



ELP Arbitration Weekly Alert



BOMBAY HIGH COURT CLARIFIES THAT THE LIMITATION PERIOD FOR SEEKING ENFORCEMENT AND EXECUTION OF A FOREIGN ARBITRAL AWARD IS THE SAME AS THE LIMITATION PERIOD FOR SEEKING EXECUTION OF A DECREE, i.e. TWELVE YEARS FROM THE DATE OF RECEIPT OF THE AWARD

[Imax Corporation v. E-City Entertainment \(I\) Pvt. Ltd. & Ors¹, \(Bombay High Court, 13 November 2019\)](#)

Background

Imax Corporation (**Petitioner**) and E-City Entertainment (I) Pvt. (**Respondent**) were involved in an international commercial arbitration, wherein a liability award dated 9 February 2006, a quantum and jurisdiction award dated 24 August 2007, and a final award dated 27 March 2008 (the three awards are hereinafter jointly referred to as the “**Foreign Awards**”) came to be passed in favour of the Petitioner.

While the present petition was filed seeking enforcement of the Foreign Awards, there was a considerable history of litigation concerning these awards, which is crucial to an understanding of the Bombay High Court’s (**High Court**) decision in the present petition.

In July 2008, the Respondent had filed an application under section 34 (**Challenge Petition**) of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) before the High Court, challenging the Foreign Awards. The Challenge Petition had been filed beyond the 90-day period prescribed in section 34, but within the extended period of 30 days. Hence, the Respondent also filed a notice of motion seeking condonation of delay (**NOM**).

The Petitioner opposed the NOM as well as the maintainability of the Challenge Petition. The NOM was opposed on the ground that each of the Foreign Awards was a separate award, and hence separate applications under section 34 ought to have been filed, within the limitation period as per each award. The maintainability of the Challenge Petition was

¹ Commercial Arbitration Petition No. 414 of 2018.

opposed on the grounds that the High Court did not have jurisdiction to entertain the same, as the awards under question in the present case were foreign awards, governed by Part II of the Arbitration Act.

On 10 June 2013, the High Court condoned the delay in filing the Challenge Petition and held that it would have jurisdiction to hear the same.

This decision of the High Court was impugned before the Supreme Court, which, by an order dated 19 November 2013 (**Stay Order**), stayed the Challenge Petition proceedings before the High Court. Thereafter, the Supreme Court finally decided on 10 March 2017 (**SC Final Order**) that section 34 was not the appropriate remedy against the Foreign Awards, and hence the Challenge Petition was not maintainable.

Subsequently, the present petition came to be filed on 2 April 2018, for enforcement of the Foreign Awards.

Issues and findings

The Respondent objected to the maintainability of the present petition. In the Respondent's view, since no limitation period is specifically prescribed for an enforcement petition under sections 47 and 49 of the Arbitration Act, such a petition would be governed by Article 137 of the Limitation Act, 1963 (**Limitation Act**), which is a residuary provision prescribing a limitation of three years.

Given that the Foreign Awards had been respectively passed in February 2006, August 2007 and March 2008, it was contended that the present petition would be far beyond the limitation period.

To this end, the Respondent placed reliance on a previous decision of the High Court in *Noy Vallesina Engineering Spa v. Jindal Drugs Limited*² (**Noy Vallesina**), wherein it had been held that enforcement petitions under section 47 of the Arbitration Act would indeed be governed by Article 137 of the Limitation Act, and would hence have a limitation period of three years. Once the court was of the view that the foreign award was enforceable, the petitioner could then file for execution of the said award within a further twelve years, as per Article 136 of the Limitation Act.

The Petitioner, on the other hand, contended that enforcement and execution proceedings for foreign awards were synonymous, and therefore the enforcement petition would have a limitation period of twelve years.

The Petitioner relied on the Supreme Court's judgment in *Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.*³ (**Fuerst Day Lawson**), wherein it had been held that a foreign award is "stamped as a decree" and that the Arbitration Act does not mandate two separate proceedings, i.e. one for enforcement and one for execution, in respect of a foreign award. It would be open for a party to jointly apply under section 47 and 49 of the Arbitration Act, to avoid multiplicity of proceedings.

It was also argued on behalf of the Petitioner in the alternative that, even assuming that Article 137 of the Limitation Act was to apply, given that the Challenge Petition had been pending before the High Court from July 2008 until 10 March 2017 (the date of the SC Final Order), this period would be excluded in calculating the limitation for the present petition. Hence, the present petition had been filed within the limitation period of three years as prescribed.

The High Court agreed with the Petitioner's contentions on both counts. In its view, the High Court's previous decision in *Noy Vallesina* could not be relied on, as the proceedings before the court in the present petition were clearly composite proceedings for enforcement and execution, as envisaged in *Fuerst Day Lawson*. This being the case, the High Court was of the view that such a combined petition would be subject to Article 136 of the Limitation Act, thereby having a limitation period of twelve years.

The High Court also agreed with the Petitioner that, even if the limitation period was considered to be three years, the present petition would nevertheless be considered to have been filed within time. This was because the Petitioner could not have sought enforcement of the Foreign Awards until a decision on the Challenge Petition which had been pending before the court in the interregnum. The High Court did not favour the Respondent's argument that as the Supreme Court

² 2006 SCC Online Bom 545.

³ (2001) 6 SCC 356.

had passed a Stay Order in respect of the Challenge Petition, the latter could not have been considered to have been subsisting on the file of the High Court.

Conclusion

The High Court, while reaching its decision, not only took into account the nature of an enforcement and execution petition, as decided in the seminal case of *Fuerst Day Lawson*, but also the object of the Arbitration Act and the underlying purpose of sections 47 and 49 thereof.

The object of the Arbitration Act is to facilitate and promote arbitration, while reducing court interference in the process. Considering the enforcement and execution of a foreign award as a combined proceeding not only streamlines the process for the award-holder, but also reduces the burden on courts as it reduces multiplicity of proceedings.

This decision brings some much-needed clarity on the limitation period for a combined application.

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