

Delhi High Court Permits Post-Expiry Extension of Arbitral Tribunal's Mandate Under Arbitration Act

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Introduction

In a recent decision in *Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd.*¹, the High Court of Delhi reiterated the legal position that a Court acting under Sections 29A(4) and 29A(5) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), may extend the mandate of the arbitral tribunal either prior to or after the expiry of such mandate. In this article, we navigate through the facts and findings of the decision rendered by the Delhi High Court.

Brief Facts

The matter pertains to a petition filed under Sections 29A(4) and 29A(5) of the Arbitration Act by Power Mech Projects Ltd. ("**Petitioner**") seeking extension of the mandate of a three-membered arbitral tribunal. In terms of the petition filed by the Petitioner, the parties entered into a Works Contract dated 12 May 2016 ("**Works Contract**"). The scope of works under the Works Contract included the erection, testing, and commissioning of "*balance work of main plant package*" and were stipulated to be completed by 30 November 2018. However, the works were still underway as of the date when the petition came to be filed.

Eventually disputes arose between the parties, and the Petitioner invoked arbitration proceedings in terms of the Works Contract, under the aegis of the Indian Council of Arbitration, by way of a "Request for Arbitration" dated 10 May 2022. A three-member arbitral tribunal entered reference on 6 July 2022. The proceedings did not complete within a period of one year. Accordingly, in terms of the Section 29A of the Arbitration Act, both parties consented for a six-month extension on 10 October 2023. In the meantime, mandate of the arbitral tribunal expired on 4 February 2024. The arbitral proceedings were left at the stage of cross-examination. Accordingly, the petitioner sought an extension of the mandate of the arbitral tribunal for 12 months.

M/s Doosan Power Systems India Private Limited ("**Respondent**") contested the petition seeking extension of mandate and submitted that the Petitioner's conduct before the arbitral tribunal would demonstrate that the Petitioner had deliberately delayed the arbitral proceedings. In this regard, the Respondent referred to a host of correspondence and orders which purportedly indicated that the Petitioner, in the course of the arbitral proceedings, was taking unnecessary adjournments and delaying the proceedings due to one reason or another.

As per the Respondent, the mandate of the arbitral tribunal ended on 4 February 2024. The Respondent expressed that it had no objection to continuing the mandate of the arbitral tribunal. However, the Respondent submitted that since the mandate had already expired by operation of law, the same could not be extended through the present petition. Further, any consent provided by the parties for the continuation of the mandate of the arbitral tribunal was not valid. Lastly, the Respondent contended that in the above circumstances,

¹ *M/s Power Mech Projects Ltd. v. M/s Doosan Power Systems India Pvt. Ltd.*, 2024:DHC:3769.

whether an extension could be granted or not is a question which was presently under consideration before the Supreme Court in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.***² and ***ATS Infrastructure Ltd. v. Rasbehari Traders***³

Given the above circumstances the Respondent contended that the present petition would not amount to "extension" of mandate, but "revival" of the mandate of the arbitral tribunal.

Decision of the High Court

The Delhi High Court observed that the question as to whether the extension of the mandate of an arbitral tribunal may be permitted under Section 29A(5) of the Arbitration Act even after the expiry of the mandate had been considered in several decisions of various High Courts.

(i) Delhi High Court

The issue of the appropriate stage(s) during which the mandate of an arbitral tribunal could be extended under Section 29A of the Arbitration Act was considered in ***Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project***⁴ and ***ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.***⁵ The aforementioned two decisions held that the mandate can be extended "either prior to or after expiry of the period so specified". The above view has also been followed in other decisions of the Delhi High Court listed below:

- (i) ***Religare Finvest Ltd. v. Widescreen Holdings Pvt. Ltd.***⁶;
- (ii) ***KMP Expressways Ltd. v. IDBI Bank Ltd.***⁷;
- (iii) ***PSA Protech and Infralogistics Pvt. Ltd. v. Food Corporation of India***⁸;
- (iv) ***Ajanta Soya Ltd. v. The Oriental Insurance Company***⁹;
- (v) ***Larsen and Toubro Ltd. v. IIC Ltd.***¹⁰;
- (vi) ***Iqbal Singh v. Naresh Kumar***¹¹;

² *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, SLP (C) 23320 of 2023.

