

IN THE HIGH COURT AT CALCUTTA
Ordinary Original Civil Jurisdiction
ORIGINAL SIDE
(Commercial Division)

Present :

Hon'ble Justice Moushumi Bhattacharya

A.P. 328 of 2023

Rohan Builders (India) Pvt. Ltd.

vs

Berger Paints India Limited

And

A.P. 500 of 2023

SMS Paryavaran Limited

vs

Asansol Durgapur Development Authority

With

A.P. 502 of 2023

SMS Paryavaran Limited

vs

Asansol Durgapur Development Authority

For the petitioner
in AP 328 of 2023

: Mr. Soumya Roy Chowdhury, Adv.
Mr. Chayan Gupta, Adv.
Mr. Sarosij Dasgupta, adv.
Ms. Susrea Mitra, Adv.
Mr. Ritesh Ganguly, Adv.
Mr. Ramanuj Ray Chaudhuri, Adv.

For the respondent
in AP 328 of 2023

: Mr. Anirban Ray, Adv.
Mr. Debraj Sahu, Adv.
Mr. Snehasish Sen, Adv.

For the petitioner in : Mr. Rudraman Bhattacharya, Adv.
AP 500 of 2023 and Mr. Ratul Das, Adv.
AP 502 of 2023 Mr. Sourajit Dasgupta, Adv.
Mr. Souvik Mazumdar, Adv.

For the respondent in : Mr. Sayantan Bose, Adv.
AP 500 of 2023 and Ms. Ankita Choudhury, Adv.
AP 502 of 2023

AP 328 of 2023 Last heard on : 11.08.2023

AP 500 of 2023 and : 04.09.2023
AP 502 of 2023
Last heard on

Delivered on : 06.09.2023

Moushumi Bhattacharya, J.

1. The issue in these applications is whether the Court can extend the mandate of the arbitrators under section 29-A(4) of The Arbitration and Conciliation Act, 1996 after the mandates have terminated. The Court has been invited to decide the issue on minor variations in the facts relevant to the arbitration petitions. The petitioners in all the three applications have prayed for extension of the mandate for the learned arbitrators to make and publish the awards. The respondents in all the matters have opposed any further extension of the mandates.

2. Since the issues involved are identical, the three arbitration petitions are being disposed of by this judgment.

3. The petitioners (claimants in the arbitration) seek extension of the arbitrator's mandate in exercise of the Court's power under section 29-A(4) of the Act. The relief prayed for could easily have been granted but for two difficulties; the respondents do not agree to extension of the arbitrator's mandate and second, the present applications for extension have been filed after the expiry of the period for making of the award under section 29-A(1) of the Act.

The facts in AP 500 and 502 of 2023 – SMS Paryavaran Limited

4. These facts are being recorded since a point of CIRP has been raised on behalf of the petitioner. The fact of the mandate having terminated before filing of the application is not disputed.

5. The CIRP proceedings were initiated under The Insolvency and Bankruptcy Code, 2016 (IBC) against the petitioner. The petitioner seeks to take advantage of an order passed by the National Company Law Tribunal dated 21.2.2023 approving the resolution plan of the petitioner. The petitioner seeks to argue that the CIRP would be a break in the chain of sequence under section 29-A of the 1996 Act and also in view of section 60(6) of the IBC.

6. The dates shown by the petitioner as well as the respondent clarify that the mandate expired before the order of the NCLT. It is also admitted that the Resolution Professional appointed under the IBC continued with the arbitration even during the moratorium during the CIRP under the IBC.

7. The petitioner has taken recourse to section 60(6) of the IBC which provides that notwithstanding any other law for the time being in force

including The Limitation Act, 1963, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under Part- II to the Act, the period during which such moratorium is in place shall be excluded.

8. There is however a fundamental distinction between section 60(6) of the IBC and 29-A of the 1996 Act. While the former is relevant for excluding the period of limitation for filing of an original proceeding in the form of a suit or application by or against a corporate-debtor, the latter i.e. section 29-A contemplates completion of a pending proceeding (arbitration). In any event, arbitration involves the parties voluntarily choosing a forum for dispute resolution unlike section 60(6) of the IBC where one of the parties / corporate-debtor is the initiator / defender of the proceedings.

