



Calcutta High Court extends the benefit of Hon'ble Supreme Court's order granting extension of limitation in view of the Covid-19 Pandemic to proceedings for setting aside and execution of Arbitral Awards

SREI Equipment Finance Limited v. MARG Limited

Citation	I.A. No. GA/1/2021 in EC/74/2021
Date	30 June 2021
Court	Hon'ble Calcutta High Court
Coram	Hon'ble Mrs. Justice Moushumi Bhattacharya

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1. Facts and Procedural History

- 1.1 The present petition was filed under Section 36 of the Arbitration and Conciliation Act, 1996 (“Act”) seeking enforcement of an arbitral award passed on 31 August 2020 (“Award”). The Award directed the award-debtor to pay a sum of INR 26 crores to the award-holder. The award-debtor received the Award on 7 September 2020. The three-month limitation period prescribed under Section 34(3) of the Act therefore expired on 7 December 2020.
- 1.2 The present case deals with the maintainability of the execution petition filed by the award holder in view of the interlocutory application made by the award-debtor seeking dismissal of the execution being I.A. No. GA/1/2021 In EC/74/2021. The present judgment articulates an important position of law pertaining to the limitation period for executing an arbitral award in view of the Covid-19 pandemic and Hon’ble Supreme Court’s order extending limitation period which is still in operation.

2. Issues

- 2.1 Whether the execution petition under section 36 of the Act is maintainable and the limitation period under Section 34 for setting aside the award has elapsed or continues to run in view of the latest order passed by the Supreme Court in Miscellaneous Application No. 665 of 2021 in *Suo Motu (C) No.3 of 2020*?

3. Contentions of the Applicant (Award-Debtor)

- 3.1 Applicant relied upon the three orders passed by the Hon’ble Supreme Court on 23 March 2020, 8 March 2021, and 27 April 2021¹ in *Suo Motu Writ Petition (Civil) No. 3/2020*, by which periods of limitation under the general and special laws were amended in view of the Covid-19 pandemic (“**SC Limitation Order**”).
- 3.2 It was contended that the period of limitation for filing proceedings under the general and special laws was extended with effect from 15 March 2020 by the SC Limitation Order. The arguments on maintainability, were twofold: first, that the time to execute the Award had not commenced as per Section 34(3) of the Act read with the SC Limitation Order and second, that the High Court did not have jurisdiction to entertain the execution proceedings. The High Court addressed only the first contention as the same was sufficient in deciding the maintainability of the execution proceedings.

4. Contentions of the Respondent (Award-Holder)

- 4.1 The Award-Holder broadly argued that the stay on the Award was no longer automatic post amendment in the Act and since the Award-Debtor did not separately apply for stay of the Award, the time for filing setting aside application under Section 34 had expired. It was further contended that since the statutory limitation had expired, the Award-holder was right to file an application for execution of the Award.
- ## 5. Order of the High Court
- 5.1 The Hon’ble Calcutta High Court placed reliance on the operative portions of the SC Limitation Order. The High Court observed that in essence, the benefit of the extension

¹ Miscellaneous Application No.665 of 2021 in *Suo Motu (C) No.3 of 2020*.

of the period of limitation given to litigants was revived and restored by the latest order dated 27 April 2021. It was opined that the question of limitation in the present proceedings must entirely turn on the effect of the order of the Hon'ble Supreme Court dated 27 April 2021. It further observed that as the latest order restored the extraordinary measures to lessen the difficulties faced by litigants due the upsurge of the pandemic, the limitation period stood extended until further orders.

- 5.2 The Court stated that any alternate interpretation of the series of orders passed by the Apex Court would lead to an absurd result. If the orders were construed as not limiting an Award-Holder from enforcing the award under Sections 36(1) and (2) of the Act, it would effectively take away the benefit and relaxation given to litigants who failed to institute proceedings under section 34 of the Act within the period of limitation.

6. PSL Opinion/Analysis

- 6.1 The issue with respect to applicability of the SC Limitation Orders to proceedings under section 34 and section 36 of the Act has been arising before various Courts in India. The present order seeks to alleviate the difficulties faced by litigants due to Covid-19 pandemic citing that any other interpretation would lead to absurd results. However, the interpretation adopted by the Court could also lead to anomaly, it may have a counter intuitive effect on the pro enforcement approach adopted by Indian judiciary lately as the SC Limitation Order is being grossly misused and misinterpreted by some defaulting parties to inordinately suspend execution of arbitral awards on frivolous grounds. SC Limitation Order must be applied pragmatically with due regard to peculiar facts of each case, after a party sufficiently demonstrates genuine difficulty in approaching the Court due to the pandemic and not in a blanket fashion. Otherwise, it may have a deleterious impact on the enforcement of Awards for commercial parties at the hands of dishonest litigants seeking to scuttle the intention evinced while entering the arbitration agreement.
- 6.2 However, some would argue, as they are that interpreting the intentions of the SC Limitation Order in any other manner would have defeated the very cause behind passing such orders while giving rise to absurd results. Clarity from the Hon'ble Supreme Court is required soon to enable nuanced and uniform application of the SC Limitation Order keeping in mind the primary objectives of the Act.