³ *ATS Infrastructure Ltd. v. Rasbehari Traders*, SLP (C) 26990 – 26991 of 2023.

⁴ *Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project*, 2023 SCC OnLine Del 2990.

⁵ *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, 2023: DHC: 8078.

⁶ *Religare Finvest Ltd. v. Widescreen Holdings Pvt. Ltd.* 2024:DHC:3004, 2024 SCC OnLine Del 2769.

⁷ *KMP Expressways Ltd. v. IDBI Bank Ltd.* 2024:DHC:2739, 2024 SCC OnLine Del 2617.

⁸ *PSA Protech and Infralogistics Pvt. Ltd. v. Food Corporation of India*, O.M.P (MISC) (COMM.) 517/2023, decision dated 21 February 2024.

⁹ *Ajanta Soya Ltd. v. The Oriental Insurance Company* 2024:DHC:1114, 2024 SCC OnLine Del 983.

¹⁰ *Larsen and Toubro Ltd. v. IIC Ltd.* 2024:DHC:909, 2024 SCC OnLine Del 832.

¹¹ *Iqbal Singh v. Naresh Kumar* (2023:DHC:8580), 2023 SCC OnLine Del 7587.

(vii) ***Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.***¹²,
and

(viii) ***ATS Infrastructure v. Rasbehari Traders***¹³.

Notably, in ***Shapoorji Pallonji Company Pvt. Ltd. v. Elena Power and Infrastructure Limited***¹⁴, the Delhi High Court took a view that only after the exhaustion of the period under Section 29A(3) of the Arbitration Act, the parties can resort to Section 29A(4) of the Arbitration Act.

(ii) Calcutta High Court

In ***Rohan Builders (India) Private Limited v. Berger Paints India Limited***¹⁵, the Calcutta High Court held that if an arbitral award is not delivered within the time limit prescribed under Section 29A(1) and/ or Section 29A(3) of the Arbitration Act, the arbitral tribunal's mandate shall automatically end. Thus, once the mandate of the arbitral tribunal expires, it no longer is feasible for parties to file a petition under Section 29A(4) of the Arbitration Act inasmuch as seeking an extension post-expiry is not permissible. To support this understanding, reliance was placed on the language of the provision under Section 29A(5) which used the term "terminate" as opposed to "revival" or "renewal". In another decision in ***Vrindavan Advisory Services LLP v. Deep Shambulal Bhanushali***¹⁶, the Calcutta High Court reiterated the position in the earlier decision in ***Rohan Builders***¹⁷.

The aforesaid decision of the Calcutta High Court in ***Rohan Builders***¹⁸ was challenged before the Supreme Court in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.***¹⁹ Similarly, the decision in ***Vrindavan Advisory Services***²⁰ was also challenged before the Supreme Court in SLP(C) No. 24489 of 2023 wherein the operation of the judgment was stayed.

In another recent judgment in ***Multiplex Equipments and Services Pvt. Ltd. v. Bagzone Lifestyles Pvt. Ltd.***²¹, the Calcutta High Court observed that the pendency of an SLP in ***Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.***²² must not pose a disadvantage to the petitioner and the arbitration proceedings cannot be kept in abeyance.

(iii) Jammu & Kashmir and Ladakh High Court

¹² *Reliance Infrastructure Ltd. v. Madhyanchal Vidyut Vitran Nigam Ltd.* (2023:DHC:8078), 2023 SCC OnLine Del 7135.

¹³ *ATS Infrastructure v. Rasbehari Traders* [O.M.P. (T) (COMM.) 91/2023, decision dated 17 November 2023].

¹⁴ *Shapoorji Pallonji Company Pvt. Ltd. v. Elena Power and Infrastructure Limited*, 2023 SCC OnLine Del 8561.

¹⁵ *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, (2023) SCC OnLine Cal 2645.

