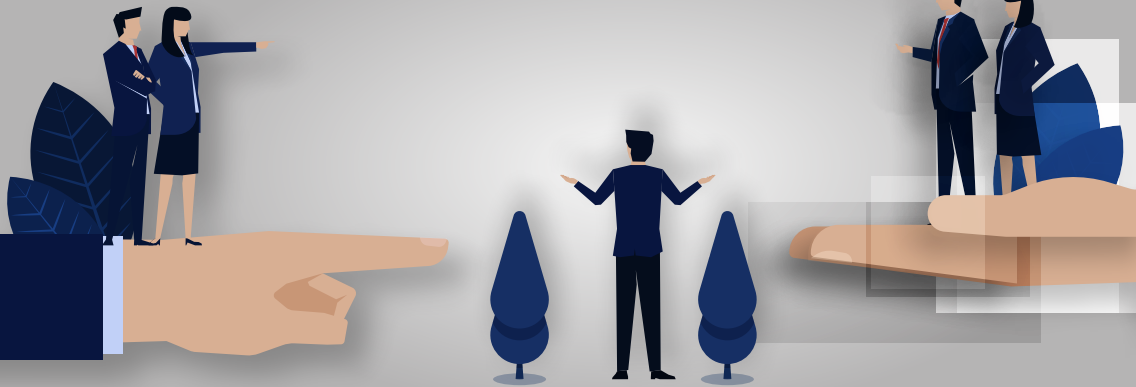


June 2024



High Court of Delhi clarifies the scope of Section 29A of the Arbitration and Conciliation Act, 1996¹

Brief Facts

M/s Power Mech Projects (“**Petitioner**”) filed a petition (“**Petition**”) under Sections 29A(4) and (5) of the Arbitration and Conciliation Act, 1996 (“**Act**”) before the High Court of Delhi (“**Court**”). The Petitioner had entered into a works contract with M/s Doosan Power Systems India (“**Respondent**”) for works related to a power plant project. Pursuant to disputes arising between parties, the Petitioner initiated arbitration proceedings on 10 May 2022. A three-member arbitral tribunal was constituted on 6 July 2022.

Since the proceedings did not conclude within a period of 12 months as required under Section 29A(1) of the Act, the parties mutually consented to a six-month extension under Section 29A(3) of the Act. However, this extended mandate too expired on 4 February 2024. The proceedings were at the stage of cross-examination of the Petitioner’s witness (Claimant in the arbitration proceedings). As the extended deadline expired, the tribunal acknowledged that its mandate had ended and stated that it would need appropriate orders from the Court to continue. Consequently, the Petition was filed by the Petitioner seeking a further extension of 12 months to complete the arbitration.

The Respondent opposed the Petition on two grounds: (i) the dilatory conduct of the Petitioner in the arbitration proceedings - the Respondent highlighted several instances recorded by the tribunal where the proceedings were delayed due to actions of the Petitioner; and (ii) the filing of the Petition after the expiry of the tribunal’s mandate on 4 February 2024 and that the court cannot extend a mandate that has already terminated by operation of law. The Respondent sought to distinguish between extending an existing mandate and reviving an expired mandate, arguing that the latter could not be done by the Petition under Sections 29A(4) and (5) of the Act. The Respondent relied on **Rohan Builders (India) Pvt. Ltd. v. Berger Paints**² and **ATS Infrastructure Ltd. v. Rasbehari Traders**,³ both of which are pending before the Supreme Court on the same issue. The Respondent suggested that since this issue is yet to attain finality, the Court should hold that the Petition is beyond the scope of Sections 29(4) and (5) of the Act.

Issue

Whether the Court has the authority to extend the mandate of an arbitral tribunal in a petition filed after the expiry of the tribunal’s mandate under Sections 29A(4) and (5) of the Act?

Judgment

At the outset, the Court listed several judgments passed by the High Court of Delhi, such as **Wadia Techno-Engineering Services Ltd. v. Director General of Married Accommodation Project and Anr.**⁴ and **ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.**,⁵ which took the view that an arbitral tribunal’s mandate could be extended by the court under Section 29A, regardless of whether the mandate had already expired.

The Respondent heavily relied on the decision of the High Court of Calcutta in **Rohan Builders** (*supra*) that is currently under challenge before the Supreme Court. In **Rohan Builders** (*supra*), the High Court of Calcutta ruled that if an award is not delivered within the time limits specified under Section 29A(1) or Section 29A(3) of the Act, the mandate of the tribunal automatically expires. According to this decision, an application for an extension of the mandate cannot be filed after its expiration, as ‘*post-expiration*’ extensions are not permissible. In this regard, the Court considered a subsequent decision of the High Court of Calcutta in **Multiplex Equipments and Services Pvt. Ltd. v. Bagzone Lifestyles Pvt.**

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Ltd.,⁶ which took the position that arbitration proceedings should not be unnecessarily delayed and should continue without waiting for the Supreme Court's decision in **Rohan Builders** (*supra*), ensuring that a party was not left without a legal remedy.

The Court also examined decisions from other High Courts that consistently relied on **ATC Telecom** (*supra*) as opposed to **Rohan Builders** (*supra*). The Court further analysed the language of Section 29A(4) of the Arbitration Act, which clearly specifies the court's authority to extend the mandate of the arbitral tribunal before or after the designated period has ended.

The Court also relied on its decision in **Larson & Turbo Ltd v. IIC Ltd. and Anr.**,⁷ wherein it noted that Section 29A(4) contemplates two situations: (i) one where the arbitration mandate has not been extended and the 12-month period expires; and (ii) another where the mandate is extended by mutual consent. In both cases, the court can extend the mandate of the tribunal.

Ultimately, the Court found that it could not rely on **Rohan Builders** (*supra*) as it was of the view that the Act allowed the court to extend the mandate of the tribunal even after it has expired. Accordingly, the Court extended the mandate of the tribunal to 31 December 2024.

Analysis

This ruling clarifies the interpretation of Section 29A(4) of the Act, emphasising that limiting the extension of a tribunal's mandate to applications filed before its expiry undermines the intent of the provision. This decision upholds the objective of Section 29A, which aims to ensure that arbitration is conducted efficiently and conclusively. The Court is entitled to be satisfied with justifiable reasons when granting the extension post the expiry of the tribunal's mandate.

This case reflects a trend where courts may choose to prioritise effective dispute resolution over strict procedural compliance to better serve the underlying objectives of alternative dispute resolution mechanisms. However, much of this rests on the decision of the Supreme Court in the pending SLPs in **Rohan Builders** (*supra*) and **ATS Infrastructure** (*supra*).

Endnote

1 Authored by Shruti Sabharwal, Partner and Anamta Khan, Associate; *M/s Power Mech Projects Ltd. v. M/s Doosan Power Systems India Pvt. Ltd.*, O.M.P. (MISC.) No. 6/2024, High Court of Delhi, judgment dated 7 May 2024.

Coram: Prathiba M. Singh, J.

2 2023 SCC OnLine Cal 2645.

3 O.M.P. (T) (COMM.) No. 91/2023, decided on 17 November 2023 (High Court of Delhi).

4 2023 SCC OnLine Del 2990.

5 O.M.P.(MISC.)(COMM.) No. 466/2023, decided on 6 November 2023 (High Court of Delhi).

6 2024 SCC OnLine Cal 174.

7 2024 SCC OnLine Del 832.

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