A. The arguments made on behalf of the parties

A1. The petitioners - who seek extension of the arbitrator's mandate:

9. According to learned counsel, an application for extension of the arbitrator's mandate is maintainable even if the application is filed after expiry of the time mentioned in section 29-A(1) or (3) of the Act. Counsel relies on section 29-A(4) to say that the Court has the power to extend the period either before or after the expiry of the period specified under section 29-A(1) or (3). Counsel submits that the Court is simply to assess the sufficiency of the cause shown for extension as would be evident from section 29-A(5).

10. Counsel relies on the 176th Report of the Law Commission of India on The Arbitration and Conciliation (Amendment) Bill, 2001 as well as the 246th

Report of the Law Commission and the Statements and Objects of The Arbitration and Conciliation (Amendment) Bill, 2015 to urge that the legislative object was to expedite the arbitration process and that the Court is conferred with sufficient powers to extend the mandate of the arbitrator upon sufficient cause being shown.

A2. The respondents - who oppose extension of the mandate:

11. Learned counsel relies on the 176th Report of the Law Commission of India on The Arbitration and Conciliation (Amendment) Bill, 2001 and section 29-A in its present form to say that the mandate of the arbitrator would terminate by operation of law if the application for extension is not made within the period of the mandate. Counsel submits that as opposed to the suspension of mandate, the Legislature has used the word “terminate” which means that the proceedings would come to an end if the award is not made within the statutory time period.

DECISION

12. The discussions and conclusions under distinct heads are articulated in sections B,C,D,E and F of this judgment, leading to the final decision.

B. The Statutory Framework of The Arbitration and Conciliation Act, 1996:

B.1. Section 29-A

13. Section 29-A is headlined by the time-limit for making an arbitral award. Sections 29-A(1) and (3), which are relevant for this section of the discussion, are reproduced below.

“29-A. Time limit for arbitral award – (1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2)...

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.”

Therefore, the two windows are

- 12 months from the date of completion of pleadings under section 23(4), i.e., from the defense of the respondent - or of the claimant if the respondent has a counter claim, and
- An additional period of 6 months

for the arbitral tribunal to make the award in matters other than international commercial arbitrations. If the arbitral tribunal is unable to make the award within the two windows under sections 29-A(1) or (3) that is 12 months or 18 (12+6) months, the mandate of the arbitrator may be extended by the Court under section 29-A(4).

14. The Court proposes to inquire into the statutory position as enacted in section 29-A and the possible interpretations thereof.

B.2. Section 29-A(4):

15. The Court steps in to extend the arbitrator's mandate for making the award. The power conferred on the Court is limited to a fact-situation where the award has not been made within the time-frame either under section 29-A(1) or section 29-A(3), that is 12 months from the date of completion of pleadings or within an additional 6 months where parties have consented to having the mandate extended for making the award.

The second *proviso* to section 29-A(4) is set out below:

"29-A.

(4)

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:"

B.3. Section 29-A(5):

16. Section 29-A(5) is in the nature of a clarification that the Court may allow the extension under section 29-A(4) on the application of any of the parties provided the Court is satisfied that sufficient cause exists for granting such extension. The Court is also given the power to impose terms on granting the extension.

Section 29-A(5) is set out below.

"29-A.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient

cause and on such terms and conditions as may be imposed by the Court.”

Conclusion I

17. Section 29-A(4) and (5) do not contemplate any further windows for extension of the mandate after 18 months from the date of completion of pleadings unless the Court extends the period beyond 18 months on an application made by a party and upon sufficient cause being shown to the Court.

18. The insertion of section 29-A to the Act in 2016 is an intervention in the sense of mandating statutory timelines for making of the award. The earlier position in the form of section 28 of The Arbitration Act, 1940 provided the following

“28. (1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time the time for making the award.

(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties to the agreement, enlarge the time for making .the award, shall be void and of no effect.”

The erstwhile position in law thus makes it clear that the Court was empowered to extend the mandate for making the award regardless of whether the time had expired for making the award. This was also noticed by the Supreme Court in *Hindustan Steel Works Construction Ltd. vs. C. Rajasekhar Rao*; (1987) 4 SCC 93.

19. Section 29-A changed all that and brought in not only strict time-limits for making of the award but also the concept of termination of the mandate if the award is not made within the prescribed statutory timelines.

20. The question is, whether the Court under section 29-A(4) is conferred with the power to extend the mandate of the arbitrator if an application is made for extension after expiry of the period envisaged under section 29-A(1) or (3)?

21. The following section looks at the triggers for incorporating section 29-A to the 1996 Act.

B.4. The deliberations relevant to the insertion of section 29-A to the 1996 Act by the Amending Act of 2016.

