

GOVERNMENT OF JAMMU AND KASHMIR
DEPARTMENT OF LAW, JUSTICE AND PARLIAMENTARY
AFFAIRS
(Arbitration Section) **Civil Secretariat**
Srinagar/Jammu


Subject: Strict adherence to time limits at the various stages of arbitration matters.

Circular No: 09 -JK(LD) of 2024

Dated: 03 - 07 - 2024

It has been observed that the arbitration matters are not being dealt with utmost seriousness and with due promptitude and despite the strict timelines involved in such matters, casual and lackadaisical approach on parts of the various departments of the Union Territory of Jammu and Kashmir is writ large, as the arbitration related references are more often being referred to the Department of Law, Justice and Parliamentary Affairs at the fag end, when either the limitation period prescribed for availing of remedies against the arbitration orders/awards has already expired or when the matters are at the stage of condonation of the delay itself. Even such applications seeking condonation of delay are drafted in casual and vague manner without giving the material particulars/details in this regard and without setting out the valid and plausible reasons for seeking condonation of delay in this regard. Since, the arbitration matters involve huge public money and vital and valuable stakes of the Government, rejection/dismissal of the application(s) for setting aside of the arbitral awards/appeals due to expiry of the limitation period has drastic consequences resulting in dismissal of the meritorious applications/appeals and upon expiry of the time period, the award becomes immediately enforceable without any further act of the Court, thereby causing unprecedented revenue loss to the State exchequer.

In this context, it would not be out of place to mention here that the Arbitration and Conciliation Act, 1996 is a self contained code and provides specific and strict time lines for Arbitration proceedings, passing of award by the Arbitrators and subsequent challenges to the Award on specific and limited grounds as mentioned in sub-section (2) and (2A) of Section 34 of the said Act.



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Section 5 of the Act provides for minimum judicial interference to the extent of the matters specified in the Part-I of the Act related to Arbitration and no judicial interference beyond the scope of the Act is permissible.

Section 34(3) of the Act mandates in explicit and unambiguous terms that an application for setting aside of the arbitral award cannot be made after three months (six months in case of Union Territory of Jammu and Kashmir as substituted vide SO 1123(E) of 2020 dated 18.03.2020) from the date on which the party received the arbitral award or, if a request under Section 33 of the Act was made, from the date on which such request was disposed of by the Arbitral Tribunal. Section 34(3) of the Act also provides that the courts may allow an application filed under Section 34 of the Act within a further period of thirty days (sixty days in case of Union Territory of Jammu and Kashmir as substituted vide SO 1123(E) of 2020 dated 18.03.2020), but not thereafter.

In case titled 'Assam Urban Water Supply & Sewerage Board v. Subash Projects & Mktg. Ltd.' reported as (2012) 2 SCC 624, the Hon'ble Supreme Court observed that the Limitation Act, 1963 shall be applicable to the matters of arbitration covered by the 1996 Act save and except to the extent its applicability has been excluded by virtue of express provision contained in Section 34(3) of the Arbitration Act.

Similarly, in 'Union of India v. Popular Construction Co.' reported as (2001) 8 SCC 470, the Hon'ble Supreme Court observed that the Arbitration Act being a special law and provides a period of limitation different from that prescribed under the Limitation Act, the period of limitation prescribed under the Arbitration Act shall prevail and shall be applicable and to that extent the Limitation Act shall be excluded. It was further held that application challenging an award filed beyond period mentioned in Section 34(3) of the Arbitration Act would not be an application "in accordance with" sub-section (3) as required under Section 34(1) of the Arbitration Act."

Besides above, in context of the Section 37 of the Arbitration and Conciliation Act, 1996, which deals with appealable orders, the

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Hon'ble Supreme Court in 'Government of Maharashtra (Water Resources Department) Represented by Executive Engineer v. M/s Borse Brothers Engineers & Contractors Pvt. Ltd.' reported in (2021) 6 SCC 460 while observing that the Section 37 of the Arbitration Act, when read with section 43 thereof, makes it clear that the provisions of the Limitation Act will apply to appeals that are filed under section 37, held as under:-

"61. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or section 13(1A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."

