

# INCORPOREAL LOOP OF EXTENSION: ANALYZING EXTENSION OF MANDATE OF ARBITRAL TRIBUNAL UNDER SECTION 29A(4) OF THE ARBITRATION AND CONCILIATION ACT, 1996

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## Introduction

Section 29A of the Arbitration and Conciliation Act, 1996<sup>1</sup> [“**Arbitration Act**”], introduced by the Amending Act of 2015<sup>2</sup> (effective as of October 23, 2015), was aimed at establishing a timeframe for the conclusion of arbitration procedures. Initially, the arbitral tribunal’s consideration began in the statutory timeframe of twelve months. However, the Amending Act of 2019<sup>3</sup>, which became effective on August 30, 2019, altered the specified time limit. Twelve months from the date when pleadings were concluded, arbitration proceedings are now required to be completed. Additionally, an extension of six months if the award is not passed in the twelve-month window is permitted by mutual agreement of the parties according to sub-Section (3). Sub-section 4 further states that if the award is not passed even in the stipulated eighteen-month mandate (including the extended period), the parties can apply to the court for an extension.

The Delhi<sup>4</sup> and Bombay<sup>5</sup> High Courts, when granting applications under Section 29A(4) of the Arbitration Act, carefully considered two crucial factors: the reasons for the delay and the status of the arbitration proceedings. The High Court of Himachal Pradesh in *Dinesh Kumar v Land Acquisition Officer*<sup>6</sup> determined that if the party filing a submission under Section 29A(4) can demonstrate to the court that the delay occurred due to a valid reason, the court can extend the

<sup>1</sup> The Arbitration and Conciliation Act 1996, s 29A.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> *Barasat Krishnagar Expressways Ltd. v National Highways Authority of India* [2023] SCC OnLine Del 243.

<sup>5</sup> *Tikamdas & Associates v V. Rabeja Design Construction Pvt. Ltd.* [2021] SCC OnLine Bom 11799.

<sup>6</sup> *Dinesh Kumar v Land Acquisition Officer* [2023] SCC OnLine HP 767.

time. Denying such an application would be equivalent to restricting the rights of the concerned party, predominantly the arbitration claimant or the petitioner.

Nevertheless, the Hon'ble Calcutta High Court adopted a different stance. In the recent case of *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*<sup>7</sup>, a rigorous interpretation of Section 29A(4) was employed, considering the language used in the provision and discerning the legislative intent. The 176th Report of the Law Commission of India<sup>8</sup> [**LCI Report**] recommended the term “suspension of arbitral proceedings” (rather than “terminate”). Single Judge held that the deadline for the conclusion of arbitration procedures be included. The lawmakers used the word “terminate” deliberately to suggest that the tribunal’s mandate would not merely persist in suspension but be terminated. About Rohan Builders, a Special Leave Petition (SLP) was lodged in the Supreme Court, and it has recently given its pronouncement. But before delving into it, it is essential to analyse the issue surrounding it.

### **Decoding Section 29A(3) to (6) in the essence of “extension.”**

The Black’s Law Dictionary<sup>9</sup> reads extend as “to expand, enlarge, prolong, widen, carry out, further than the original limit.” In the Indian legal realm, the Supreme Court distinguished between the terms “extension” and “renewal” in *Provash Chandra Dalui v Biswanath Banerjee*<sup>10</sup>, the division bench held that renewal is a situation where “a new lease is required while extension means a prolongation of the lease.”

The Companies Act, 1956, in its Section 18(4)<sup>11</sup> states, “the Court may, at any time, by order, extend the time for the filing.” The interpretation implies flexibility to allow the court to exercise its power to extend deadlines, even years or decades after the original filing date. The Punjab and Haryana High Court judgment in *The National Industrial Corporation Ltd. v The Registrar of Companies*<sup>12</sup>, Justice Tek Chand indicated that unlike the term “revive”, which involves bringing something back to life after it has become moribund or inactive, the term “extension” signifies the continuation of an existing entity. Thus, courts exercise their authority to extend deadlines at any time, emphasising the continuity of existing entities rather than creating new ones.