¹⁶ *Vrindavan Advisory Services LLP v. Deep Shambulal Bhanushali* [A.P. 448 of 2023, decision dated 29 August 2023].

¹⁷ *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, (2023) SCC OnLine Cal 2645.

¹⁸ *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, (2023) SCC OnLine Cal 2645.

¹⁹ *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, SLP (C) 23320 of 2023.

²⁰ *Vrindavan Advisory Services LLP v. Deep Shambulal Bhanushali* [A.P. 448 of 2023, decision dated 29 August 2023].

²¹ *Multiplex Equipments and Services Pvt. Ltd. v. Bagzone Lifestyles Pvt. Ltd.*, 2024 SCC OnLine Cal 174.

²² *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.*, SLP (C) 23320 of 2023.

In ***H. P. Singh v. G. M. Northern Railways***²³, it was held that the Court had authority to extend the mandate of an arbitral tribunal beyond the initial period of one year, or even the extended period of six months under Section 29A(4) of the Arbitration Act. In this regard, the High Court of Jammu & Kashmir and Ladakh relied upon the decision in ***ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.***²⁴.

(iv) High Court of Kerala

In ***Hiran Valiyakkil Lal v. Vineeth M.V.***²⁵, the High Court of Kerala held that under Section 29A(4) of the Arbitration Act, extension of the mandate of an arbitral tribunal may be granted prior to or after expiry of the period provided under Sections 29A(2) and 29A(3) of the Arbitration Act, on sufficient cause, and on such terms and conditions as may be imposed by the Court.

(v) High Court of Madras

In ***Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.***²⁶ the Madras High Court also took a similar view and held that extension for making of the award may be granted by the Court, even after the period under Section 29A(1) or Section 29A(3) of the Arbitration Act has expired. However, after the award is passed, the mandate cannot be extended in a petition under Section 34 of the Arbitration Act.

(vi) Bombay High Court

In ***Nikhil H. Malkan v. Standard Chartered Investment and Loans (India) Ltd.***²⁷, the Bombay High Court relied on the decision in ***ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.***²⁸ and observed that "*if it is to be held that the Court could exercise power to extend the mandate of the learned Arbitrator even after expiry of the extended period only if the application or petition for extension of mandate is filed prior to expiry of such mandate. There is nothing in the provision to indicate that if such an application or petition is not filed before the expiry of the mandate of the learned Arbitrator, the Court would be rendered powerless to exercise its authority*".

In view of the above decisions, Delhi High Court held that it was unable to follow the decision of the Calcutta High Court in ***Rohan Builders***²⁹ as relied upon by the Respondent.

In view of the fact that the expression used in Section 29A(4) of the Arbitration Act is "*prior to or after expiry of the period so specified*", the Delhi High Court opined that it was fully empowered to extend the mandate of the arbitral tribunal even after the expiry of the same. Accordingly, the mandate of the arbitral tribunal was extended till 31 December 2024 taking into consideration, the facts of the case.

Comment

²³ *H. P. Singh v. G. M. Northern Railways*, 2023 SCC OnLine J&K 1255.

²⁴ *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, 2023: DHC: 8078.

²⁵ *Hiran Valiyakkil Lal v. Vineeth M.V.*, 2023 SCC Online Ker 5151.

²⁶ *Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.*, 2020 SCC OnLine Mad 7858.

²⁷ *Nikhil H. Malkan v. Standard Chartered Investment and Loans (India) Ltd.*, 2023:BHC-OS:14063.

²⁸ *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*, 2023: DHC: 8078.

²⁹ *Rohan Builders (India) Private Limited v. Berger Paints India Limited*, (2023) SCC OnLine Cal 2645.

The Delhi High Court's decision in ***Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd.***³⁰ sets out a pragmatic approach towards extension of mandate of the arbitral tribunal. By affirming the Court's authority to extend the mandate of an arbitral tribunal both before and after its expiry, the judgment aligns with the provisions contained under Section 29A of the Arbitration Act.

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³⁰ *M/s Power Mech Projects Ltd. v. M/s Doosan Power Systems India Pvt. Ltd.*, 2024:DHC:3769.