From the aforesaid legal position, it is manifest that the provisions of the Arbitration and Conciliation Act, 1996 are time bound and time specific and there is absolutely no scope for seeking condonation of delay beyond specified time limits provided in Section 34 and condonation of shorter delay in exceptional circumstances under Section 37 of the Act. Therefore, it is imperative that the arbitration matters are being dealt with utmost seriousness and with due promptitude and the requisite steps are taken in a time bound manner at the various levels for assailing of the Arbitration Awards/orders immediately upon receipt of the said awards/orders. Accordingly, the following time lines are required to be strictly followed at the various levels while forwarding the references to this department:-

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- (i) Every Administrative Department upon receipt of any notice/communication from the Arbitral Tribunal or any Court of competent jurisdiction in connection with any arbitration matter shall immediately recommend the name of an officer well conversant with the facts and circumstances of the said case to the
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Department of Law, Justice and Parliamentary Affairs for appointment as Officer In-charge(OIC) Litigation in terms of Government Order No.1673-JK(LD) of 2021 dated 24.03.2021 issued pursuant to Administrative Council Decision No.35/4/2021 dated 10.03.2021, who shall perform all the duties and responsibilities as envisaged in Paragraph/clause-III of the said Order.

- (ii) Whenever, any adverse order, be it interim, intermediate or final, prejudicial to the interests of the department in any manner is passed by an Arbitral Tribunal/ Court in any pending arbitration related matter, the Officer In-charge (OIC) Litigation shall take immediate and prompt requisite and necessary steps for obtaining a copy of the said order on same day or the following day, and after obtaining the opinion/comments of Counsel representing the department in the said matter, take up the matter with the concerned Administrative Department/Competent Authority along with a concise statement of facts and relevant records. Thereafter, the concerned Administrative Department shall forward the reference alongwith all the relevant details / documents together with its considered comments to the Department of Law, Justice and Parliamentary Affairs for further necessary action and the Law Department shall after evaluating the merits of the case dispose of the reference within a period of one week positively depending upon the time available. A copy of the Contract/document containing Arbitration Clause with a concise Statement on nature of disputes shall invariably be forwarded to the Law Department to arrest any delay on this count.
- (iii) In all the cases, where the Arbitration Awards are passed by the Arbitral Tribunal, the Officer In-charge (OIC) Litigation/concerned field agency / department, shall immediately after obtaining / receiving a copy of Award, evaluate and examine its merits in light of the relevant records and after obtaining comments of the Counsel representing the department in the case and whenever it is found that the Award is not based on relevant parameters or is prejudicial to the interests of the department in any manner, formulate a concise statement of facts/summary of award showing all claims, amount claimed & awarded against each claim and submit the case to the Competent Authority / Administrative Department within a period of twenty(20) days from the date of receipt of award or from the date of disposal of application filed u/s 33 of Arbitration Act & Conciliation Act by the Arbitral Tribunal. The Administrative Department shall thereupon after further

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examination of the case and after evaluating the merits of the Arbitral Award and taking a conscious decision as to its acceptance or challenging the same and accordingly, refer the matter within a period of fifteen(15) days to the Department of Law, Justice and Parliamentary Affairs for further consideration and wherever, it is decided to assail the Award before the Court of competent jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996, the Law Department shall after consideration of the matter dispose of the reference at an earliest by according requisite sanction and in no case, the reference shall be kept pending for more than fifteen(15) days. There shall be effective and proactive monitoring of the arbitration matters at various levels and any lapse/deviation shall be taken seriously and responsibility fixed accordingly and wherever time limits are exceeded in any manner, reasons thereof shall be brought on record and any kind of delay in this regard shall be viewed seriously.