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<sup>7</sup> *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.* [2023] SCC OnLine Cal 2645.

<sup>8</sup> Law Commission of India, *The Arbitration and Conciliation (Amendment) Bill, 2001 (176th LCI Report, 2001)*.

<sup>9</sup> Bryan A. Garner, *Black’s Law Dictionary* (11<sup>th</sup> edn, Thomson Reuters West 2019).

<sup>10</sup> *Provash Chandra Dalui v Biswanath Banerjee* [1989] Supp (1) SCC 487.

<sup>11</sup> The Companies Act 1956, s 18(4).

<sup>12</sup> *The National Industrial Corporation Ltd. v Registrar of Companies* [1963] AIR P&H 239.

## **Extension vs. Renewal of Mandate**

Section 29A(4), rather than applying itself, emphasises the state of its pendency and contemplates the ongoing status of an application requesting an extension of the arbitrator’s authority. This implies that the extension is only viable if the application is submitted before the expiration of the mandate and not after that. A deemed fiction is employed in the provision to ensure timely submission, creating a scenario where the application is considered to be submitted while the arbitrator’s mandate is still in force. The specific language, “either before or after the expiry of the period so specified”, underscores the importance of the application being made within the existing timeframe.

The division bench of the Patna High Court stated that<sup>13</sup>, “if the mandate has already terminated and expired for the Arbitral Tribunal if the legislature so intended. It would have used the term revival or renewal and not the word extension, which presupposed the existence of something.” Further, the statements were backed by the meanings of the words from Mitra’s Legal and Commercial Dictionary and Chambers 21st Century Dictionary<sup>14</sup>. The lines of the judgment were also quoted in the High Court of Bombay.<sup>15</sup>

In Section 29A(4), the term “extension” is directly linked to the timeframe outlined in Section 29A(1) or (3) concerning the arbitrator’s mandate for delivering a decision. The deliberate omission of terms like “renewal” or “revival” suggests that the application for an extension should be structured as a continuous mandate. This implies that the framers intended for the application to extend the arbitrator’s mandate to be made within the existing mandate’s duration. Had the intention been to allow for extension requests at any point following the mandate, the language might have incorporated other terms like “revive” or “renew” instead of “terminate” in Section 29A(4).

## **The catalysing effect of Section 29-A in Arbitration**

Section 29A was amended in response to the 176th LCI Report<sup>16</sup>, which identified several issues with delays and high costs in the arbitral award-making process in India. To address these concerns, the report recommended several vital changes to expedite proceedings and establish clear deadlines for rendering awards. These amendments aimed to streamline the arbitration

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<sup>13</sup> *South Bihar Power Distribution Co. Ltd. v Bhagalpur Electricity Distribution Co. Pvt. Ltd.* [2023] SCC OnLine Pat 1658.

<sup>14</sup> Chambers, *The Chambers Dictionary* (2nd edn, Chambers Publishing 2008).

<sup>15</sup> *Nikhil H. Malkan v Standard Chartered Investment & Loans (India) Ltd.* [2023] SCC OnLine Bom 2575.

<sup>16</sup> *LCI Report* (n 8).

process and reduce delays. As a result, Section 29A of the Arbitration Act now plays a crucial role in accelerating arbitration timelines.

The presentation of the award should take place within one year following the conclusion of the pleadings, and an additional six months may be allowed if mutually agreed upon by the parties, according to Sections 29A(1) and (3) as reiterated in the case of *M/S Lucknow Agencies v U.P. Avas Vikas Parishad*<sup>17</sup>. According to Section 29A(2), if the arbitral tribunal renders an award within six months of the reference date, the parties may agree to additional fees for the tribunal. However, if the arbitral tribunal is to blame for the delay in the proceedings, the Court may lower the arbitrator's costs<sup>18</sup> under the first provision of Section 29A(4). Furthermore, Section 29A(4) provides for extensions of the arbitral tribunal's mandate, which, according to the recent Supreme Court ruling in *Chief Engineer (NH) PWD v M/s BSC & C and C JV*<sup>19</sup>, is vested solely in the principal civil court of original jurisdiction or a High Court with ordinary civil jurisdiction. This decision clarifies that the term "Court" under Section 29A(4) does not extend to High Courts without original jurisdiction, thus setting a clear procedural boundary for extension applications and reinforcing the authority of district-level courts or equivalent High Courts. This clarification is vital in ensuring consistency and predictability in the arbitration process, though it raises concerns for ongoing cases previously granted extensions by High Courts without such jurisdiction.

