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Supreme Court clarifies that an application seeking extension of arbitral tribunal's mandate under Section 29A of the Arbitration and Conciliation Act, 1996 can be filed even after the expiry of the mandate

In the recent case of *Rohan Builders vs. Berger Paints*¹ (“**Rohan Builders Case**”), the Hon’ble Supreme Court of India (“**Supreme Court**”) has conclusively settled the long-standing issue concerning the time of filing an application for extension of time to render an arbitral award under Section 29A of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). While deciding the issue in the affirmative, the Supreme Court ruled that such an application can be filed even after the expiry of the prescribed time period.

Background

Under Section 29A of the Arbitration Act, arbitral awards in domestic arbitrations must be delivered within 12 (twelve) months from the date of completion of pleadings². This time period can be extended by another 6 (six) months by the consent of the parties. If the arbitral tribunal is unable to pass the award within this time period of 12 (twelve) months (or 18 (eighteen) months, where parties have consented to the 6 (six) month extension), the mandate of the arbitral tribunal terminates. Thereafter, the mandate can be further extended only by the court under Section 29A(4) of the Arbitration Act, on an application from either party to continue the arbitration process.

In the *Rohan Builders Case*, the Supreme Court held that under Section 29A(4) of the Arbitration Act, the power to extend the mandate of the arbitral tribunal can be exercised by courts even after the mandate has expired.

This judgement puts to rest the convergent views taken by the High Courts of Calcutta, Delhi, Patna, Bombay, Madras, Kerala and Jammu and Kashmir on this issue.

Brief facts

Rohan Builders (the “**Petitioner**”) filed an application under Section 29(4) of the Arbitration Act seeking an extension of the arbitral tribunal’s mandate before the Hon’ble High Court at Calcutta (“**Calcutta HC**”) as the arbitral tribunal had failed to render the award in the prescribed time. Berger Paints (the “**Respondent**”) contested the application arguing, *inter alia*, that the Petitioner ought to have sought an extension during the subsistence of the arbitral tribunal’s mandate and that any application filed thereafter is not maintainable.

¹ 2024 INSC 686

² 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.

By a judgment dated September 6, 2023³, the Calcutta HC agreed with the Respondent, holding that applications seeking extension of time under Section 29A(4) of the Arbitration Act cannot be filed after the prescribed time period (12 (twelve) months or 18 (eighteen) months from the date of completion of pleadings, as the case may be) had expired. The Calcutta HC provided the following reasons for its decision:

1. Section 29A of the Arbitration Act provides for: (a) ‘termination’ of the arbitral tribunal’s mandate on the expiry of the prescribed period; and (b) ‘extension’ of the mandate. Read together, this means that the mandate of the arbitral tribunal must be ‘continuing’ for it to be extended;
2. there is a conscious omission of the words ‘renewal’ or ‘revival’ in the provisions empowering courts to extend the mandate of an arbitral tribunal. Such words would have been used (instead of ‘extension’) if the legislature intended that an application under Section 29A(4) of the Arbitration Act could be made even after the expiry of the arbitral tribunal’s mandate; and
3. allowing parties to approach courts for extension of time even after the expiry of the arbitral tribunal’s mandate would: (a) render the time limits for making an award inconsequential; and (b) encourage rogue litigants who could stall arbitrations by filing extension applications long after the expiry of the arbitral tribunal’s mandate.

Aggrieved, the Petitioner challenged the Calcutta HC’s judgement before the Supreme Court.

Issue

Whether an application for extension of time under Section 29A of the Arbitration Act can be filed even after the expiry of the prescribed period for making of the arbitral award?

Findings

The Supreme Court recognised the divergent views on the issue while the Calcutta HC and High Court of Patna had held that the power of extension under Section 29A(4) of the Arbitration Act cannot be invoked after the arbitral tribunal’s mandate had ended. The High Courts at Delhi, Bombay and Madras had held that parties are entitled to seek an extension of time under Section 29A(4) of the Arbitration Act even after the end of the prescribed time for making an award.

