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Supreme Court resolves conflict on the issue of territorial jurisdiction for seeking extension of time in an arbitration

In the recent decision of *Chief Engineer (NH) PWD (Roads) vs. BSC&C and C JV*,¹ the Hon'ble Supreme Court of India ("Supreme Court") held that the power to extend time for making an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") vests in the 'court' defined under Section 2(1)(e) of the Arbitration Act, i.e., the principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction). In the wake of multiple conflicting decisions on the point rendered by courts across the country, the Supreme Court's decision provides much needed quietus and settles the question of territorial jurisdiction for seeking extension of time in an arbitration.

Brief Facts

Due to the arbitral tribunal's failure to render the award within the prescribed time,² the respondent – a joint venture company had applied for an extension of time before the Ld. Commercial Court at Shillong, Meghalaya. The petitioner, on the other hand, contested the jurisdiction of the commercial court to entertain the application for extension of time under Section 29A of the Arbitration Act.

By judgment and order dated February 16, 2024, the commercial court held that it had the requisite jurisdiction to extend the mandate of the arbitral tribunal. This decision was challenged by the petitioner through a revision petition before the Hon'ble High Court of Meghalaya at Shillong ("**Meghalaya HC**").³

By judgment and order dated April 22, 2024, the Meghalaya HC upheld the decision of the commercial court. The petitioner challenged the Meghalaya HC's decision through SLP (Civil) No. 10544/2024 before the Supreme Court.

Issue

The core issue considered by the Meghalaya HC, and the Supreme Court, was whether the expression 'court' used in Sections 29A(4), (5) and (6) of the Arbitration Act would mean the High Court or the principal civil court of original jurisdiction in a district. Put simply, the question to be decided was whether an application for extension of time for making an arbitral award ought to be filed before the concerned commercial/ district court or the High Court.

¹ Order dated May 13, 2024, in SLP (Civil) No. 10544/2024

² As per Section 29A of the Arbitration Act, in a domestic arbitration, the award is required to be passed within 12 (twelve) months from the date of completion of pleadings. This period is extendable by 6 (six) months by the parties' consent, and thereafter, by an order of the court. As per Section 23(4) of the Arbitration Act, pleadings are required to be completed within 6 (six) months from the date of constitution of the arbitral tribunal.

³ CRP No. 2/2024.

Analysis and Findings

Before the Meghalaya HC, the petitioner contended that the expression ‘court’ used in Sections 29A(4), (5) and (6) of the Arbitration Act should be read as the “*court which has the power to appoint an arbitrator under Section 11*” of the Arbitration Act. Placing reliance on decisions of various High Courts,⁴ the petitioner argued that: (a) Section 29A(6) of the Arbitration Act provides that a court while extending the time period for making an award may substitute any of the arbitrators; (b) such a power of appointing a new/ substitute arbitrator vests with the High Court under Section 11 of the Arbitration Act; and therefore (c) the powers under Section 29A ought to be exercised only by High Courts, to prevent anomalous situations where commercial/ district courts may be called upon to substitute arbitrators originally appointed by High Courts.

On the other hand, the respondent contended that the language used in Section 2(1)(e) of the Arbitration Act was clear and unambiguous in providing that a High Court will exercise powers under Section 29A only if it possesses original civil jurisdiction. Citing decisions of various High Courts⁵ conflicting with those cited by the petitioner, the respondent argued that: (a) had the legislature intended to provide the power of extension of time in arbitration to High Courts, they would have provided so in Section 29A, as they did for appointment of arbitrators in Section 11; and (b) as commercial/ district courts are empowered under Section 34 to set aside awards passed by arbitrators who may have been appointed by High Courts, there is no basis to the contention that such arbitrators cannot be substituted by commercial/ district courts.

After hearing the parties, the Meghalaya HC held that:

1. a plain reading of Section 2(1)(e) of the Arbitration Act makes it clear that the ‘court’ is defined to mean the principal civil court of original jurisdiction in a district, including the High Court in exercise of its ordinary civil jurisdiction;
2. in cases where the arbitral tribunal was not appointed by the High Court under Section 11 of the Arbitration Act, the principal civil court of original jurisdiction would have the power to extend the mandate of the arbitral tribunal under Section 29A; and
3. in the given facts, since the Meghalaya HC neither appointed the arbitral tribunal nor possessed original civil jurisdiction, the commercial court correctly exercised jurisdiction to extend the mandate of the arbitral tribunal under Section 29A.