According to Section 29A(5), the court may only prolong the arbitrator's mandate if it finds adequate justification for the terms and conditions it deems appropriate<sup>20</sup>. In addition to extending the mandate, Sections 29A(6) and 29A(7) empower the Court to substitute one or more arbitrators and ensure the continuation of the arbitral proceedings, even after the tribunal has been reconstituted. In *Sh. Ram Chand v Union of India & Ors*<sup>21</sup>, Section 29A(9) imposes a time limit on the Court to render a decision on an application under Section 29A(5) within 60 days from the opposite party's receipt of notice. Furthermore, Section 29A(8) grants the Court the authority to levy actual or exemplary costs on the parties involved in the arbitration process.

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<sup>17</sup> *M/S Lucknow Agencies v UP Avas Vikas Parishad* [2019] 07 AHC CK 0081.

<sup>18</sup> Singhania & Partners LLP, 'Application Under Section 29A of The Arbitration Act Lies Only Before The Court Competent To Appoint Arbitrator' (*Mondaq*, 3 March 2021). <<https://www.mondaq.com/AdviceCentre/Content/4788/Application-Under-Section-29A-Of-The-Arbitration-Act-Lies-Only-Before-The-Court-Competent-To-Appoint-Arbitrator>> accessed 16 September 2024.

<sup>19</sup> *Chief Engineer (NH) PWD (Roads) v BSC & C & C JV* [2024] SCC OnLine SC 1801.

<sup>20</sup> Ayush Mehta, Samkit Jain, 'Decoding Time Bound Arbitration in India: A Closer Look At Section 29A' (*NUALS Law Journal*, 12 April 2020) <<https://nualslawjournal.com/2020/04/12/decoding-time-bound-arbitration-in-india-a-closer-look-at-section-29a/>> accessed 16 September 2024.

<sup>21</sup> *Ram Chand and Ors. v Union of India & Ors.* [1994] 1 SCC 44.

On the other hand, the Delhi High Court adopted a different position in the *ATC Telecom Infrastructure Pvt. Ltd. v Bharat Sanchar Nigam Ltd.*<sup>22</sup> case. It contended that preventing parties from applying the arbitral tribunal's mandate would negate the entire objective of the Act, which disagrees with the Calcutta and Patna High Courts. The Delhi High Court highlights that preventing parties from requesting an extension after the tribunal's mandate has expired would undermine the goal of the Act. The court's observation reflects this stance<sup>23</sup>.

Section 29A of the Arbitration Act, in its entirety, aims to compel all entities participating in the arbitration process to demonstrate diligence and commitment to expeditiously conclude the arbitration proceedings, facilitating the prompt issuance of the award. In addition to the arbitrator's obligation to provide the decision within the allotted time frames, as reiterated in *South Bihar Power Distribution Co. Ltd. v Bhagalpur Electricity Distribution Co. Pvt. Ltd.*<sup>24</sup> The extra time allotted by Section 29A(3) is the penultimate opportunity for extending the mandate. The fundamental mandate is that the parties must take concrete, timely actions to extend the arbitral tribunal's authority to make the award during its term rather than seeking the authority after the term concludes automatically.

### **Section 29A – “A Sense of Many Endings”**

Section 29-A and its sub-sections are interpreted as an extension of the arbitrator's authority, which persists until the court resolves an application. Essentially, the argument suggests that the mandate endures until the Court terminates it through an application initiated by a party.

The reasoning conflicts with the events found in Section 29A (1) through (5), where each mandate extension from 29A (1) through (4) envisions the end of the period under each sub-Section as reiterated in *M/S Lucknow Agencies Lko v U.P. Avas Vikas Parishad*<sup>25</sup> stated differently, there are multiple ends in Section 29A that can only be extended by the parties or the Court as long as the compulsion remains valid. This Section serves as a reminder to expedite the arbitration process, as the mandate may be revoked if the parties fail to act precisely and promptly. This Section focuses on the conclusion of the mandate.<sup>26</sup> At different points, rather than emphasising new beginnings.

