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LAW ADVISORY

Arbitration Newsletter

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Glowsun Powergen Private Limited v. Hammond Power Solutions Private Limited: MANU/DEOR/64519/2024 - Delhi High Court States that Section 29A Allows Extension Requests Even After Arbitrator's Mandate Expires – The Delhi High Court bench held that Section 29A of the Arbitration and Conciliation Act, 1996 does not preclude the consideration of applications for extension of the arbitrator's mandate filed after the expiration of the mandate.

The Court stated that Section 29A does not prevent the Court from considering applications that are filed after the specified deadline. The High Court emphasized the legislative intent to permit extensions, even if the specified period has expired, as stated in Section 29A. The High Court distinguished its stance from the ruling of the Calcutta High Court in the case of *Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd., 2023 SCC OnLine Cal 2645*. It maintained that Section 29A does not establish specific boundaries and that the Court's discretion to grant extensions remains unaffected.

The High Court observed that the arbitration proceedings had been in progress for about two and a half years, with the delay being attributed to the Petitioner. The High Court emphasized the need to avoid any additional delays and encouraged the arbitrator to expedite the

proceedings. Thus, the High Court has decided to extend the mandate of the Arbitral Tribunal until 31.12.2024.

When it comes to law, the judiciary may take into account the legislative intent of the legislature when interpreting legislation (see judicial interpretation). In situations where legislation is unclear or does not sufficiently address a specific issue, the judiciary may step in to determine the intended purpose of the legislation or identify any drafting errors that may have occurred.

According to legal precedent, once a statute is clear and unambiguous, there is no need to further investigate legislative intent. When a statute can be interpreted in multiple ways, it becomes necessary to infer legislative intent from sources other than the actual text of the statute.

Sarika Chaturvedi v. Agarwal Auto Traders, 2024 SCC OnLine Del 4063 – Delhi High Court Imposes Costs of Rs. 50,000 For Unnecessarily Challenging and Questioning of Arbitrator's Mandate - The Delhi High Court bench imposed costs of Rs.50,000/- on a party for unnecessarily challenging and questioning the mandate of the arbitrator. The bench held that the party's intent was to create a stale mate. It held that repeated interventions of the Court

in Arbitral proceedings are to be avoided and parties cannot force the arbitrators to recuse/withdraw.

The High Court observed that the arbitrator's dissatisfaction and irritation with the situation were evident from the numerous orders and communications. The Respondent's actions were particularly troubling as they were intended to weaken the Arbitrator's authority, and the parties frequently requested adjournments.

The High Court observed that the Respondent's concerns caused the Arbitrator, who had been appointed in accordance with the loan arrangement, to withdraw himself. The Respondent then persisted in contesting the new arbitrator's mandate, which was appointed on July 8, 2022. The Respondent's agreement to extend the Arbitrator's mandate by six months, until October 7, 2023, was noted by the Arbitrator when they clarified the matter on September 16, 2023. As a result, the High Court determined that the Respondent's email challenging the Arbitrator's authority was not justified.

The High Court ruled that such attempts to sabotage and disrupt arbitration procedures should be met with severe consequences. The Respondent's activities were interpreted as an attempt to unduly contest the Arbitrator's mandate, leading to a deadlock and necessitating

Court intervention. **The High Court ruled that arbitrators shouldn't be coerced into recusal since such conduct is inappropriate.** The High Court observed that the Arbitrator is a respectable lawyer and that her decision to step down was a last choice brought on by the Respondent's actions.

According to the High Court, the Respondent was trying to go too far and drag out the arbitration process. As a result, the High Court determined that since the present Arbitrator had made substantial progress in the case, no replacement Arbitrator was required.

The same arbitrator was instructed by the High Court to pick up where she left off with the proceedings. The arbitrator's mandate was extended till December 31, 2024. In addition, the Respondent was assessed costs of Rs. 50,000 by the High Court as a result of the delays and Respondent's actions.

Jagdish Tyres (P) Ltd. v. Indag Rubber Ltd., 2024 SCC OnLine Del 3961 – The Delhi High Court holds that Party Can't Challenge Procedural Order Passed by Arbitrator Under Section 9 of the A&C Act - The bench held that: *“...it is observed that by filing a petition under Section 9 of the Act, 1996 the Petitioner is merely attempting to avoid the appellate provision under Section 37 of the Act, 1996*

which clearly stipulates as to which orders are appealable.”

