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March 29, 2020

To,

The Hon'ble Chief Justice of India,
And His Companion Justices
Of the Supreme Court of India.

SUBJECT: REQUEST FOR ISSUANCE OF FURTHER DIRECTIONS IN SUO MOTO WRIT PETITION (CIVIL) NO. 3 OF 2020 FOR EXTENSION OF TIMELINES PRESCRIBED BY VARIOUS STATUTES.

Respected Lordships,

1. On behalf of the Indian Commercial and Arbitration Bar Association, a Trust aimed at creating a body of Lawyers and Advocates specializing in Commercial Litigation and Arbitration, addressing such legislative concerns with the Parliament, Executive and Judiciary amongst other things (hereinafter referred to as the 'ICABA'), I write this letter to bring to your Lordships' notice certain adverse situations that are bound to arise at the reopening of Hon'ble Courts and most humbly request Your Lordships to take pre-emptory action(s) to prevent the same.
2. Your Lordships, by way of the captioned order passed on 23.02.2020, had been pleased to take *suo moto* cognizance of the situation arising out of and the challenge faced by the Country on account of Covid-19 virus and the resultant difficulties that may be faced by the litigants throughout the Country in filing their Petitions/Application/Suits/Appeals within the period of limitation prescribed under the General Law of Limitation and/or under Special Laws. Vide Order dated 23.03.2020, this Your Lordships had been pleased to pass the following direction:

“To obviate such difficulties and to ensure that 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 the General Law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.”

3. Thus, in essence, this Hon’ble Court by way of its Order dated 23.03.2020 has extended the period of limitation, prescribed under both General Law and/or Special Law, for the purposes of filing of Petitions/Application/Suits/Appeals from running beyond 15.03.2020 till such time that further orders are passed by this Hon’ble Court.
4. The Hon’ble Prime Minister while addressing the nation on 24.03.2020 has called for a complete lockdown for a period of 21 days starting from 25.03.2020 till 14.04.2020 in the Country in order to combat the Covid-19 virus and its impact. It is still unclear as to what would be the position at the end of the said period.
5. It is most respectfully submitted that Your Lordships, by way of the aforementioned Order dated 23.03.2020 has only extended the period of limitation in respect of filings before this Hon’ble Court and the Courts and Tribunals subordinate to it. However, the said order does not encompass and deal with situations where certain proceedings abate/terminate on account of non-adherence to timelines prescribed by certain statute(s). ICABA seeks to draw the attention of Your Lordships to few such statutes, viz:-

A. Section 29A of the Arbitration & Conciliation Act, 1996

The said provision was initially inserted by way of Arbitration and Conciliation (Amendment) Act, 2015 vide which it had been made incumbent upon the Arbitral Tribunal to pass the final award within a period of 12 months from the date the Arbitral Tribunal enters upon the reference. Additionally, the period of the said proceedings could be extended by the Arbitral Tribunal with the mutual consent of the parties for a period of 6 months. If, however, the Arbitral Tribunal was unable to pass the final award within any of the aforementioned periods, in such a scenario a party could approach the Court with an application for extension of time and additional time could be granted to the Tribunal for the passing of the final award as deemed prudent by the Court, in the absence of which the mandate of the Arbitral Tribunal would terminate.

It is pertinent to mention that Section 29A of the Arbitration and Conciliation Act, 1996 has recently been amended by way of the Arbitration and Conciliation (Amendment) Act, 2019, with effect from 09.08.2019. Since, the applicability of the said amendment act is not retrospective, and the period provided for under the 2019 Amendment still subsists, the present Application is confined to proceedings falling within the purview of Section 29A of the Act as inserted by way of Arbitration and Conciliation (Amendment) Act, 2015(As amended upto date).

B. Section 12(3) of the Insolvency and Bankruptcy Code, 2016

It is most respectfully submitted that the said provision was inserted by way of Insolvency and Bankruptcy Code, (Amendment) Act, 2019 w.e.f. 16.08.2019 and makes it mandatory that the Insolvency Resolution Process shall be completed within a period of Three Hundred and Thirty days from the Insolvency Commencement Date, including any extension of the period of Corporate Insolvency Resolution Process granted under Section 12 of the Code and the time taken in legal proceedings in relation to the said resolution process of the corporate debtor.

In fact, if the said Process is not completed within 330 days, Section 33 of the Act unequivocally mandates that the Adjudicating Authority shall pass an order of liquidation of the Corporate Debtor.

C. Section 131 of the Trade Marks Act, 1999

It is most respectfully submitted that Section 131 of the said Act provides that an application for extension of time shall be made before the Registrar for extending the time for doing any act, whether the time so specified has expired or not, and subject to sufficient cause being shown, the said application may be allowed.

In fact, the Registry of Trademarks has even issued a Public Notice dated 23.03.2020 stating that all stakeholders may file extension of time (now or after the situation becomes normal) and that such request shall be considered by the Registrar in accordance with law.

D. Section 138 of the Negotiable Instruments Act, 1881

It is submitted that Section 138 of the said Act provides that when any cheque is returned by the drawer's bank, the drawee shall send a demand notice for the payment of said amount in writing within 30 days of receipt of information of said return.