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<sup>22</sup> *ATC Telecom Infrastructure Pvt. Ltd. v Bharat Sanchar Nigam Ltd.* [2023] SCC OnLine Del 7135.

<sup>23</sup> Upadhyay S., & Khare R., 'Judicial Discretion in Arbitration: A Critical Examination of Section 29A(4) of the Arbitration and Conciliation Act, 1996' (*Lexology*, 20 November 2023) <<https://www.lexology.com/library/detail.aspx?g=78bbf618-a778-4626-ac3d-477e1b47f5d8>> accessed 16 September 2024.

<sup>24</sup> *South Bihar Power Distribution Co.* (n 13).

<sup>25</sup> *M/S Lucknow Agencies* (n 17).

<sup>26</sup> Payal Chandra, Rhythm Buaria, 'Appointment of arbitrators under Section 11 by the Supreme Court: A time intensive phenomenon' (*SCC Times*, 28 November 2020)

In addition to allowing for a time extension, subclause (6) of Section 29A gives the authority to replace any or all arbitrators. This is significant because if we interpret “Court” defined in Section 2(1)(e) of the Act, the High Court may replace the arbitral tribunal that the Apex Court appoints under Section 11 of the Arbitration Act in the event of international commercial arbitration. Similarly, a primary Civil Court may replace an arbitral tribunal that the High Court appoints in any other arbitrations. In the second instance, the circumstances will become even more unique and strange<sup>27</sup> because a primary Civil Court does not, in the first place, have the power to appoint an arbitrator in any circumstances.

### **A New Cycle of Extension**

Section 29A of the Arbitration Act addresses adhering to specified timelines for rendering awards. The deadlines should be interpreted as obligatory limits, requiring vigilance from both the arbitrator and the involved parties regarding deadlines.<sup>28</sup> I am looking for an extension of the arbitral tribunal’s authority. The request for an extension must be submitted while the mandate is still in effect, not after.

Only an order granting an extension for sufficient cause may be issued by the Court under Sections 29A(4) and (5) of the Act. The mandatory-peremptory phrase “the mandate of the arbitrator(s) shall terminate”<sup>29</sup> appears in Section 29A(4). If the arbitral tribunal chooses to render an award beyond the established deadlines, such a decision could be susceptible to jurisdictional errors. This is because once the tribunal’s mandate is terminated by operation of law, there is no provision for it to be renewed.

To address the issue of drawn-out arbitral proceedings,<sup>30</sup> Section 29A was added; nevertheless, it may create more problems than it attempts to resolve. Preserving party autonomy and ensuring that the parties involved in arbitration retain the freedom to extend the proceedings beyond the

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<<https://www.sconline.com/blog/post/2020/11/28/appointment-of-arbitrators-under-Section-11-by-the-supreme-court-a-time-intensive-phenomenon/>> accessed 16 September 2024.

<sup>27</sup> Soumya, ‘Analysing The Issue Of Jurisdiction With Respect To Section 29a Of The Arbitration And Conciliation Act, 1996’ (*Mondaq*, 6 May 2022) <<https://www.mondaq.com/india/arbitration--dispute-resolution/1190810/analysing-the-issue-of-jurisdiction-with-respect-to-Section-29a-of-the-arbitration-and-conciliation-act-1996>> accessed 16 September 2024.

<sup>28</sup> *Dalmia Office Trust v ATS Housing Pvt. Ltd.* [2021] SCC OnLine NCLT 29210.

<sup>29</sup> Ruchika Darira, ‘Section 29A Of The Amended Indian Arbitration And Conciliation Act, 1996’ (*Mondaq*, 10 May 2017) <<https://www.mondaq.com/india/arbitration--dispute-resolution/592764/Section-29a-of-the-amended-indian-arbitration-and-conciliation-act-1996>> accessed 16 September 2024.

