initiation of a corporate insolvency restructuring process by the creditors. This is being contemplated to prevent companies at large from being forced into insolvency proceedings.

Is arbitration covered under the extension?

All the time-lines prescribed under the Arbitration and Conciliation Act, 1996 and subsequent amendments, (“**Arbitration Act**”), for example, the timeline to file a challenge under Section 34 of the Arbitration Act or an appeal arising thereunder will stand extended. Any timeline contemplated and codified under the Arbitration Act will be covered by the Supreme Court’s order.

It is debatable whether the proceedings conducted by the Arbitral Tribunal, which is usually recorded in a procedural order, will be covered under the ambit of the Supreme Court’s Order. Nevertheless, given the current situation, it is expected that any tribunal will take a lenient view, though usage of video conferencing and online modes are being propagated to ensure that arbitration proceeds on schedule/with minimal delay and dispute resolution does not suffer in wake of Covid-19.

Due to Covid-19, there may be delays in initiation or the conduct of the arbitration proceedings, or recourse to any court. The obtaining of interim reliefs, filing of a challenge to the award, or enforcement of an award, are all likely to get delayed. The Supreme Court’s Order is, therefore, a positive and welcome development which will prevent much consternation on computation of limitation.

How will a commercial case be impacted?

A commercial case could entail a civil suit for recovery of claims, infringement action in relation to intellectual property laws etc., and is construed in a wide manner as per the definition under the Commercial Courts Act, 2015 (“**Commercial Courts Act**”). All commercial cases which usually are required to be filed within a three-year period under the Limitation Act will be covered under the Supreme Court’s order. The timelines contemplated under the Commercial Courts Act, such as completion of pleadings, should also be covered under the purview of the order, thereby allowing extensions which are not statutorily available.

Analysis

Overall, this is a commendable step by the Supreme Court. It is a sensible and praiseworthy approach adopted and the litigants will look forward to further guidance from the Supreme Court in near future.

At the same time, it does open doors for interpretation and needs to be looked at on a case-to-case basis. With Supreme Court intending on revisiting the situation four weeks later and given that the law and order situation with Covid-19 being fluid, it is expected that more clarifications and enabling orders may be issued from time to time.

The issue of whether the Supreme Court has the power to issue such an all-encompassing order, which while being enabling and a welcome one, arguably transgresses the clear language of statute, is also one which is likely to get argued at another point in time. The ramifications of this ripple will flow over a period of time.

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