



## Delhi High Court sets limitation for filing an application under Section 8 of the Act in civil and commercial suits<sup>1</sup>

### Brief Facts

SSIPL Lifestyle Private Limited (“**Plaintiff**”) and Vama Apparels (India) Private Limited (“**Defendant**”) entered into a supply contract containing an arbitration clause for domestic arbitration. Subsequently disputes arose between the parties. The Plaintiff filed two commercial suits for recovery of sums from the Defendant for which summons were issued on 15 March 2018 and 16 May 2018 respectively. Insolvency proceedings were commenced against the Defendant on 17 May 2018, which concluded on 8 October 2018. The Defendant subsequently moved applications under Section 8 (“**Applications**”) of the Arbitration and Conciliation Act, 1996 (“**Act**”) in each of the suits. The Defendant’s contentions were that the suits for recovery are not maintainable as there is an arbitration clause in the contract, and that the parties ought to be referred to arbitration as the Applications, having been filed prior to the filing of the written statements, are maintainable in law. The Plaintiff argued that the Applications are belated in view of the amended Section 8 of the Act, pursuant to the Arbitration and Conciliation (Amendment) Act, 2015, as insertion of the word “*date*” in the provision would mean that the time period for filing the Applications has to be read with the time period of filing a written statement under the Code of Civil Procedure, 1908 (“**CPC**”).

### Issues

**Issue (i):** Whether there is a limitation period for filing an application under Section 8 of the Act?

**Issue (ii):** Whether the limitation period for filing a written statement as prescribed in the CPC and the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015 (“**Commercial Courts Act**”) would be applicable to an application filed under Section 8 of the Act?

### Judgment

The Court relied on several decisions, including *Krishan Radhu*,<sup>2</sup> *Anil Mahindra*,<sup>3</sup> *Parasramka Holdings*,<sup>4</sup> and *Hughes Communications*,<sup>5</sup> and examined the significance of the amendment to Section 8 to hold the following:

**Issue (i):** The Court held that the difference between the language of the unamended and amended Section 8 are the phrases “*not later than when submitting*” and “*not later than the date of submitting*”. The Court construed this change as a conscious step towards prescribing a limitation period for filing an application under Section 8 wherein the word “*date*” in the amended provision means that it is a precise and crystallised date and not a ‘period’ prior to the filing of the first statement on the substance of the dispute.

**Issue (ii):** The Court considered the period of 120 days to file a written statement, as prescribed by

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the CPC read together with the Commercial Courts Act, as the outer limit for filing a Section 8 application in a commercial suit. The Court concluded that even if the period during which the insolvency proceedings were underway is deducted, the Applications were still filed beyond 120 days (calculated from the date on which the moratorium period ended). Accordingly, it dismissed the Applications in view of the delay occasioned by the Applicant/Defendant.

## Analysis

By this decision, the Court re-emphasised the intention of the recent amendments in the CPC and the Act for speedy disposal of disputes. The judgment is categorical that defendants who wish to refer their disputes to arbitration ought to do so expeditiously and not merely procrastinate, which would defeat the intention behind the amendments. Therefore, the Court expressly stated that the maximum period for filing an application under Section 8 from the date of service of summons would be 90 days for ordinary civil suits and 120 days for commercial suits.

However, while rendering this decision, the Court took into account the peculiar facts of the case, namely the period of moratorium under the Insolvency and Bankruptcy Code, 2016 for the Defendant. The Court gave the Defendant the benefit of the period when the insolvency proceedings were underway and deducted such number of days from the total delay in filing the Applications, but found that the delay still exceeded 120 days. Moreover and in addition to the stipulation of 120 days, in this decision the Court held that the obligation under the *Booz Allen*<sup>6</sup> principle for filing Section 8 applications “at the earliest” still remains. Therefore, the Court would still exercise jurisdiction to assess whether the applicant intentionally delayed the filing of the Section 8 application in order to protract the proceedings.

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1 Authored by Siddhartha Datta, Partner and Surabhi Binani, Associate; *SSIPL Lifestyle Private Limited. v. Vama Apparels (India) Private Limited & Anr.*, CS (COMM) No. 735 of 2018, Delhi High Court, judgment dated 19 February 2020.

**Quorum:** Prathiba M. Singh, J.

2 *Krishan Radhu v. Emaar MGF Construction Pvt. Ltd.*, 2016 SCC OnLine Del 6499.

3 *Anil Mahindra v. Surender Kumar Makkar*, 2017 SCC OnLine Del 11532.

4 *Parasramka Holdings Pvt. Ltd. v. Ambience Pvt. Ltd.*, 2018 SCC OnLine Del 6573.

5 *Hughes Communications India Ltd. and Ors. v. Union of India*, 2018 SCC OnLine Del 7408.

6 *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd. & Ors.*, (2011) 5 SCC 532.

## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

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