The Petitioner contended that they were unfairly denied the right to file an updated statement of defense, and that their amended statement and bank statements that they had submitted on a later date had not been received by the arbitrator owing to a technical issue.

The Respondent, on the other hand, argued that The Petitioner has been inconsistent in attending the arbitration procedures, and that the Petitioner had the habit of attending the proceedings late, and questioned whether the amended statement had actually been sent.

The High Court cited an email provided by the Petitioner as evidence of their effort to submit an amended statement of defense. The High Court discovered discrepancies between the submitted email and the actual reply sent, indicating that the Petitioner did not demonstrate sufficient diligence before the arbitrator.

The High Court ruled that Section 9 of the Arbitration Act does not permit objections to procedural orders issued by the arbitrator.

Section 9 is typically used to request interim measures, rather than challenging procedural decisions. In addition, the High Court has ruled that appeals under Section 37 of the Arbitration Act are limited to specific orders issued by the

arbitrator or the Court. The Court determined that procedural orders are not included in the list of orders that can be appealed under Section 37.

Section 37 of the Arbitration and Conciliation Act, 1996 allows for the submission of appeals against orders issued by the Court or an Arbitrator. The Section provides a comprehensive list of orders against which an appeal can be filed, which is widely regarded as all-encompassing.

The orders that can be appealed include: An order that denies referring the parties to arbitration under Section 8, an order that grants or denies any measure under Section 9, an order that sets aside or denies setting aside an Arbitral Award under Section 34. It also includes an order providing the Tribunal's acceptance of the plea mentioned in sub-Section (2) or sub-Section (3) of Section 16 and the Tribunal's decision to grant or refuse an interim measure under Section 17.

In addition, the High Court made reference to a Supreme Court decision in *Deep Industries Ltd. v. ONGC [(2020) 15 SCC 706]*, which established that appeals are limited to specific orders, and Courts cannot interfere in procedural matters through alternative petitions.

The High Court ruled that the Petitioner's attempt to challenge the procedural order through a Section 9 petition was an attempt to bypass the appropriate appeal process outlined in Section 37.

The High Court has ordered the Petitioner to pay a cost of Rs.10,000/-

Chief Engineer (NH) PWD (Roads) v. M/S BSC & C and C JV SLP (C) No. 010544/2024 –

The Supreme Court held that a High Court Not Having Original Civil Jurisdiction Cannot Extend Time to Pass Arbitral Award as Per S.29A(4) Arbitration Act - The bench clarified that as per the mandate of Section 29A (4) of the Act, the power to extend the time limit for passing of the Arbitral Award vests within the principal Civil Court of original jurisdiction, but there is no impediment for the High Court who is exercising the ordinary original civil jurisdiction to extend the time limit.

Section 29A of the Act, inserted through the 2015 Amendment to the Arbitration and Conciliation Act, sets a strict deadline of 18 months for the Arbitral Tribunal to issue an Arbitral Award. Section 29A, sub-Section (4), grants the civil Court with the authority to extend the time limit for passing the Award if it was not done within the prescribed period.

The case originated from a decision made by the Meghalaya High Court, where the Appellant's request to extend the time limit for passing the

Arbitral Award was denied. The High Court declined to do so because it lacked the original civil jurisdiction. In addition, it pointed out that if the High Court does not have the authority to extend the time limit, then the appropriate Court would be the main civil Court with the power to consider such a request for an extension of the time limit.

In India, Special Leave Petitions (SLP) holds a prime place in the Judiciary of India, and has been provided as a residual power in the hands of Supreme Court of India to be exercised only in cases when any substantial question of law is involved, or gross injustice has been done. It provides the aggrieved party a special permission to be heard in apex Court in appeal against any judgment or order of any Court/Tribunal in the territory of India, except military Tribunal and Court martial. Special Leave Petitions are provided for in Article 136 of the Constitution.

The Supreme Court saw no reason to consider the appeal and upheld the High Court's decision, agreeing with the reasoning provided, stating that “*The power under sub-Section (4) of Section 29A of the Arbitration Act vests in the Court as defined in Section 2(1)(e) of the Arbitration Act. It is the principal Civil Court of original jurisdiction in a district which includes a*

High Court provided the High Court has ordinary original civil jurisdiction... In this case, the High Court does not have the ordinary original civil jurisdiction... Hence, there is no merit in the Special Leave Petition. The same is, accordingly, dismissed.”

