



Supreme Court clarifies that the time limit for passing an arbitral award under amended Section 29A of the Arbitration and Conciliation Act is inapplicable to international commercial arbitrations

The Supreme Court of India (“**Supreme Court**”) in its recent judgment in *Tata Sons Pvt. Ltd. v. Siva Industries and Holding Ltd and Ors.*¹ has *inter alia* held that the time limit of 12 (twelve) months as provided under the amended Section 29A (1) of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) for rendering an award does not apply to ‘international commercial arbitrations’.

Brief facts

Tata Sons Private Limited (“**Applicant**”), Tata Tele Services Limited (“**TTSL**”) and NTT Docomo Inc. (“**Docomo**”) executed a share purchase agreement, in terms of which Docomo acquired certain equity shares of TTSL from Siva Industries and Holding Ltd (“**Respondent No. 1**”). The rights, obligations and duties of Docomo’s ownership of TTSL’s shares were recorded in a shareholders’ agreement executed between the Applicant, TTSL and Docomo (“**SHA**”).

Thereafter, the Applicant, TTSL and Respondent No. 1 along with C. Sivasankaran, a foreign resident, promoter and guarantor of Respondent No. 1 (“**Respondent No. 2**” together with “Respondent No.1 referred to as “**Respondents**”) executed an *inter se* agreement whereby the Respondents agreed to acquire TTSL’s shares on a pro-rata basis in the event Docomo exercised its sale option under the SHA (“**Inter se agreement**”).

Disputes arose between Docomo and the Applicant pursuant to the SHA and the matter was referred to arbitration. An award was passed in this arbitration directing the Applicant to *inter alia* acquire Docomo’s shareholding in TTSL.

Considering this award and pursuant to the Inter se agreement, the Applicant called upon the Respondents to acquire Docomo’s shareholding in TTSL. Disputes arose between the Applicant and Respondents and the matter was referred to arbitration. However, the Respondents failed to appoint their nominee arbitrator. Since Respondent No. 2 was a foreign party, the Applicant filed a petition under Section 11(6) of the Arbitration Act before the Supreme Court for constitution of an arbitral tribunal. The Supreme Court appointed a sole arbitrator with the consent of the Applicant and the Respondents.

During the preliminary meeting, the sole arbitrator recorded the parties’ consent to an extension of 6 (six) months (till August 14, 2019) for delivering the award in terms of Section 29A (3) of the Arbitration Act. During the pendency

¹ Miscellaneous Application No 2680 of 2019 in Arbitration Case (Civil) No 38 of 2017

of this arbitration, insolvency proceedings were initiated against Respondent No.1 and a moratorium was imposed. This moratorium was lifted on June 3, 2022.

Accordingly, the Applicant filed an application before the Supreme Court *inter alia* seeking continuation of the arbitral proceedings on an automatic basis in view of the amended Section 29A of the Arbitration Act. The Applicant *inter alia* argued that the time limit under Section 29A(1) for passing an arbitral award was inapplicable to international commercial arbitrations and such amendment being procedural would apply retrospectively. Respondent No. 2 *inter alia* argued that to accept the Applicant's arguments would imply that the statutory time limit under Section 29A are entirely inapplicable to international commercial arbitrations.

Issues

In this judgment, the Supreme Court has addressed the following issues:

1. Whether the time limit for passing an award as per the amended Section 29A of Arbitration Act is applicable to 'international commercial arbitration'?
2. Whether the amended Section 29A of Arbitration Act applies retrospectively?

Analysis and Findings

The Supreme Court allowed the application based on the following observations:

1. The international arbitral institutions had criticised Section 29A of the Arbitration Act as it stood prior to its amendment on ground that it allowed for court intervention for extending the time limit for rendering an award in international commercial arbitrations. This criticism led to the amendment of Section 29A of the Arbitration Act in 2019 which expressly kept international commercial arbitrations outside the purview of the time limits envisaged in Section 29A of the Arbitration Act.
2. The amended Section 29A (1) of the Arbitration Act specifically excludes international commercial arbitration from its purview and clarifies that the arbitral tribunal in international commercial arbitration is only required to "endeavour" to render the arbitral award within 12 (twelve) months from completion of pleadings. Consequently, the time limit stipulated under the amended Section 29A(1) for rendering an award does not apply to international commercial arbitrations.
3. Given that the substantive part of the amended Section 29A(1) of the Arbitration Act is inapplicable to international commercial arbitrations, the additional time limit under Section 29A(3) and 29A(4) to extend the mandate of the arbitral tribunal are also inapplicable to international commercial arbitrations.
4. The time limit prescribed under the amended Section 29A(1) of the Arbitration Act applies retrospectively to all pending arbitral proceedings from its effective date i.e., August 30, 2019.

Based on the above observations, the Supreme Court held that the sole arbitrator was empowered to pass appropriate procedural directions for extension of time while endeavouring to expeditiously conclude the arbitration.

JSA Comment

By this judgment, the Supreme Court has restricted the applicability of the time limit under the amended Section 29A of the Arbitration Act to domestic arbitrations and excluded international commercial arbitrations from its purview. The implication of this judgment is that it restricts the intervention of the courts in international commercial arbitration in relation to any extension of timelines. Moreover, this judgment allows international arbitral institutions to follow their independent machinery to monitor the timelines to expeditiously conclude arbitral proceedings without any court intervention instead of being bound by the statutorily prescribed time limits.

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