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Determining the terminus ad quem for challenging an award: analysis of the judgment in prime interglobe (p) Ltd. v. super milk products (p) Ltd.

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INTRODUCTION

In a noteworthy development, the Hon'ble High Court of Delhi at New Delhi (**'Hon'ble High Court'**) has held that the limitation period for challenging an award commences from the disposal of the application under Section 33 of the Arbitration and Conciliation Act, 1996 (**'the Act'**), and it is immaterial whether the application is made under Section 33(1) or 33(4) of the Act. Further, it has been held that the benefit of reckoning the limitation period from the disposal of the application made under Section 33 of the Act will equally inure to both parties and cannot be restricted only to the party making such application as such a situation is not contemplated under Section 34(3) of the Act.

This case comment analyses the decision of the Hon'ble High Court in Prime Interglobe (P) Ltd. v. Super Milk Products (P) Ltd.^[2] which substantively addresses the afore-stated issues and concludes with a short analysis signifying the importance of the judgment and a plausible drawback of how it may be misused. However, a holistic reading of the decision reveals that it has its heart in the right place.

FACTUAL MATRIX

The decision of the Hon'ble High Court arose out of an application seeking condonation of delay in filing of the petition under Section 34 of the Act. The relevant dates are as follows:

Date	Particulars/ Event
11 March 2023	The arbitral award was passed and received by M/s Prime Interglobe Private Limited ('Petitioner') on the same date.
28 March 2023	M/s Super Milk Products Private Limited ('Respondent') filed an application under Section 33(4) of the Act claiming one of the claims of the Respondent had not been decided.
24 April 2023	Additional award was passed by the Ld. Sole Arbitrator.
19 May 2023	Petitioner filed an application under Section 33(1) of the Act seeking correction in the additional award.
24 May 2023	The application filed by the Petitioner was dismissed by the Ld. Sole Arbitrator.
22 August 2023	The petition under Section 34 of the Act was filed by the Petitioner.

The Respondent raised preliminary objections regarding the maintainability of the petition filed under Section 34 of the Act, contending it was beyond the statutory timeline, which necessitated determining this preliminary issue by the Hon'ble High Court. Accordingly, the following issues fell for determination:

1. What is the *terminus ad quem* for limitation under Section 34 of the Act?
2. Whether the initial filing of the petition under Section 34 of the Act was *non-est*?

CONTENTIONS

Contentions on behalf of the Petitioner:

It was primarily argued that the limitation period would be reckoned from 24 May 2023, i.e. when the Petitioner's application under Section 33(1) of the Act was rejected. This argument was based on a simple reading of Section 34(3) of the Act, which prescribes the limitation period to commence from the date on which the arbitral tribunal had disposed of that request.

It was further contended that even if the limitation is to be reckoned from the date of disposal of the Claimant's application under Section 33(4) of the Act, the petition was filed within the prescribed timeline.

Contentions on behalf of the Respondent:

The Respondent contended that the petition filed under Section 34 of the Act on 22 August 2023 was *non-est* in law and not maintainable as being statutorily barred by limitation.

It was argued that the arbitral award was passed on 11 March 2023, and the limitation is to be reckoned from the date of receipt of the arbitral award and, in any case, should not be beyond the maximum period of 30 days prescribed after the three-month period.

The benefit of the limitation period prescribed under Section 34(3) of the Act in cases where an application is made under Section 33 of the Act will not benefit the Petitioner as its application was misconceived, and the benefit will only accrue in favour of the party making such application.

JUDGMENT

The second issue pertaining to the nature of filing the petition as *non-est* was considered and decided by the Hon'ble High Court before delving into the other issues, and by applying the principles laid down in *Sai Rama[3]*, the Hon'ble High Court concluded that the standard for testing the validity of the initial filing was met and cannot be considered *non-est*.

While addressing the contention raised by the Respondent regarding the *terminus ad quem* for limitation prescribed under Section 34(3) of the Act, the Hon'ble High Court held that the Petitioner would be entitled to reckon the limitation from 24 April 2023, i.e. when the Respondent's application under Section 33(4) of the Act was allowed by the Ld. Sole Arbitrator.

The Hon'ble High Court disagreed with the Respondent's contention that the benefit of the second part of Section 34(3) of the Act is only available to the party making such an application under Section 33. The reasoning was premised on the exposition of statutory words since Section 34(3) of the Act is not made statutorily dependent on the party who has filed the Section 33 application. It was further held that Section 34(3) does not specify who must have made the request. The relevant findings of the Hon'ble High Court are reproduced herein:

“18. The second and latter part of Section 34(3) adverts to a situation in which “a request has been made under Section 33”. It does not specify who must have made the request. It applies, therefore, irrespective of whether the request is made by the claimant(s), or the respondent(s), before the Arbitral Tribunal.”

Regarding the relevance of the sub-section of Section 33 of the Act, it was held that the second part of Section 34(3) applies to all applications made under Section 33 of the Act. Thus, it is now a settled position of law that irrespective of the sub-section of Section 33 of the Act, the petition under Section 34 can be filed within three months from the disposal of the Section 33 application.

Lastly, the Hon’ble High Court held that the challenge to awards could not be determined by whether both awards could or could not be independently challenged. Any such situation would lead to importing artificial considerations, which cannot be the intent under Section 34 of the Act. Accordingly, the Hon’ble High Court condoned the delay in filing the petition under Section 34 of the Act.

ANALYSIS

The present judgment provided much-needed clarity regarding the second part of Section 34(3) of the Act and allows a party to compute the limitation period from the date of disposal of the application made under Section 33. However, there may be a scope of abuse by parties that prefer frivolous applications to delay enforcement of the award. If both parties prefer applications under Section 33, the date of disposal of the application decided later shall be considered for computing the strict period of three months prescribed for challenging an award.

The statutory period for filing an application under Section 33 of the Act is only 30 days from receiving the award. Thus, it is imperative to note that a party failing to apply under Section 33 of the Act within 30 days of receiving the award cannot seek the benefit of the second part of Section 34(3).

The judgment of the Hon’ble High Court also aligns with the settled position of law by the Hon’ble Supreme Court of India (**‘Hon’ble Supreme Court’**) in *Ved Prakash Mithal & Sons*^[4] held that Section 34(3) of the Act speaks explicitly of the date on which a request under Section 33 of the Act has been “disposed of” by the Arbitral Tribunal. Regarding the meaning of ‘disposal’, it can mean both allowing it or dismissing it. This position was also followed in *USS Alliance*^[5], which held that the limitation period for challenging the award under Section 34 of the Act would commence from passing the amended or corrected award as the corrected award has to be challenged and not the original award.

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