

Dispute Resolution Hotline

April 29, 2021

COVID-19 2.0: SUPREME COURT INTERVENES TO TEMPORARILY SUSPEND THE PERIOD OF LIMITATION

With a sharp rise in the number of Covid-19 cases and related casualties across the country, the second wave has led the country into an unprecedented crisis. When Covid-19 first hit the planet last year, the Supreme Court took cognizance of the situation and accordingly on March 23, 2020, passed an order extending the limitation period for *petitions, applications, suits, appeals and all other proceedings under the general or special law, both under central and/or state legislations*, in all courts and tribunals across the country. This order was with effect from March 15, 2020 and was binding on all courts and tribunals in India. The Apex Court invoked their inherent power under Article 141 and 142 of the Constitution of India and passed such an order taking into account the difficulties that may be faced by the litigants across the country on account of the Covid-19 pandemic. Further clarifications were issued by the Supreme Court *vide* their orders dated May 6, 2020 and July 10, 2020 that extended the order dated March 23, 2020 to Section 138 of the Negotiable Instruments Act, 1881 ("**NI Act**"), Section 29A and 23(4) of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") and Section 12A of the Commercial Courts Act, 2015 ("**Commercial Courts Act**").

MARCH 2021 ORDER OF THE SUPREME COURT

When the situation seemed to be improving during early 2021, the Apex Court on March 8, 2021, revisited their earlier order dated March 23, 2020. The Apex Court observed that although the pandemic had not ended, there was significant improvement in the situation basis which the lockdowns had been lifted in most places and the country was returning to normalcy. The Apex Court also noted that majority Courts and Tribunals had already started functioning either physically or virtually. Accordingly, the Supreme Court lifted the extension that had been granted on the limitation period, with the following directions:

1. For any suit, appeal, application or proceeding, the period between March 15, 2020 and March 14, 2021 would be excluded for the purpose of calculating the limitation period. It would be considered that the limitation period had stopped running from March 15, 2020 till March 14, 2021 and would resume from March 15, 2021 with the remaining balance period of limitation as on March 15, 2020.
2. In cases where the limitation would have expired during the period between March 15, 2020 and March 14, 2021, irrespective of the remaining balance period of limitation, litigants would be allowed a period of 90 days from March 15, 2021. In the event the actual balance period of limitation remaining is greater than 90 days, that longer period would apply with effect from March 15, 2021.
3. The period from March 15, 2020 till March 14, 2021 would also be excluded in computing the limitation periods prescribed under special laws such as Sections 23(4) and 29A of the Arbitration Act, Section 12A of the Commercial Courts Act and provisos (b) and (c) of Section 138 of the NI Act, that prescribe periods of limitation for instituting proceedings, outer limits within which the court or tribunal can condone delay and termination of proceedings.

APRIL 2021 ORDER OF THE SUPREME COURT

However, India saw the beginning of a second and deadlier wave in April 2021. The Supreme Court Advocate on Record Association filed an interlocutory application highlighting the daily surge in Covid-19 cases in Delhi and the difficulties faced by the advocates and the litigants in instituting cases in Delhi. Accordingly, they prayed for the restoration of the order of the Supreme Court dated March 23, 2020. A bench comprising of Chief Justice N. V. Ramana, Justice Surya Kant and Justice A.S. Bopanna, took judicial notice of the fact that the dire situation due to a rise in Covid 19 cases was not just limited to Delhi, but could be felt across the country.

Accordingly, the Apex Court once again invoked their powers under Article 142 read with Article 141 of the Constitution of India and restored their earlier order dated March 23, 2020, to be read in consonance with their order dated March 8, 2021. The Court directed that the period of limitation, *as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not*, would stand extended till further orders. The Supreme Court has also clarified that, in continuation of their order dated March 8, 2021, the period from March 14, 2021 till **further orders**, would also be excluded in calculating the limitation periods prescribed under Sections 23 (4) and 29A of the Arbitration Act, Section 12A of the Commercial Courts Act, provisos (b) and (c) of Section 138 of the NI Act and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits within which the court or tribunal can condone delay and termination of proceedings. The order dated March 23, 2020 has been restored until further orders and the next date of hearing in the matter is July 19, 2021.

This judgment takes into account the extraordinary situation currently prevalent in India and the extraordinary measures required to minimize hardship of the litigant-public across India.

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