

# Dispute Resolution Hotline

September 09, 2016

## DELHI HIGH COURT INTERPRETS RECENT COMMERCIAL COURTS ACT- NO DISCRETIONARY POWER TO EXTEND TIMELINES

- Strict application of time-lines stipulated under The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015.
- Commercial Courts don't have a discretionary power to extend timelines provided under the Act for filing of a Written Statement.
- The time limit for filing a Written Statement in a commercial suit does not get postponed till the disposal of an application under Order VII Rule 11 of the CPC.

### INTRODUCTION

The Delhi High Court ("**Court**") in the cases of *Oku Tech Private Limited ("OTP") Sangeet Agarwal & Ors ("SA & Ors")*<sup>1</sup> and *Gulf DTH FZ LLC ("Gulf") v Dish TV India Limited and Others*<sup>2</sup> ("**DishTV**") has upheld the legislative intent of enforcing strict timelines under the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ("**Act**"). The Court has stated that Commercial Courts do not have a discretionary power to grant additional time (in excess of what is provided in the Act) to file a Written Statement ("**WS**"). The Court observed that the provisions of the Act should be strictly complied with and any delay over and above than that prescribed under the Act cannot be condoned by the Court.

### FACTS

#### FIRST CASE

OTP had filed a suit on November 21, 2015, pursuant to which SA & Ors were served with a notice on November 27, 2015. The outer limit of 120 days to file the WS expired on March 26, 2016. Thereafter, SA & Ors filed its WS on May 7, 2016.

The present application was filed by SA & Ors seeking condonation of delay in filing of WS.

#### SECOND CASE

Gulf had filed the suit was on November 6, 2015, pursuant to which the Court had issued summons on November 16, 2015. The summons was served on DishTV on December 19, 2015. The outer limit of 120 days to file the WS, expired on April 18, 2016, however DishTV failed to file their WS within this time. Thereafter the Court had passed an order stating that the statutory period for filing a WS had expired as per the Act. The present application was filed by DishTV asking the Court to recall that order.

### CONTENTIONS

OTP opposed the application for condonation of delay by citing Section 16 read with the Schedule of the Act in terms of which the second proviso to Order V Rule 1 of the Code of Civil Procedure, 1908 ("**CPC**")<sup>3</sup> as well as the proviso to Order VIII Rule 1 of the CPC<sup>4</sup> have been amended to provide a binding timeline for the filing of a WS, which cannot be extended at the discretion of the Court. They also cited a proviso which has been inserted after Order VIII Rule 10 to the effect that no court can pass an order extending the time limit for filing of a WS as provided for in the CPC.<sup>5</sup>

OTP submitted that as per the relevant provisions of CPC, the SA & Ors had to file their WS within 120 days from the date on which they received the summons. Therefore, since the Defendants had filed their WS beyond 120 days, the same could not be taken on record by the Court.

The SA & Ors contended that under Section 15 of the Act a new time limit could be prescribed by the Court in respect of those cases which had been transferred to the Commercial Court post the commencement of the Act. Accordingly, it was submitted that the Court had the discretion to extend the time limit to file the WS, and condone the delay in filing the written statement.

However, in the second case, DishTV had contended that the suit had been filed before the notification of the Act and therefore under Section 15 of the Act, the Court had the required discretion to extend the time limit for filing of a WS. Further, DishTV had also contended that the suit was not re-numbered as a Commercial Suit and that an application under Order VII Rule 10 & 11 of the CPC had been filed by DishTV pending which the WS need not have been filed.

### JUDGMENT

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The Court referred to the Supreme Court's ruling in *Kailash v. Nankhu JT*<sup>6</sup>, wherein the Court had interpreted Order VIII Rule 1 of the CPC as it existed prior to the amendment.<sup>7</sup> The Supreme Court stated that a court had the discretion to extend the timelines for filing of the WS beyond the stipulated time frame of 90 days from the date of service of the summons.

Thereafter, the Court referred to the amendments to the CPC which were introduced to expedite litigation process in India. The substituted provisos to Order V Rule 1, Order VIII Rule 1 and Order VIII Rule 10 place an outer limit of 120 days from the date of service of summons up to which the Court could allow a defendant to file their WS. A failure to file the WS within such a stipulated time would amount to instant forfeiture of the right to file a WS. The Court also mentioned that the insertion of the substituted provisos gave a clear indication regarding the legislative intent to bar courts from having the discretion to grant any extension beyond the time limit stipulated under the statute. The Court concluded that the mandate of law had to be strictly followed and any deviation from the same would be beyond the purview of the Court.

In the second case, the Court had followed the same line of reasoning to refuse any extension of timelines for filing of the WS beyond the statutory period of 120 days. The Court stated that the very object of the Act and the amendments brought about in the CPC was for strict adherence of the timelines for the various stages in a commercial suit, therefore it could not be construed that the time for filing a WS in a commercial suit in terms of the Act would get postponed till the disposal of an application under Order VII Rule 11 CPC. This implies that the provisions of the Act would be applicable to pending suits as well, as long as the date of institution of the suit is after the date of commencement of the Act, which is October 23, 2015.

## ANALYSIS

It is well known that *vigilantibus et non dormientibus jura subveniunt*, i.e. the law assists those that are vigilant with their rights, and not those that sleep thereupon. India is infamous for having an overburdened judicial system, which leads to indefinite delays in the disposal of cases. Inefficiencies in its legal infrastructure have made it all the more difficult for foreign as well as domestic investors to protect their investments in India. Thus, there had always been a long standing requirement for a stable and efficient dispute resolution system ensuring quick enforcement of contracts. The Act has taken into consideration these requirements and provided for an expeditious and efficient resolution of commercial disputes. It is important for the judiciary to understand the legislative intent and purpose while interpreting the law. The Court has taken a step towards this direction by ensuring that the amended legal position is implemented in its true spirit and that there is no unnecessary judicial interference. It will be interesting to observe if the judiciary maintains this approach and zealously implements the amendments to law in the face of opposition from scrupulous litigants.

— Arjun Gupta, Alipak Banerjee & Moazzam Khan

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<sup>1</sup> CS (OS) 3390/2015

<sup>2</sup> CS (OS) 3355/2015

<sup>3</sup> In Order V, in Rule 1, in sub-rule (1), for the second proviso, the following proviso has been substituted after the commencement of the Act:—

*"Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."*

<sup>4</sup> In Order VIII, in Rule 1, for the proviso, the following proviso has been substituted after the commencement of the Act:—

*"Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record."*

<sup>5</sup> In Rule 10, the following proviso has been added after the commencement of the Act:—

*"Provided further that no Court shall make an order to extend the time provided under Rule 1 of this Order for filing of the written statement."*

<sup>6</sup> *Kailash v. Nankhu JT* 2005 (4) SC 204

<sup>7</sup> Order VIII Rule 1.

*"The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defense:*

*Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons."*

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