The 176th Report of the Law Commission of India on The Arbitration and Conciliation (Amendment) Bill, 2001

22. The Report seeks to make a case for speedy disposal of arbitrations with minimal Court intervention. Paragraph 1.6 of the Report mentions section 29-A with regard to prevention of delays before the arbitral tribunal. Paragraph 1.8 deals with “major reforms” in speeding up pending and future arbitrations under the 1996 Act which would be reflected from the following extract.

*“Next, for future arbitrations under the 1996 Act, the arbitrators will have one year and thereafter another period not exceeding one year as agreed by the parties, under the proposed section 29A, for passing the award. **Thereafter, if the award is not passed, parties are to move the court for extension and if the parties do not apply, the arbitrators can***

also apply for the same. Till the application is made, the arbitration proceedings are suspended, but once an application is made to the Court, the arbitration proceedings shall continue and are not to be stayed by the Court. On the other hand, the Court shall pass an order within one month fixing the time schedule or it may also pass orders as to costs taking into account various factors which have led to the delay and also the amount already spent towards fee etc. The Court will continue to pass such orders granting time and fixing the procedure, till the award is passed. The above procedure is also to be applied to arbitrations which are pending under the 1996 Act for more than three years as provided in sec. 33 of the amending Act. Applications under section 34(1) to set aside awards and appeals under sec. 37(1) are to be disposed of within six months and appeals under sec. 37(2) within three months from the date of commencement of the amending Act. A similar procedure is envisaged for future applications and appeals”

Paragraph 2.21.5 also contains proposals and views which are relevant for this discussion.

*“The Commission, therefore, proposes to see that an arbitral award is ultimately passed even if the above said delays have taken place. In order that there is no further delay, **the Commission proposes that after the period of initial one year and the further period agreed to by the parties (subject to a maximum of one year) is over, the arbitration proceedings will nearly stand suspended and will get revived as soon as any party to the proceedings files an application in the Court for extension of time.** In case none of the parties files an application, even then the arbitral tribunal may seek an extension from the Court. From the moment the application is filed, the arbitration proceedings can be continued. When the Court takes up the application for extension, it shall grant extension subject to any order as to costs and it shall fix up the time schedule for the future procedure before the arbitral tribunal. It will initially pass an order granting extension of time and fixing the time frame before the arbitral tribunal and will continue to pass further orders till time*

the award is passed. This procedure will ensure that ultimately an award is passed”.

(The relevant portions are highlighted)

23. The above paragraphs make it clear that the Report of the Law Commission envisioned the concept of “suspension of mandate” to be introduced to the proposed section 29-A and being made applicable for the intervening period between “termination of mandate” and “filing of an application for extension of mandate”. The Law Commission hence proposed that after termination of the arbitrator’s mandate to make an award under section 29-A(1) or (3), the mandate would remain suspended until an application is made for extension of the mandate under section 29-A(4).

24. The “suspension of mandate” recommended in the 176th Report of the Law Commission was ultimately dropped from the subsequent Law Commission Report and finally from the section as amended on and from 23.10.2015.

B.5. A comparative statement of what was proposed in the Law Commission Reports and what was finally inserted in the Act:

As recommended by the Law Commission in the 176 th Report	Section 29-A(4) as it stands today
29-A(3). - <i>If the award is not made within the period specified in sub-section (1) and the period agreed to by the parties under sub-section (2), the arbitral proceedings shall, subject to the provisions of sub-sections (4) to (6), stand suspended until an application for extension is made to</i>	29-A(4). - <i>If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the</i>

<p><i>the Court by any party to the arbitration, or where none of the parties makes an application as foresaid, until such an application is made by the arbitral tribunal.</i></p> <p>29-A(4). - Upon filing of the application for extension of time under sub-section (3), <u>suspension of the arbitral proceedings shall stand revoked</u> and pending consideration of the application for extension of time before the court under sub-section (3), the arbitral proceedings shall continue before the arbitral tribunal and the court shall not grant any stay of the arbitral proceedings.</p>	<p><i>period:</i></p> <p><i>Provided that while extending the period under sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.</i></p> <p><i>Provided further that where an application under sub-section (5) is pending the mandate of the arbitrator shall continue till the disposal of the said application:</i></p> <p><i>Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.</i></p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

B.6. Conclusion II:

25. The inescapable conclusion is that the Law Commission’s proposal for suspension of the arbitrator’s mandate after the expiry of statutory timelines under section 29-A(1) or (3) and before filing of the application under section 29-A(4) for extension of the mandate did not find favour with the Legislature as the concept of suspension was jettisoned and “termination” of the mandate was inserted under section 29-A(4).