The Supreme Court concurred with the latter view and held that an application for extension of time to make an arbitral award can be filed after the expiry of the prescribed time period. The Supreme Court reasoned that:

1. Section 29A(4) of the Arbitration Act provides that the mandate of the arbitral tribunal will stand terminated unless extended by the court “*either prior to or after the expiry of the period*” prescribed for making an arbitral award. The plain language of the provision was unambiguous, and it clearly empowered courts to extend the time for making an award even after the expiry of the mandated period; and
2. courts should be wary of prescribing a limitation period where the legislature has refrained from doing so.⁴ Since no limitation period was prescribed by Section 29A(4) of the Arbitration Act, requiring parties to file extension applications within a specific timeframe would amount to rewriting the statute.

The Supreme Court also dealt with the rationale provided by the Calcutta HC in the following manner:

1. the Supreme Court noted that the Calcutta HC’s decision turned on the interpretation of the word ‘terminate’ used in Section 29A of the Arbitration Act. However, the Supreme Court clarified that the word ‘terminate’ is followed by the word ‘unless’. As such, the termination of the arbitral tribunal’s mandate is qualified by the succeeding part of the provision, which provides that the mandatory period for making an arbitral award may be extended by the court “*either prior to or after the expiry of the period*”; and

³ *Rohan Builders vs. Berger Paints*, A.P. 328/2023

⁴ *North Eastern Chemicals vs. Ashok Paper Mill*, 2023 SCC OnLine SC 1649; *Ajaib Singh vs. Sirhind Cooperative*, (1999) 6 SCC 82

2. the Supreme Court appreciated the Calcutta HC's concern that if parties are allowed to approach the court for extension of time even after expiry of the prescribed time period, rogue litigants may misuse the provision to defeat the mandatory timelines for making an award. However, the Supreme Court highlighted that Section 29A provided for various safeguards against such rogue litigants: (a) the power to extend time is not to be exercised mechanically, but only for 'sufficient cause'; and (b) while extending the time for making an award, the court can impose terms and conditions and even substitute the arbitral tribunal's member(s).

Conclusion

As observed by the Supreme Courts, High Courts across India have provided conflicting answers to the question of whether extension of time in an arbitration can be sought after the end of the arbitral tribunal's mandate. With the decision in the Rohan Builders Case, the Supreme Court has rightly ended the conflict by unequivocally declaring that parties are permitted to seek, and courts are empowered to grant, extension of time even if it is sought after the end of the prescribed time period for making an award.

Holding otherwise would have rendered portions of Section 29A(4) of the Arbitration Act meaningless, which expressly empower courts to grant extension of time "either prior to or after the expiry of the period" prescribed for making an arbitral award. As such, the decision is in consonance with the well-settled principle *ut res magis valeat quam pereat*, which requires courts to lean in favour of interpretations that make statutory provisions *intra vires*.⁵

Earlier, in *Chief Engineer (NH) PWD (Roads) vs. BSC&C and C JV*⁶, the Supreme Court had settled conflicting views regarding the territorial jurisdiction under Section 29A of the Arbitration Act for seeking extension of time. It held 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). Now, with the Rohan Builders Case, parties can also enjoy certainty with respect to the time periods governing extension applications under Section 29A of the Arbitration Act.

This judgement also addresses the recent trend of courts mechanically allowing extension applications under Section 29A of the Arbitration Act and reminds parties that such applications can only be allowed for sufficient cause.

⁵ *Johri Mal vs. Director of Consolidation of Holdings*, AIR 1967 SC 1568

⁶ SLP (Civil) No. 10544/2024

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This Prism is prepared by:



Dheeraj Nair
Partner



Divyam Agarwal
Partner



Vishrutyi Sahni
Principal Associate



Aniket Aggarwal
Senior Associate



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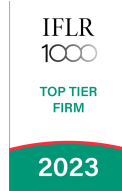
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