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### SUPREME COURT CLARIFIES TIME PERIOD FOR FILING APPLICATION UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996

17 August 2018

By an order dated 8 August 2018 passed in *M/s Ved Prakash Mithal and sons v Union of India* (Special Leave to Appeal (C) No(s). 20195/2017), the Supreme Court of India (the Court) has clarified the issue regarding the commencement of limitation period in filing an application to set aside an award under Section 34 of the Arbitration and Conciliation Act, 1996 (as amended) (Act). The Court has *inter alia* held that Section 34(3) of the Act specifically provides for the date on which the application under Section 33 of the Act which deals with interpretation and correction of clerical errors in an award etc. has been 'disposed of' by the Arbitral Tribunal. Therefore, the limitation period shall commence from the date of such disposal of an award which includes the date of disposal of an application filed by the parties under Section 33 of the Act.

#### Background

In the present case, an Arbitral Award was delivered on 30 October 2015 (Arbitral Award) and received by the Respondent on 7 November 2015. An application was made by the Respondent to correct the said Arbitral Award on 16 November 2015. A similar application to correct the Arbitral Award was also made on behalf of the Respondent on 20 November 2015. Both these applications were decided by the learned Sole Arbitrator together and both were dismissed by an order of the Tribunal dated 14 December 2015. Thereafter, the Respondent challenged the said Arbitral Award by preferring an application under Section 34 of the Act on 11 March 2016.

The learned Additional District Judge, *vide* its order dated 30 May 2017 (Order), found that the Section 34 application was time-barred, on the ground that the application should have been made within the time prescribed under the Act which commenced from the date of the Arbitral Award i.e. 7 November 2015 and not from the date of the dismissal of the application made by the Respondent for correction of the Arbitral Award i.e. 14 December 2015. Accordingly, the Respondent preferred an appeal against the Order dated 30 May 2017 in the Delhi High Court. The Learned Single Judge of the Delhi High Court *vide* its order dated 10 July 2017 (High Court Order) reversed the Order dated 30 May 2017 stating that the Section 33 application had been disposed of on 14 December 2015 and the period mentioned in Section 34(3) would only start running only from the said date, thereby, clarifying that the Section 34 application is not time-barred. The Petitioner impugned the High Court Order by preferring a Special Leave to appeal before the Court.

#### Issue for consideration

The issue for consideration before the Court was whether the period of limitation provided under Section 34 of the Act for challenging an arbitral award would commence from the date of disposal of the Section 33 application or from the date of the Award?

## Petitioner's contentions

The Petitioner contended that the expression "disposed" which is mentioned in Section 34(3) of the Act would have to be read in consonance with and in harmony with Section 33 of the Act and that unless an award is not ultimately corrected or modified, the limitation period would not commence from the date on which a request for correction of the award is merely dismissed. The Petitioner further placed reliance upon the judgment of a Single Judge of the Bombay High Court in the case of *Amit Suryakant Lunavat v Kotak Securities, Mumbai* (2010) (6) Mh.L.J. 764) wherein the Learned Single Judge opined that considering the scheme and purpose of the Act, in an event an application is filed under section 33 of the Act and it was rejected subsequently, the limitation period does not commence afresh from the date of such decision of the award. Therefore, Section 34(3) contemplates only a situation where the Arbitrator corrects or interprets and/or adds or decides to add any additional claims and modifies the award because only in such cases the original award loses its originality and therefore an application for setting aside the award needs to be filed within the stipulated time under the Act from the date of receipt of such corrected or modified award.

## Findings and Conclusions

The Court dismissed the contentions of the Petitioner and clarified that the judgment in the matter of *Amit Suryakant Lunavat* (supra) does not reflect the correct position in law. The Court held that Section 34(3) specifically contemplates a request under Section 33 of the Act wherein the application is "disposed of" by the Arbitral Tribunal and that a "disposal" of the application can be either by allowing it or dismissing it. Therefore, a party who receives an award after deciding the application under section 33 of the Act, will get the benefit of fresh commencement of limitation either from the receipt of the modified and/or corrected award or otherwise from the date of dismissal.

## Comment

This decision of the Court clearly sets out the applicability of Section 34(3) of the Act in relation to the final disposal of an arbitral award including the dismissal of an application under Section 33 of the Act. This decision has resolved the conflicting views pertaining to the interpretation of the limitation period for filing of a Section 34 application as contemplated under Section 34(3) of the Act and has settled the divergent views taken by various High Courts.

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