

**Client Alert**

**Extension of limitation period during the COVID-19 pandemic – Supreme Court order**

With COVID-19 spreading worldwide, governments across the world have been taking steps to implement restrictive measures to curtail its spread. In India, several restrictions have been imposed such as travel restrictions, orders for closure of establishments (with certain exceptions), restrictions on physical movement, limited functionality of the judicial system, and the declaration of a complete lockdown for 21 days with effect from March 25, 2020. On April 14, 2020, the lockdown was extended till May 3, 2020.

In India, around mid-March, the apex court, i.e. the Supreme Court of India (“**Supreme Court**”), in order to avoid the spread of COVID-19 and enforce social distancing by preventing mass gatherings, directed the functioning of the courts to be restricted to hearing of urgent matters only, and restricted the entry of lawyers and litigants in the courtrooms. However, pursuant to the announcement of the nationwide lockdown by the Prime Minister of India on March 23, 2020, only ‘extremely urgent’ matters are being heard by the Supreme Court by virtual means using video conference facilities. Further, various High Courts and subordinate courts of the country have suspended routine court activities and are hearing only ‘urgent’ matters with limited functioning and operating in a restricted manner.

Under the prevailing circumstances, the limited functioning and accessibility of the courts and tribunals in India during the COVID-19 pandemic has given rise to several concerns for litigants regarding their pending matters before the courts or tribunals,

adhering to the prescribed timelines for the requisite filings to be made or compliance as per the limitation period prescribed under law<sup>1</sup>, etc.

In order to address the situation arising out of the challenges being faced by India due to the outbreak of COVID-19, the Supreme Court, on March 23, 2020, took *suo moto* cognizance of a petition<sup>2</sup> concerning the difficulties that could be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings and the period of limitation prescribed under the general law of limitation or under special laws (both central and state)<sup>3</sup>. The Supreme Court, exercising the plenary powers conferred to it under Article 142 read with Article 141 of the Constitution of India, ordered that **in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws, whether condonable or not, the limitation period shall stand extended with effect from March 15, 2020 until further order(s) is passed by the Supreme Court in this regard, and the said order would be binding on all courts and tribunals in India. The order further mentioned that the matter would be heard/returnable in four weeks from the date of the order** (the “**Supreme Court Order**”). In other words, the period for limitation for filing the petitions/ applications/ suits/ appeals/ all other proceedings, under the Limitation Act, 1963 or any special law, shall be extended from March 15, 2020 till the period, as may be decided by the Supreme Court in this regard, in order to avoid any difficulty for the litigants in approaching the courts for the same due to

<sup>1</sup> Limitation period essentially relates to any time period prescribed under law within which an aggrieved party can approach the court for redressal. In India, the Limitation Act, 1963 is the legislation governing inter alia the period of limitation for institution of various suits, applications, appeals etc. and the time period for

concluding the legal proceedings are provided in various special acts and rules made thereunder.

<sup>2</sup> *Suo Moto Writ Petition (Civil) No(s).3/2020*

the ongoing pandemic situation.

**Applicability and impact of the Supreme Court Order on proceedings under the Insolvency and Bankruptcy Code, 2016 and the Arbitration and Conciliation Act, 1996**

- a. Proceedings under the Insolvency and Bankruptcy Code, 2016

Section 238A of the Insolvency and Bankruptcy Code, 2016, inserted *vide* the Insolvency And Bankruptcy Code (Second Amendment) Act, 2018, states that “*The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be*”. Upon a cumulative reading of Section 238A of the Code and the Supreme Court Order, it can be said that the extension of the limitation period would be applicable to the proceedings under the Code.

On March 24, 2020, the National Company Law Appellate Tribunal (“NCLAT”) issued a notice<sup>3</sup> regarding preventive measures to contain the spread of COVID-19 for, *inter alia*, extending the limitation for filing appeals with effect from March 15, 2020 till further orders, in consonance with the Supreme Court Order. Further, the NCLAT in its order dated March 30, 2020 passed in *Suo Moto – Company Appeal (AT) (Insolvency) No. 01 of 2020* stated, *inter alia*, that “*the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law*

*Tribunal or in Appeal before this Appellate Tribunal.*”

- b. Proceedings under the Arbitration and Conciliation Act, 1996 and amendments made thereunder

Vide the Supreme Court Order, the time period prescribed under the Arbitration and Conciliation Act, 1996 and the amendments made thereto for approaching the court(s) stand extended by excluding the period from March 15, 2020 till further orders of the Supreme Court.

However, there may be situations where approaching courts for seeking interim reliefs, enforcement of awards etc. may take longer due to the present situation of limited operation of courts. Further, since the Supreme Court Order does not specify anything regarding the proceedings conducted by an ‘arbitral tribunal’, it is unclear whether the applicability of the Supreme Court Order would extend to the same.

*Clarification of the Supreme Court Order*

It may be important to note that the Indian Commercial and Arbitration Bar Association (“ICABA”) has addressed a letter dated March 29, 2020 to the Supreme Court requesting the issuance of further directions and seeking expansion of the Supreme Court’s order passed on March 23, 2020 regarding the extension of limitation period for cases pending in all courts and tribunals, as the same ‘*does not encompass and deal with situations where certain proceedings abate/terminate on account of non-adherence to timelines prescribed by certain statutes or those that provide for adverse consequences to follow on the expiry of time periods prescribed therein.*’ Vide the said letter, the ICABA has requested for *inter alia* extension of mandatory timelines prescribed under certain statutes which specify timelines to be adhered to, failing which serious

<sup>3</sup>  
<https://nclat.nic.in/Useradmin/upload/19900700725e79a182ce018.pdf>

consequences follow, such as the period prescribed for the arbitral tribunal to pass the final award failing which the mandate of the tribunal terminates, if no permission for extension is taken by the parties from the court; requirement of sending a notice within a prescribed period in case of cheque bouncing etc.

### **What lies ahead?**

Despite the Supreme Court having taken positive steps to ensure that litigants face reduced challenges and difficulties due to the present situation of COVID-19, certain issues, such as those discussed above, remain contentious, and practical aspects seem to have been overlooked, to which the Supreme

Court Order may not serve the intended purpose for which it was passed, and which may result in greater challenges once the courts reopen and resume regular functioning as and when the situation improves. The Supreme Court, vide the aforesaid order, has passed a blanket order for the extension of limitation for filings but has not touched upon the issue of the timelines laid under different statutes. If the same is not addressed, it is likely to result in numerous matters being filed concerning these issues which, if handled promptly, may save the courts from such matters adding to the existing load of courts. As the matter is likely to be heard in the coming days, the Supreme Court may pass further orders addressing the lacunae in its order dated March 23, 2020.

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## About Chadha & Co.

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Chadha & Co. is a leading corporate and commercial law firm based in New Delhi, India. The Firm has a specialized inbound practice in advising domestic and foreign corporations doing business in India on all Indian laws and regulations that are relevant to their business.

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