- (iv) In order to ensure that the remedies available in respect of the Arbitration Award as also for challenging the judgments/orders rendered in Section 34 petitions are pursued within the statutory limits, and for availing remedy of Appeal under Section 37 of the Arbitration and Conciliation Act within the statutory time frame, following timelines shall be scrupulously and strictly adhered in this regard:-

S.No		No. of days to be taken(at various levels)
1.	Examination of Arbitral Award by the concerned Field functionaries / Subordinate Offices / OIC and obtaining of comments of Counsel. <ul style="list-style-type: none"> This shall be applicable to Awards rendered under MSMED Act, 2006 and all other Arbitration Awards passed in terms of the Arbitration and Conciliation Act, 1996. 	Twenty (20) days from the date of receipt of the Award or from the date of disposal of application filed under Section 33 of Arbitration and Conciliation Act, 1996.
2.	Examination of the aforesaid Arbitral Award by the Administrative Department	<p>a. When the reference is received from Field Functionaries/ Subordinate Offices, Fifteen (15) days from the date of receipt of reference.</p> <p>b. When the Arbitral Award directly pertains to the Administrative Department, Thirty Five (35) days from the date of receipt of</p>

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		the Award or from the date of disposal of application filed under Section 33 of Arbitration and Conciliation Act, 1996.
3.	Examination of the Arbitral Award upon reference from the Administrative Departments by the Department of Law, Justice and Parliamentary Affairs and accord of sanction for challenging, etc of the same.	Fifteen (15) days from the date of receipt of reference from the Administrative Departments in the Department of Law, Justice and Parliamentary Affairs.
4.	Examination of the judgements/orders rendered under Section 34 of the Arbitration and Conciliation Act (or) any order in respect of which the remedy of appeal is provided under Section 37 of the Arbitration and Conciliation Act by the concerned Field functionaries/Subordinate Offices/OIC and obtaining of comments of Counsel thereon.	<p>a. Fifteen (15) days from the pronouncement of judgment / order by the Hon'ble Court, where the limitation is governed under Article 116 of the Limitation Act (i.e in respect of the Arbitration matters involving value of less than three lacs).</p> <p>b. Five (05) days from the pronouncement of judgement/order by the Hon'ble Court, where the limitation is governed under Article 117 of the Limitation Act (i.e in respect of the Arbitration matters involving value of less than three lacs).</p> <p>c. Fifteen (15) days from the pronouncement of judgment / order by the Hon'ble Court, governed by Section 13(1A) of the Commercial Courts Act, 2015 (i.e in respect of the Arbitration matters involving value of more than three lacs).</p>
5.	Examination of the aforesaid judgements/orders by the Administrative Department.	<p>a. In matters, where the limitation is governed by Article 116 of the Limitation Act (i.e. in respect of the Arbitration matters involving value of less than three lacs), following time limits are to be adhered to:-</p> <p>i. When the reference is received from Field Functionaries / Subordinate Offices, Fifteen (15) days from the date of receipt of reference in this regard.</p>

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		<p>ii. When the judgment / order directly pertains to the Administrative Department, Thirty (30) days from the date of receipt of the judgment / order.</p> <p>b. In matters, where the limitation is governed by Article 117 of the Limitation Act (i.e in respect of the Arbitration matters involving value of less than three lacs), following time limits are to be adhered to:-</p> <p>i. When the reference is received from Field Functionaries / Subordinate Offices, Five (05) days from the date of receipt of reference in this regard.</p> <p>ii. When the judgment / order directly pertains to the Administrative Department, Ten (10) days from the date of receipt of the judgment / order.</p> <p>c. In matters, governed by Section 13(1A) of the Commercial Courts Act, 2015 (i.e in respect of the Arbitration matters involving value of more than three lacs), following time limits are to be adhered to:-</p> <p>i. When the reference is received from Field Functionaries/ Subordinate Offices, Fifteen (15) days from the date of receipt of reference in this regard.</p> <p>ii. When the judgment / order directly pertains to the Administrative Department, Thirty (30) days from the date of receipt of the judgment/order.</p>
6.	<p>Examination of the judgements/orders rendered under Section 37 of the Arbitration and Conciliation Act, 1996 upon reference from the Administrative Departments by the Department of Law, Justice and Parliamentary Affairs and accord of sanction for challenging, etc of the same.</p>	<p>a. Fifteen (15) days from the date of receipt of reference from the Administrative Departments, where the limitation is governed under Article 116 of the Limitation Act (i.e in respect of the Arbitration matters involving value of less than three lacs).</p> <p>b. Seven (07) days from the date of receipt of reference from the</p>