<sup>30</sup> ‘What is Section 29B of Arbitration and Conciliation Act’ (*Indian Dispute Resolution Centre*) <<https://theidrc.com/content/adr-faqs/what-is-Section-29b-of-arbitration-and-conciliation-act>> accessed 16 September 2024.

stipulated six-month period specified in Section 29A is one approach to tackle the issue arising from the mentioned Section<sup>31</sup>. This approach should consider the nature and complexity of the matter to accommodate necessary extensions as required. The only situation in which the court should become involved is if the arbitration’s participants cannot agree on whether the deadline should be extended.

Applying for an extension under 29A(4) does not automatically bring post-termination back to life under the mandate. In these cases, the respondents have declined to consent for the additional six-month period.<sup>32</sup> under Section 29A(3) or beyond the stage of Section 29A(1). The crucial phrase, which is found in Section 29A(4), states explicitly that “the mandate of the arbitrator(s) shall terminate.” When the mandate expires, the arbitrator or arbitral tribunal is de jure incapable of carrying out their duties, similar to what would happen in a case covered by Section 14(1)(a) of the Act. Furthermore, someone dissatisfied with the outcome could argue that an award issued following an extension of a mandate is illegitimate,<sup>33</sup> as the tribunal did not possess the authority to render the decision after the conclusion of its mandate.

### **The Supreme Court’s Ruling**

The Court in *Roban Builders (India) Pvt. Ltd. v Berger Paints India Ltd.*<sup>34</sup> clarified several important aspects of Section 29A. First, it held that the period for an award could not be extended beyond six months by mutual consent of the parties. Any extension beyond this point requires judicial intervention, which may be granted either before or after the statute of limitations expires. The court also elaborated that although the arbitral tribunal is *functus officio* (i.e. its order expires) after the lapse of time, it is not absolute. If an extension is requested and approved by the court, the court order can again be revived.

Further, the court held that the arbitral tribunal should refrain from making a pronouncement while an application for extension under Section 29A(5) is pending before the tribunal. Even if a statement is issued while such an application is pending, the court must decide the application and,

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<sup>31</sup> Gaurav Juneja, Aayush Jain, ‘Applications for Extension of Time for Passing the Award in India: Which Court to Entertain?’ (*Kluwer Arbitration Blog*, 1 January 2020) <<https://arbitrationblog.kluwerarbitration.com/2020/01/01/applications-for-extension-of-time-for-passing-the-award-in-india-which-court-to-entertain/>> accessed 16 September 2024.

<sup>32</sup> Anshika Sharma, Khyati Mehrotra, ‘Unraveling the Dilemma of Application of Amended Section 29A of Arbitration and Conciliation Act’ (*IRCCCL*, 10 May 2020) <<https://www.ircl.in/post/unraveling-the-dilemma-of-application-of-amended-section-29a-of-arbitration-and-conciliation-act>> accessed 16 September 2024.

<sup>33</sup> *Ayush Mehta* (n 20).

<sup>34</sup> *Roban Builders (India) Pvt. Ltd. v. Berger Paints India Ltd.* [2024] SCC OnLine SC 2494.

where necessary, may apply other sub-sections, such as (6) to (8), that have been used to improve the situation. Finally, the High Court concluded that applications under Section 29A(4) read with Section 29A(5) for extension of time for arbitration proceedings apply when the first time or which even at the end of the expansion. This decision has provided much-needed clarity on this issue, reinforcing the importance of court oversight in the court system and ensuring that technical delays do not compromise the integrity of the case.

## **Conclusion**

Section 29A reveals an interplay between the court's discretion and the expansion of the arbitrator's mandate. The term "extension" in Section 29A(4) reflects a deliberate choice by the legislature, signalling the continuity of the existing mandate rather than a revival or renewal. Courts across India have grappled with divergent interpretations, with some emphasising the need for strict adherence to timelines and others recognising the importance of flexibility to accommodate unforeseen circumstances.

The recent Supreme Court ruling reaffirms that while strict adherence to timelines is crucial, courts retain the power to grant extensions even after the statutory period is over. This ensures that arbitration proceedings are not unjustly curtailed.