26. The sub-text would therefore be that the mandate of the arbitral tribunal to make the award within 12 months after completion of pleadings [under section 29-A(1)] or within the extended time of 6 months [under section 29-A(3)] would stand terminated once the timelines are exhausted and the

mandate would not remain in suspension till filing of the application for extension of the mandate under section 29-A(4).

C. Section 29-A uses the word “Extension”

27. The word “extend” is first used in section 29-A(3) which allows parties to consent to a further extension of 6 months for making the award. The word “extend/extended” re-appears in section 29-A(4) and the first proviso to the section which is reproduced once again for ease of reference.

“29-A. (4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay.”

The word “extend” appears twice-over in section 29-A(5) and section 29-A(6) which are set out below.

“29-A. (5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

29-A(6).- While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.”

28. A plain construction of the sections set out above together with the conscious use of the word “extend” in its various forms, significantly in 29-A(4) means that the mandate of the arbitral tribunal must be in existence or subsisting at the time of making the application for extension of the mandate under section 29-A(4). The words used in a statute must be given their literal meaning with due regard to the contextual placement and the legislative intent to use the particular word/s to the exclusion of others.

29. The words “*extended period*” read with “..... *the mandate of the arbitrator(s) shall terminate....*” in section 29-A(4) unerringly presumes that the mandate is a continuing one at the time of making the application for extension. If the application is not made within a continuing mandate, the mandate shall simply terminate.

30. Significantly, section 29-A(4) only speaks of the power of the Court to extend the “period so specified” either prior to or after expiry of the period, that is the period mentioned in section 29-A(1) or section 29-A(3). There are two notable features in section 29-A(4).

31. First, the words “... *unless the Court has, either prior to or after the expiry... extended the period*” is not with regard to any application made for extending the arbitrator’s mandate.

32. Second, the Court can extend the period where the application for extension has been made while the mandate of the arbitrator is subsisting. This interpretation is taken forward by the second proviso to section 29-A(4) which reads as:

“29-A. (4)....

Provided further that where an application under sub-section (5) is pending the mandate of the arbitrator shall continue till the disposal of the said application.”

Section 29-A(5) empowers the Court to extend the mandate if the Court is satisfied of the sufficiency of the cause shown by the applicant. The Court can also impose appropriate terms and conditions for the extension.

C1. “Extension” : leitmotif of section 29-A(3) to (6)

33. Black’s Law Dictionary 10th Edition defines “extension” as the continuation of the same contract for a specified period. Stroud’s Judicial Dictionary of Words and Phrases 8th Edition defines “extension” as a term used for the purpose of enlarging or giving further duration to any existing right but does not import the re-vesting of an expired right which would not be an “extension” but a “re-creation”.

34. In *Provash Chandra Dalui v. Biswanath Banerjee*; 1989 Supp (1) SCC 487, the Supreme Court drew a distinction between the words “extension” and “renewal” and explained that to “*extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit*”. The Supreme Court further went on to say that extension ordinarily implies the continuing existence of something to be extended as opposed to a case of renewal where a new lease is required whereas the same lease continues in extension.

35. In *The National Industrial Corporation Ltd. v. The Registrar of Companies*; AIR 1963 P&H 239, the Court interpreted the expression “*The Court may, at any time, by order, extend the time for the filing.....*” as contained

in section 18(4) of The Companies Act, 1956 to hold that if the phrase “at any time” is to be construed literally, there is no period of time for the exercise of this power by the Court and it can do so even after years or decades. The Court further held that the word “extension” imports the continuation of an existing thing as opposed to the word “revive” which means to *“bring back to life what has become moribund”*. The Court interpreted the word “revive” and held it to be synonymous to *“... re-enact or reanimate a matter which has become void and inoperative in law, revitalize what was in a state of animation by force of the statute, restore or brought back to life”*.

C2. Extension vs. Renewal of Mandate

36. The second proviso to section 29-A(4) hence envisages pendency of an application for extension of the arbitrator’s mandate as opposed to filing of an application. Therefore, the mandate can only continue if the application is filed prior to expiry of the mandate and not thereafter. The words in section 29-A(4) *“...either prior to or after the expiry of the period so specified...”* is a deeming fiction which takes shape to ensure that the application is made during the continuation of the mandate.

