



Sidhartha Das
Managing Associate



Astha Nigam
Senior Associate



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EFFECT OF LOCKDOWN / COVID-19 ON THE LAW OF LIMITATION

Corona Virus (COVID 19) has engulfed the world into an unprecedented crisis forcing most of the countries to enforce a lockdown on the movement of persons which appears to be the only option to control and contain spread of this dreaded virus. Around 211 countries and areas are experiencing the cases of COVID-19, with around 14,30,298 confirmed cases and 82,130 confirmed deaths, the disease has been declared a pandemic by the World Health Organisation (“WHO”). In India itself, the curve is rising at high speed, with 5,194 active cases and 149 deaths as recorded on the 8th of April, 2020. In order to contain the spread of the virus and strictly implement the concept of “social distancing”, the Government of India declared a 21-days nation-wide lockdown with effect from 25th March, 2020 to 14th April, 2020 (Order No. 40-3/2020-DM-I(A), issued on March 24, 2020 by the Ministry of Home Affairs, Government of India), pursuant to the powers conferred on it under

Section 10(2)(l) of the Disaster Management Act, 2005 and the order of the National

Disaster Management Authority (Order No. 1-29/2020-PP (Pt. II) dated 24th March, 2020. The ‘lock-down’ restricts residents’ movement outside of their homes and orders a closure of all offices, factories and shops, except those considered as essential goods and services.

One of the fall-outs of the lock-down order was the severe curtailment in the functioning of courts across the country. Simultaneous to the lock-down order issued by the Government of India, and in some cases prior to it (on account of similar orders issued by the respective state governments for their states), the Supreme Court and the High Courts across the country notified their (and that of their subordinate courts) respective shutdown. The Supreme Court issued directions under the Supreme Court Rules, 2013 for hearing of urgent matters only. Similarly, High Courts across India have regulated their functioning and the functioning of the sub-ordinate courts falling under their supervisory jurisdiction pursuant to Article 227 and Article 235 of the Constitution of India. However, there is no clarity as to what constitutes an “urgent

matter”, which is being decided by the respective courts on a case-to-case basis.

In this Article, we examine the impact of the lockdown on the law of limitation and consider the following issues:

- (i) Whether the limitation period to make any filing before courts or any other judicial or quasi-judicial authority continue to run?
- (ii) Whether the closure of the courts or any other judicial or quasi-judicial authority stops the running of time?

It is relevant to mention here that in the unprecedented circumstances prevailing in the country at the moment, the courts / tribunals have taken *suo moto* cognizance of the fact that certain matters may have filing deadlines falling within the lock-down period, and matters yet to be filed before the courts / tribunals.

The general law of limitation in India is clearly provided in Section 3 of the Limitation Act, 1963 (“**Limitation Act**”) which states that every suit, appeal and application shall be filed within the prescribed period of time, failing which the suit, appeal and application shall be dismissed. However, Section 4 of the Limitation Act provides that when the prescribed period for any suit, appeal and application expires on a day when the court

is closed, the said suit, appeal and application may be filed on the day when the court re-opens. As per the Explanation appended to Section 4, the court shall be deemed to be closed on any day within the meaning of the Section, if during any part of its normal working hours it remains closed on that day.

Considering the issue of limitation, the High Court of Delhi vide an office order dated 23rd March, 2020 passed the following directions: “*Lockdown / Suspension of work of Courts shall be treated as “closure” within the meaning of the Explanation appended to Section 4 of the Limitation Act, 1963 and other enabling provisions of the Act and other Statues, as may be applicable to court proceedings. Thus, the limitation for any court proceeding shall not run w.e.f. 23.03.2020. to 04.04.2020 subject to further orders.*”

The Supreme Court also took account of the situation and the difficulties faced by the litigants across the country in filing their petitions/ application/ suits/ appeals /all other proceedings within the period of limitation prescribed under general law of limitation or under any special Law (both Central and/ or State). In order to preclude the above difficulties and to ensure that lawyers and/or litigants do not have to come physically to file their petitions/ application/ suits/ appeals in respective courts/ tribunals/ forums across the country, the Supreme Court *suo motu* exercising its power, under Article 142 read with Article 141 of the

Constitution of India, passed an order dated 23rd March, 2020 in *Suo motu Writ Petition (Civil) No. 3 of 2020* and extended the limitation in all kind of matters w.e.f. 15th March, 2020 till further orders. In the said order the Supreme Court observed as under:

“To obviate such difficulties and to ensure that the lawyers/ litigants do not have to come physically to file such proceedings in respective Courts/ Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further orders to be passed by this Court in present proceedings.”

The aforementioned Supreme Court order clearly overrides the earlier Delhi High Court order which treated the lock-down period as a “closure” under Section 4 of the Limitation Act. In our view, the aforementioned order of the Supreme Court may be interpreted to mean that the clock of limitation stops ticking with effect from 15th March, 2020 till further orders and will resume only once the Supreme Court notifies so, i.e. the period between 15th March, 2020 till further orders of the Supreme Court in this matter shall be excluded while computing the period of limitation. In our view, the present situation of lock-down in the country cannot be treated at par with a court vacation under Section 4 of the Limitation Act, and the

entire period should be discounted for the purposes of law of limitation.

The above interpretation is also in line with the order passed by the National Company Law Appellate Tribunal (“NCLAT”), wherein the NCLAT exercising its power under Rule 11 of National Company Law Appellate Tribunal Rules, 2016 in *Suo Moto – Company Appeal (AT) (Insolvency) No. 01 of 2020* ordered that the period of lockdown in connection with the COVID-19 pandemic shall be excluded for the purpose of counting of the period for resolution process under Section 12 of the Insolvency and Bankruptcy Code, 2016 (“IBC”). It was further clarified that any interim order/stay order passed by the NCLAT under Insolvency and Bankruptcy Code, 2016, company appeals and competition appeals shall continue to operate till the next date of hearing, which may be notified later. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“CIRP Regulations”) was also amended and a new regulation, Regulation 40C, was introduced therein. As per the new Regulation 40C of the CIRP Regulations, the period of lockdown shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process under the code.

It is relevant to mention here that the Indian Commercial and Arbitration Bar Association (“**ICABA**”) has addressed a letter to the Supreme Court seeking extension of its order passed in the wake of the Coronavirus lockdown, by which it had extended the limitation period for cases pending in all courts and tribunals. According to ICABA, while the order dated March 23, 2020 has extended the period of limitation prescribed under both general and special law, it does not include and/or deal with circumstances 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*”. The ICABA argues that as and when courts will become fully functional, they will be swamped with applications for extensions / permissions, which is not an ideal situation and will have a “*snowballing effect, adding to the already existing burden and backlog due to the lockdown*”.

While we note that certain special laws have been amended (for example, timelines under the IBC, as discussed above), it is likely that the Supreme Court may issue further directions to ensure smooth resumption of services once the lock-down is lifted and avoid a spate of litigation in relation to law of limitation / time barred claims etc.

In view of pandemic, the Government and the other organizations are taking all

necessary measures to handle the situation and bring it under control. The Judiciary is also attempting to implement the best possible ways to face the challenges imposed by COVID-19 and the consequent lock-down, and to keep the work going so that nobody is denied any service which they are entitled to get.

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