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		<p>Administrative Departments, where the limitation is governed under Article 117 of the Limitation Act (i.e in respect of the Arbitration matters involving value of less than three lacs).</p> <p>c. Fifteen (15) days from the date of receipt of reference from the Administrative Departments, governed by Section 13(1A) of the Commercial Courts Act, 2015 (i.e in respect of the Arbitration matters involving value of more than three lacs).</p>
7.	<p>Examination of judgements/orders rendered by the Hon'ble High Court in Arbitration matters, where the remedy is by way of filing of SLP under Article 136 of the Constitution of India by the concerned Field functionaries / Subordinate Offices/OIC and obtaining of comments of Counsel.</p>	<p>Fifteen (15) days from the passing of judgement/orders by the Hon'ble High Court.</p>
8.	<p>Examination of the aforesaid judgements/orders by the Administrative Department.</p>	<p>a. When the reference is received from Field Functionaries/ Subordinate Offices, Fifteen (15) days from the date of receipt of reference.</p> <p>b. When the judgments / orders pertain directly to the Administrative Department, Thirty (30) days from the date of receipt of the said judgment / order.</p>
9.	<p>Examination of the aforesaid judgments/orders received upon reference from the Administrative Departments by the Department of Law, Justice and Parliamentary Affairs and accord of sanction for challenging, etc of the same.</p>	<p>Fifteen (15) days from the date of receipt of reference in this regard from the Administrative Departments in the Department of Law, Justice and Parliamentary Affairs.</p>

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(v) Responsibility for any lapse/delay should invariably be fixed in accordance with rules, and remedial measures should be taken in future, so as to prevent the recurrence of any lapses in this regard.

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- (vi) Once, it is decided to assail the Arbitral Awards/ judgments/orders passed in Arbitration matters, immediately upon receipt of the sanction from the Department of Law, Justice and Parliamentary Affairs, the concerned Administrative Department shall ensure that sanctioned remedy is availed well before the expiry of the limitation period and if there is delay in availing of the remedy within the prescribed limitation period, the Administrative Department shall ascertain reasons for such delay/failures and also to identify the erring officer / employee responsible for such delay / failure and take appropriate disciplinary action against the erring officer / official / Counsel, if there were no reasonable and sufficient grounds for such delay/lapse.
- (vii) Wherever, an application for condonation of delay is required to be filed, to the extent as may be permissible in terms of the Arbitration and Conciliation Act, the same application seeking condonation of delay shall be drafted carefully delineating the plausible and justifiable reasons while seeking delay. All the particulars/material details leading to delay in seeking of the appropriate remedy within the prescribed statutory limits shall be mentioned in the said application.

Accordingly, the above mentioned instructions are brought to the notice of the Administrative Departments for information, implementation and strict compliance so as to safeguard the interests of the Government of UT of Jammu and Kashmir and avert any loss to the public exchequer in arbitration matters.

Sd/-
(Achal Sethi)

Secretary to Government

Dated: 03 - 07 -2024

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Copy for information to the:

1. All Financial Commissioners (Additional Chief Secretaries).
2. Principal Secretary to the Hon'ble Chief Justice of High Court of Jammu and Kashmir and Ladakh.
3. All Principal Secretaries to the Government.
4. All Commissioner / Secretaries to the Government.
5. All Administrative Secretaries to the Government.
6. Private Secretary to the Chief Secretary, J&K.
7. Private Secretary to the Ld. Advocate General, J&K.
8. Private Secretary to Secretary Department of Law, Justice and P.A.
9. In-charge website section of the Department of Law, Justice and P.A.

Aayat Ullah
03.07.2024

(Aayat Ullah)

Assistant Legal Remembrancer

03.07.2024