37. Section 29-A(4) uses the word “extension” for the period specified under section 29-A(1) or (3) of the arbitrator’s mandate to make the award. There is a conscious omission of the word “renewal” or “revival”. This would mean that the continuing mandate of the arbitrator must form the substratum for an application to be made for extension of that mandate. If the framers intended that the application for extension could be made at any time after expiry of the

mandate, section 29-A(4) would not have used “terminate” but “revive” or “renew”.

D. The object of section 29-A is to expedite the arbitration process

38. The 176th Law Commission Report contained several proposals to control delays before the arbitral tribunal by amending section 29-A. The Report recognised the long delays and expenses attached to the making of arbitral awards in India and accordingly proposed measures to speed up the proceedings and impose time limits for making awards.

39. Even otherwise, the scheme of section 29-A of the 1996 Act accelerates the momentum of the arbitration proceedings.

40. Sections 29-A(1) and (3) mandate that the award must be made within one year from completion of pleadings and an additional six months by consent of parties. Section 29-A(2) provides that the arbitral tribunal shall be entitled to receive additional fees as the parties may agreed if the award is made within six months from the date of the reference. On the other hand, the first *proviso* to section 29-A(4) permits the Court to reduce the fees of the arbitrator if the proceedings have been delayed for reasons attributable to the arbitral tribunal.

41. Section 29-A(5) provides that the arbitrator’s mandate may be extended by the Court only for sufficient cause and on such terms and conditions as may be imposed by the Court. Sections 29-A(6) and (7) authorises the Court to substitute one or all of the arbitrators while extending the mandate and further contemplates continuity of the arbitral proceedings even after

reconstitution of the tribunal. Section 29-A(8) allows the Court to impose actual or exemplary costs on the parties in the arbitration and section 29-A(9) fixes a time limit on the Court itself to dispose of an application under section 29-A(5) within 60 days from the date of service of notice on the opposite party.

42. The focus on speed which is built into section 29-A is in consonance with the interpretation of section 29-A(1) - (5) in the earlier section of this judgment.

43. The object of the 1996 Act in general and of section 29-A in particular is that the stakeholders in the arbitration process must be vigilant and committed to expediting the arbitration culminating in the award. The mandate is not only on an arbitrator to make the award within the prescribed time limits but also on the parties to ensure that the additional period under section 29-A(3) is seen as the penultimate window for extending the mandate.

44. A party certainly cannot be permitted within the framework of section 29-A to make an application under section 29-A(4) for extending the mandate at any point of time after the mandate expires under section 29-A(3). Construing section 29-A(4) to mean that the Court can extend the mandate any time after expiry of the period under section 29-A(1) or (3) would inevitably lead to breaching the limits for making the award envisaged under section 29-A. This construction would be antithetical not only to the object for which section 29-A was inserted into the Act in 2015 but also to the declared objective of the Amending Act 3 of 2016 which is settlement of disputes through alternative disputes mechanism in an expeditious manner.

45. The underlying mandate is that parties must take effective and time-bound steps for extending the arbitral tribunal's mandate for making the award within the subsistence of the mandate and not after the mandate expires by operation of law. (Underlined for emphasis)

Section 29A – “A Sense of many Endings”

46. The petitioners have construed section 29-A with its sub-sections as continuation of the arbitrator's mandate which remains alive until the Court disposes of an application under 29-A(4). In other words, the argument contemplates the mandate surviving until terminated by the Court on an application brought up by one of the parties.

47. This argument runs contrary to the episodes under section 29-A (1) - (5) where each of the extensions of the mandate from 29-A (1) - (4) envisages the curtain falling on the exhaustion of the time-frame under each of the sub-sections. In other words, section 29-A contains several endings which can only be extended by the parties or the Court while the mandate subsists. Section 29-A, in that sense, is a grim reminder to the parties to speed up the process of arbitration with the curtain dropping on the mandate whenever the parties fail to act with speed and precision. The section is not about bright new beginnings (revival of mandate) but about endings where the mandate terminates episodically where it is not extended during the lifetime of the mandate.

E. Is the above the only plausible construction of section 29-A(4)?

48. If the expedition factor is accepted as one of the main objects of the 2016 Amendment - which it is – then any other construction of section 29-A(4) would lead to conclusions which are contrary to the statute. The petitioner’s argument of the Court having the power to extend the mandate after the expiry of the period under section 29-A(1) or (3) would encourage applications being filed for extension under section 29-A(4) any time after expiry of the mandate. They would make the timelines for making the award inconsequential.