Tata Projects Ltd. v. Power Grid Corporation of India Ltd FAO (COMM) 93/2024 CM APPL. 29905/2024 – Delhi High Court holds that Non-Disclosure of Section 9 Petition in Another Matter Can't Be Termed As 'Egregious Fraud'- The Delhi High Court bench held that non-disclosure of the petition under Section 9 of the Arbitration and Conciliation Act, 1996 in another matter cannot be termed as a case of egregious fraud, which would disentitle a party from pursuing its petition under Section 9.

The Appellant had approached a Commercial Court and filed a petition under Section 9 of the A&C Act, seeking interim measures of protection as per the specifics of the case. The Commercial Court had, however, dismissed the appeal on the grounds that the Appellant had approached the Court with “unclean hands”.

Prior to filing the petition under Section 9 of the Arbitration Act, the Appellant had previously filed a similar petition before the District Judge, Commercial Court, Saket, but later withdrew it on

01.05.2024. The order stated that the Appellant withdrew the petition because it was mistakenly filed in South District, Saket Courts. The Commercial Court deemed it a fault on the part of the Appellant for not disclosing this fact in the petition. Feeling dissatisfied, the Appellant contested the decision of the Commercial Court in the Delhi High Court ("High Court").

The High Court observed that the Appellant had previously withdrawn a similar petition that was filed before the District Judge, Commercial Court, South District. The High Court observed that the Appellant's justification for withdrawing the previous petition, citing a misunderstanding regarding jurisdiction, was incorrect. The High Court ruled that the filing of such petitions before a Court is required by the Arbitration Act, as defined under Section 2(1)(e) of the Act. According to the Arbitration Act, Section 2(1)(e) provides a definition for "Court" as the primary civil Court in a district, which also includes the High Court when it handles regular civil cases.

Considering the arbitration agreement specified New Delhi as the seat of arbitration, any Courts in New Delhi with jurisdiction under Section 2(1)(e) of the Arbitration Act can handle petitions under Section 9. Nevertheless, the High Court ruled that the omission to disclose the previous petition under Section 9 of the Arbitration in another matter does not constitute severe fraud,

which would prevent the Appellant from pursuing the current petition.

The bench held that *“we are of the view that non-disclosure of the petition under Section 9 of the A&C Act in another matter cannot be termed as a case of egregious fraud.”*

The High Court determined that the Commercial Court failed to thoroughly examine the substance of the case and instead dismissed the petition without offering any explanations. As a result, the High Court overturned the decision of the Commercial Court and sent the case back for further review based on its merits.

Vijay Maheshwari v. Splendor Buildwell Private Limited and Ors. (10.06.2024 - DELHC): MANU/DE/4139/2024 - *Scope of Inquiry in Section 9 Petition is Limited, Interpretation of Contract Would be Within Domain of Arbitral Tribunal.* - The bench of the Delhi High Court ruled that matters of fact or law should not be conclusively decided during the Section 9 phase, as they fall under the jurisdiction of the Arbitral Tribunal. The Arbitral Tribunal has the authority to interpret the terms of the Contract/MoU and determine its scope.

The High Court determined that the investigation during the Section 9 phase is limited to the provision of temporary assistance. The High

Court, in a recent ruling, clarified that the determination of issues of fact and law should not be conclusively decided by the Court. Instead, this falls under the jurisdiction of the Arbitral Tribunal, as stated in Section 9. Arbitration is responsible for interpreting contractual terms and determining their scope. The High Court ruled that the Court should apply the same principles used for applications under Section 9 as those used for Order XXXIX Rules 1 and 2 of the Civil Procedure Code.

The High Court observed that a sum of Rs. 20,00,000 was deposited into the Petitioner's account, which she initially believed to be included in the assured return mentioned in the unsigned MoU. Further emails clarified that the Petitioner acknowledged receiving the payment, but was not aware of the specific details regarding it. They assumed it was in relation to the minimum guarantee calculated based on the supposed terms of the MoU. Another payment of Rs. 10,00,000 was made, however, the Petitioner persisted in her pursuit of a complete refund of her investment.

The High Court determined that the Petitioner consistently pursued the refund of her money but did not actively pursue the execution of Conveyance Deeds. The Court ruled that the Petitioner's claim for guaranteed returns, which were based on an MoU that had not been signed

or finalized, could not be supported. The communications between the parties indicated that the Petitioner's main focus was on the return on her investment, rather than the completion of the property transactions.