4. It is most respectfully submitted that the aforementioned provisions have been referred to bring to Your Lordship's kind notice that parties need to adhere to certain timelines, failing which serious consequences would follow as prescribed under the aforesaid statutes, which in the present circumstances is not because of any fault of the parties. In fact, under certain circumstances, non-adherence to these timelines would in fact bring about an euthanasia in respect of pending/prospective litigations.
5. Thus, whilst the order dated 23.03.2020 does extend the period of limitation for filing, it does not cover the time limits prescribed under different statutes. The consequences would be (a) Courts and other authorities are not functioning except to hear urgent matters and hence cannot be approached for seeking such extensions/permissions; and (b) as and when Courts become fully functional, they will be inundated with such applications, which is clearly not the ideal situation. As and when these concerned parties approach the Court/Authority/Tribunal, it will have a snowballing effect, adding to the already existing burden and backlog due to the lockdown.
6. Another aspect that needs to be considered are cases where the lockdown will only delay adjudication. For instance, there may be a situation where the time period as specified by Section 29A of the Arbitration & Conciliation Act, 1996 has expired today but the parties and the Arbitral Tribunal have the wherewithal to continue the proceedings even during lockdown such as through video conferencing, however because either party cannot approach the concerned Court as of today, there can be no adjudication because the mandate of the Arbitral Tribunal already stands terminated. Similarly, if 330 days of a Corporate Debtor's Corporate Insolvency Resolution Process expires during the lockdown, upon opening, the Adjudicating Authority shall either be inundated with applications for extension as per this Hon'ble Court's ruling in the case of *Committee of Creditors in Essar Steel India Limited v. Satish Kumar Gupta & Ors.*, Civil Appeal No. 8766-67 of 2019 or shall have to resort to draconian measures like an order of liquidation, which shall surely render the whole process an exercise in futility and defeat the very core intention of the Insolvency & Bankruptcy Code, 2016.

7. Therefore, by way of the present letter, I urge your Lordships that in the interest of effecting justice, there is need to exercise extraordinary jurisdiction under Article 142 of our Constitution, in terms of declaring and passing appropriate directions that the timelines as mentioned above, stand extended/excluded and the parties need not approach the Court/Authority/Tribunal(s) for seeking such extensions. For the convenience of Your Lordships, a tabulation proposing reasonable extensions in respect of such timelines is provided:

Sr. No.	Statute	Proposed extension/exclusion
1	Arbitration and Conciliation Act, 1996	An automatic extension/exclusion in respect of all pending arbitrations where the timeline as prescribed under section 29A has elapsed and/or is likely to elapse for the entire period of the lockdown w.e.f. 15.03.2020
2	Insolvency and Bankruptcy Code, 2016	An automatic extension/exclusion in respect of all pending Corporate Insolvency Process where the timeline as prescribed under Section 12(3) has elapsed and/or is likely to elapse for the entire period of the lockdown w.e.f.15.03.2020.
3	Trade Marks Act, 1999	An automatic extension/exclusion in respect of doing any act, the time period of which has already expired and/or is likely to expire for the entire period of the lockdown w.e.f. 15.03.2020
4	Negotiable Instruments Act	Limitation to stand extended/excluded for the entire period of the lockdown w.e.f. 15.03.2020.

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8. It is also not out of place to mention that apart from the aforementioned statutes, there are other notices, for instance, eviction notices, notices for recovery of money, cease and desist notices, civil defamation notices, etc., which a private litigant intends to send and approach the concerned Court/Authority/Tribunal as soon as the lockdown is over without wasting any time. However, given the present conditions, service through speed post/registered courier is nearly impossible to get effected. Thus, it is imperative that for the entire period of the lockdown, requirement of such physical service may be dispensed with and instead, service through electronic email/WhatsApp be effected. At the time of coming to the concerned Court/Authority/Tribunal, an additional Affidavit can be filed by the litigant stating that the electronic mail address/WhatsApp number of the other party on which notice was sent by him is correct to the best of his knowledge and screenshots of the WhatsApp number may be attached with such affidavit.
9. It is most humbly submitted that irreparable loss shall be caused to the litigants at large in the Country in case directions in the nature sought are not passed by Your Lordship. It is these times of incertitude and exigencies where Advocates and Litigants alike, look up to this Hon'ble Court and Your Lordships to develop its own jurisprudence according to its own light, suited to the conditions of the country and exercising the plenitude of the jurisdiction under Article 142 given to us by our Constitution.
10. Thus, it is most humbly requested that in view of current scenario, and the highly indefinite future, Your Lordships may be pleased to pass necessary directions as aforementioned, summarised hereinbelow for Your Lordships' convenience:
 - A. Pass necessary directions in the nature of extending/excluding the timeline as prescribed under Section 29A of the Arbitration and Conciliation Act, 1996, for the entire period of the lockdown w.e.f. 15.03.2020 or any other period as deemed appropriate by Your Lordships;
 - B. Pass necessary directions in the nature of extending/excluding the timeline as prescribed under Section 12 (3) Insolvency & Bankruptcy Code, 2016 for the entire period of the lockdown w.e.f. 15.03.2020 or any other reasonable period as deemed appropriate by Your Lordships;
 - C. Pass necessary directions in the nature of extending/excluding the timeline as prescribed under Section 131 of Trade Marks Act, 1999 for the entire period of

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the lockdown w.e.f. 15.03.2020 or any other reasonable period as deemed appropriate by Your Lordships;

- D. Pass necessary directions in the nature of extending/excluding the timeline as prescribed under Section 138 of the Negotiable Instruments Act, 1881 for sending Demand Notice for the entire period of the lockdown w.e.f. 15.03.2020 or any other reasonable period as deemed appropriate by Your Lordships;
- E. Pass necessary directions in the nature of exemption to be allowed to consider service made through Electronic Email/WhatsApp to be complete (along with necessary compliance to be made as suggested in Paragraph 8) for sending Demand Notice for the entire period of the lockdown w.e.f. 15.03.2020 or any other reasonable period as deemed appropriate by Your Lordships;

Yours Sincerely,

Sd/-
(PAYAL CHAWLA)
Trustee ICABA

DRAFTED BY



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