F. What about “Rogue” litigants?

49. There can be situations where litigants who are faced with a counter claim in an arbitration may refuse to give consent after expiry of the period under section 29-A(1) or for extension of the mandate under section 29-A(3). The petitioners worry about such situations to say that the arbitration process cannot be force-stopped by such litigants.

50. Section 29-A(6) deals with such situations by empowering the Court to substitute one or all of the arbitrators and ensure that the arbitration continues from the stage already reached by the erstwhile arbitrator. Further, nothing prevents a party faced with a difficult opponent to make the application for extension before the mandate expires. The Court under section 29-A(4) and (5) will only see whether the application is made during the subsistence of the mandate and pass suitable orders for extension or otherwise on the sufficiency of cause shown to the Court.

51. It should also be mentioned that recalcitrant litigants with or without a counter-claim stalling the arbitration for random reasons is much less

probable than relaxed litigants who apply for extension long after expiry of the mandate by taking the timelines for granted. The number of cases filed in the latter category stand testimony to this view.

52. Earlier orders passed by this Court allowing extension of mandate were on the consent of both the parties. In any event, parties will be at liberty of filing appropriate applications if the earlier orders are found to be contrary to this judgment.

53. The decisions cited on behalf of the petitioner do not strictly apply to the case before Court. *Tata Sons Private Limited v. Siva Industries and Holdings Limited*; (2023) 5 SCC 421 was concerned with the issue whether the timeline in section 29-A(1) would apply to the international commercial arbitration which is admittedly not connected to the facts in the present case. *Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project*; 2023 SCC OnLine Del 2990 did not involve any issue on the significance of the word extend/extension/extending as used in section 29-A. *Jwil Infra Ltd. v. National Thermal Power Corporation Ltd.*; MANU/DE/3302/2020 is dissimilar to the present facts as the parties therein had consented to extension of the arbitrator's mandate for 6 months during subsistence of the mandate. *DDA v. Tara Chand Sumit Construction Co.*; 2020 SCC OnLine Del 2501 was essentially concerned with pecuniary jurisdiction and neutrality of the arbitrator and the issues urged in the present case did not fall for consideration before the Delhi High Court in that case. *Senbo Engineering Ltd. v. Hooghly River Bridge Commissioners*; 2020 SCC OnLine Cal

2250 dealt with the issue whether section 29-A of the Act allows a party to approach the Court for extension only once or multiple times.

G. And finally, Conclusion III

54. Section 29-A of The Arbitration and Conciliation Act, 1996 contemplates making of the award within the prescribed statutory timelines. The timelines are to be read as mandatory limits where the arbitrator and the parties to the arbitration are required to be conscious and vigilant of the cut-off dates for applying for extension of the mandate of the arbitral tribunal. The application for extension must be made during continuation of the mandate and not thereafter.

55. The Court under section 29-A(4) and (5) of the Act can only pass an order for permitting extension for sufficiency of cause. Section 29-A(4) uses the mandatory-peremptory words “..... *the mandate of the arbitrator(s) shall terminate....*”. If the arbitral tribunal proceeds to make an award after expiry of the timelines, the award would suffer from a jurisdictional error. This is by reason of the fact that there is no provision for renewal of mandate of the tribunal once it stands terminated by operation of law.

56. The mandate does not automatically revive post-termination simply on the making of an application for extension under 29-A(4). The respondents in these applications have refused to give their consent after the stage of section 29-A(1) or for the additional window of six months under section 29-A(3). Section 29-A(4) uses the express term that “..... *the mandate of the arbitrator(s) shall terminate*” which is the deciding factor. Once the mandate terminates,

the arbitrator/arbitral tribunal becomes *de jure* unable to perform his / her functions akin to a situation under section 14(1)(a) of the Act. Moreover, if an award is made after extension of mandate, a disgruntled party can always argue that the award is a nullity as the tribunal did not have the power to make the award after termination of its mandate.

57. In the present applications, the mandates admittedly terminated before the applications for extension were filed in the Court. The Court is therefore statutorily - precluded from extending the mandate. The discussion on the law makes the individual facts or the stage from which consent was refused irrelevant.

58. AP 328 of 2023, AP 500 of 2023 and AP 502 of 2023 are accordingly dismissed. There shall be no order as to costs.

59. The Court conveys its appreciation to learned counsel who appeared for the parties for their intense engagement with the matters.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)