In addition, the High Court pointed out that the Respondents had already sold two of the units and had entered into an agreement to sell the third. This action alone undermines any chance of the Petitioner establishing a clear right, title, or interest in the units. Considering the Petitioner's monetary claims and the fact that she has already received the principal amount, the High Court determined that there was no balance of convenience in her favor. Therefore, the Petitioner did not suffer any significant loss or injury.

The High Court also acknowledged that the Petitioner had already commenced the arbitration process to address her concerns regarding refunds and payments. Thus, the High Court concluded that the Petitioner was not eligible for any form of relief as per Section 9 of the Arbitration Act.

Power Mech Projects Ltd. v. Doosan Power Systems India Pvt. Ltd. (15.03.2024 - DEOR): MANU/DEOR/50019/2024 - Delhi High Court held that a Court is fully empowered to extend a mandate even after the expiration of Arbitral

Tribunal's mandate under Section 29A(4). - The High Court of Delhi bench held that the Court is fully empowered to extend the mandate, even after the expiry of the mandate of the Arbitral Tribunal under Section 29A(4) of the Arbitration and Conciliation Act, 1996.

The High Court cited a relevant case, *Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd., 2023 SCC OnLine Cal 2645*, which addressed the issue of Arbitral Awards not being delivered within the specified time limits under the Arbitration Act. In this case, the Court held that if the Award is not delivered within the specified time limits, the Tribunal's mandate automatically expires. Therefore, it is important for parties to submit a petition under Section 29A(4) before the Tribunal's authority expires. It is not allowed to request an extension after the expiration, as the legislative intent does not provide for 'revival' or 'renewal' and uses the term 'terminate' in Section 29A(5).

However, the High Court of Jammu & Kashmir and the High Court of Kerala had differing interpretations of Section 29A(4) of the Arbitration Act. As an example, the Jammu & Kashmir High Court, in the case *H.P. Singh v. G.M. Northern Railways, 2023 SCC OnLine J&K 1255*, ruled that the Court has the power to extend the term of an Arbitral Tribunal beyond the originally specified period under Section 29A(4).

Section 29A of the Arbitration and Conciliation Act, 1996 establishes a time limit for the completion of arbitration proceedings. The prescribed period is 12 months from the date the Arbitral Tribunal begins the reference. Following the 2019 Amendment, arbitration proceedings must now be concluded within 12 months from the completion of pleadings. In addition, sub-Section (3) of Section 29A of the Act permits a six-month extension if both parties agree to it for the purpose of passing the Award. Similarly, according to the Act, if the Award is not passed within the specified time frame, the parties have the option to apply to the Court for an extension of the Arbitral Tribunal's mandate.

According to Section 29A(4) of the Act, the arbitrator(s) will no longer have authority unless the Court extends the specified period, either before or after it expires. Although the provision clearly addresses the extension of the Tribunal's mandate beyond the specified period under Section 29A, it fails to provide clarity on whether applications for extension can be submitted after the specified period has expired.

In a similar vein, the Kerala High Court, in the case of *Hiran Valiyakkil Lal v. Vineeth M.V.*, 2023 SCC OnLine Ker 5151, granted an extension in cases where there is a valid reason, whether it is requested before or after the

specified time period outlined in Section 29A(2) & (3). In a different perspective from the Calcutta High Court, the Bombay High Court, in the case of *Nikhil H. Malkan v. Standard Chartered Investment and Loans (India) Ltd.* (2023: BHC-OS: 14063), adopted the interpretation of Section 29A(4) as outlined by the Delhi High Court in *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.* [2023 : DHC : 8078]. The decision of the Calcutta High Court was challenged, and it was determined that the Court has the power to consider extension petitions even after the mandate has expired, as long as valid reasons are presented.

The High Court determined that it could not adhere to the ruling established by the Calcutta High Court in the Rohan Builders case, observing that the mandate of the Arbitral Tribunal had expired on 4th February 2024, whereas the petition before the High Court was filed on 23rd February 2024. Even though the Tribunal's mandate had expired, the case was still in the cross-examination phase. The High Court cited Section 29A(4) of the 1996 Act and concluded that it uses the language "before or after the specified period has ended." According to this statement, **the High Court has confirmed its complete authority to extend the mandate of the Arbitral Tribunal, even if the initially specified period has expired, and provided an extension to the Tribunal's mandate.**

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