In challenge, the Supreme Court upheld the Meghalaya HC’s decision and unequivocally held that:

1. the power to extend the time under Section 29A(4) of the Arbitration Act vests with the principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction); and
2. the power of substituting arbitrators while extending the mandate of the arbitral tribunal is only a consequential power, which has to be exercised by the same court which has the power to extend the time under Section 29A(4) of the Arbitration Act.

Conclusion

As is clear from the parties’ arguments, High Courts across India have provided conflicting answers to the question of which court to approach for seeking extension of time in an arbitration. While some decisions hold that only High Courts would have the power to extend the mandate of an arbitral tribunal,⁶ other decisions conclude that this power

⁴ *Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel*, 2018 SCC OnLine Guj 5017; *KV Ramana Reddy vs. Rashtriya Ispat Nigam Limited*, 2023 SCC OnLine AP 398; *Amit Kumar Gupta vs. Dipak Prasad*, 2021 SCC OnLine Cal 2174; *Indian Farmers Fertilizers Cooperative vs. Manish Engineering Enterprises*, 2022 SCC OnLine All 150

⁵ *A’Xykno Capital Services Private Limited vs. State of U.P.*, 2023/AHC -LKO/37194; *Aplus Projects and Technology vs. Oil India*, (2020) 1 Gau LR 99; *URC Construction vs. BEML Ltd.*, 2017 SCC OnLine Ker 20520

⁶ *Nilesh Ramanbhai Patel vs. Bhanubhai Ramanbhai Patel*, 2018 SCC OnLine Guj 5017; *DDA vs. Tara Chand*, 2020 SCC OnLine Del 2501; *Lots Shipping Company vs. Cochin Port Trust*, 2020 SCC OnLine Ker 21443; *Amit Kumar Gupta vs. Dipak Prasad*, 2021 SCC OnLine Cal 2174; *Indian Farmers Fertilizers Cooperative vs. Manish Engineering Enterprises*, 2022 SCC OnLine All 150; *KV Ramana Reddy vs. Rashtriya Ispat Nigam Limited*, 2023 SCC OnLine AP 398

would be exercised by High Courts only if they have ordinary original civil jurisdiction.⁷ In view of such conflicting decisions, the Hon'ble Allahabad High Court⁸ and the Hon'ble Bombay High Court⁹ have, in fact, referred this question to larger benches for consideration as well.

The rationale provided in earlier decisions for holding that the power to extend time in arbitration ought to be exercised only by High Courts was the prevention of anomalous situations where subordinate courts may be required to substitute arbitrators originally appointed by High Courts. In the present case, the Meghalaya HC addressed that argument by drawing a distinction on facts, holding that such an anomaly cannot arise in cases where the arbitral tribunal was not appointed by the High Court under Section 11 of the Arbitration Act, and therefore, in such cases, the principal civil court of original jurisdiction would have the power to extend the mandate of the arbitral tribunal under Section 29A. Even this distinction has been eliminated by the Supreme Court's ruling in *Chief Engineer (supra)*, which unequivocally settles that the power to extend the time for making an arbitral award vests with principal civil court of original jurisdiction (including a High Court, provided the High Court has ordinary original civil jurisdiction).

This decision provides a welcome quietus to the cacophony of decisions on the question of territorial jurisdiction under Section 29A. Now, it is clear that:

1. an application for extension of time can be filed before the concerned High Court only if it has ordinary original civil jurisdiction. In other words, subject to satisfaction of applicable pecuniary limits, only the Hon'ble High Courts at Delhi, Bombay, Calcutta, Madras and Himachal Pradesh can adjudicate an application for extension of time under Section 29A of the Arbitration Act; and
2. in states where High Courts do not have ordinary original civil jurisdiction, applications for extension of time must be filed before the principal civil court of original jurisdiction in the district where the seat of arbitration is located (i.e., the commercial/ district court).

⁷ *URC Construction vs. BEML Ltd.*, 2017 SCC OnLine Ker 20520; *Lucknow Agencies vs. UP Avas Vikas Parishad*, 2019 SCC OnLine All 4369; *Aplus Projects and Technology vs. Oil India*, (2020) 1 Gau LR 99; *Mormugao Port Trust vs. Ganesh Benzoplast*, Writ Petition No. 3/2020 (Bombay High Court); *A'Xykn Capital Services Private Limited vs. State of U.P.*, 2023/AHC -LKO/37194

⁸ *Jaypee Infratech vs. Ehbh Services Private Limited*, 2024 SCC OnLine All 444

⁹ *Sheela Chowgule vs. Vijay Chowgule*, 2024 SCC OnLine Bom 1069

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