

Rohan Builders (India) Private Limited vs Berger Paints India Limited on 12 September, 2024

2024 INSC 686

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No

ROHAN BUILDERS (INDIA) PRIVATE LIMITED ..

VERSUS

BERGER PAINTS INDIA LIMITED ..

WITH

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No

CIVIL APPEAL NOS. OF
(Arising out of Special Leave Petition (Civil) Nos. 2

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) N

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) N

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) N

CIVIL APPEAL NO. OF 2024
(Arising out of Special Leave Petition (Civil) No

AND

CIVIL APPEAL NOS. OF
(Arising out of Special Leave Petition (Civil) Nos. 1

Signature Not Verified
Digitally signed by
babita pandey
Date: 2024.09.12
17:23:33 IST

Reason :

Civil Appeal a/o. SLP (C) No. 23320 of 2023 & Ors.
JUDGMENT

SANJIV KHANNA, J .

Leave granted.

2. This common judgment decides whether an application for extension of time under Section 29A of the Arbitration and Conciliation Act, 1996¹ can be filed after the expiry of the period for making of the arbitral award. The High Court at Calcutta in *Rohan Builders (India) Pvt. Ltd. v. Berger Paints India Limited*² has held that the application for extension of time under Sections 29A(4) and 29A(5) of the A & C Act can only be entertained if filed before the expiry of the mandate of the arbitral tribunal. The High Court at Calcutta held that once the mandate of the arbitral tribunal is terminated by afflux of time of twelve months, or when so consented to by the parties after a further six-month extension, the power of the court to extend time under Section 29A(4) cannot be invoked. A similar view has been taken by a Division Bench of the High Court of Judicature at Patna in *South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited*.³ However, a catena of judgments from other High Courts have taken an opposite view. The High Court of Delhi in *ATC Telecom Infrastructure Pvt. Ltd. v. Bharat Sanchar Nigam Ltd.*⁴, *Wadia Techno-Engineering Services Limited v. Director General of Married Accommodation Project and Another*⁵, and some other cases⁶; the High Court of Judicature at Bombay in *Nikhil H. Malkan and Others v. Standard*¹ For short, “A & C Act”.

² AP/328/2023 and other connected matters decided on 06.09.2023. ³ Civil Writ Jurisdiction Case No. 20350 of 2021 and other connected matters decided on 26.04.2023. ⁴ 2023:DHC:8078.

⁵ 2023 SCC OnLine Del 2990.

⁶ *ATS Infrastructure Ltd. and Another v. Rasbehari Traders*, 2023 SCC OnLine Del 8645, *M/s Power Mech Projects Ltd. v. M/s Doosan Power Systems India Pvt. Ltd.*, 2024:DHC:3769, *KMP Expressways Ltd. v. IDBI Bank Ltd.*, 2024 SCC OnLine Del 2617, *Reliance Infrastructure Limited v. Madhyanchal Vidyut Vitran Nigam Limited*, 2023:DHC:5745 et al. *Chartered Investment and Loans (India) Limited*⁷; the High Court of Kerala in *Hiran Valiyakkil Lal and Others v. Vineeth M.V. and Others*⁸; the High Court of Madras in *G.N.Pandian v. S. Vasudevan and Others*⁹; and the High Court of Jammu and Kashmir and Ladakh in *H.P.Singh v. G.M. Northern Railways and Others*¹⁰, have held that an application for extension of time limit for arbitral award can be filed by a party even after the expiry of the term of twelve months or the extended period of six months. Recently, the High Court at Calcutta in a subsequent decision of the single Judge in *Ashok Kumar Gupta v. M.D. Creations and Others*¹¹, on elaborated examination, has concurred with this view.¹²

3. For the reasons recorded below, we accept the view taken by the High Courts of Delhi, Jammu and Kashmir and Ladakh, Bombay, Kerala, Madras, and the subsequent view expressed by the High Court at Calcutta in Ashok Kumar Gupta (supra). However, before we elucidate our reasons, it would be appropriate to first quote Section 29A of the A & C Act as it stands today:

“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) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral 7 2023:BHC-OS:14063.

8 2023 SCC OnLine Ker 5151.

9 2020 SCC OnLine Mad 737.

10 2023 SCC OnLine J&K 1255.

11 2024 SCC OnLine Cal 6909.

12 This Court while issuing notice in the Civil Appeal a/o SLP (C) No. 2115 of 2024 had granted a stay on the operation of the common judgment in Rohan Builders (India) Pvt. Ltd. (supra).

tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(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.

(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 this 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:

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:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(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.

(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.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.”

4. Earlier, the Arbitration Act, 1940, stipulated in its First Schedule that the arbitral award must be made within four months from the date of reference, or from the date the arbitrator was called upon to act by notice, or within any extended time granted thereafter.¹³ Section 28(1) of the Arbitration Act, 1940, empowered the court to extend the time for making an award, irrespective of whether the original time had expired or whether the award had already been made. As per Section 28(2) of the Arbitration Act, 1940, parties could extend the time for making an award by mutual consent.¹⁴ Prior to the enactment of Section 29A, the A & C Act did not specify a time limit for making an arbitral award. This was deliberate, given the fact that the First Schedule and Section 28 of the Arbitration Act, 1940 led to litigation and delay. Section 29A, as quoted above, was inserted by Act No. 3 of 2016¹⁵ with retrospective effect ¹³ Paragraph 3 to the First Schedule of the Arbitration Act, 1940 reads:

“3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.”

14 “28. Power to Court only to enlarge time for making award.— (1) The Court may, if 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.” 15 Section 29A was inserted in the A & C Act vide the Arbitration and Conciliation (Amendment) Act, 2015 (Act No. 3 of 2016) which read:

“15. Insertion of new Sections 29-A and 29-B.— After Section 29 of the principal Act, the following new sections shall be inserted, namely— ‘29-A. Time limit for arbitral award.— (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.— For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. (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. (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:

from 23.10.2015. The Arbitration and Conciliation (Amendment) Act, 2015 aimed to ensure that arbitration proceedings are completed without unnecessary adjournments and delay.

5. Section 29A envisages two time limits for making of an arbitral award. First, Section 29A(1) states that an award shall be made by the arbitral tribunal within a period of twelve months. Secondly, Section 29A(3) stipulates that the parties by consent can extend the time for making the award beyond twelve months, up to an additional period of six months. Extension beyond six months, even by consent of the parties, is not permitted. In terms of the Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019)¹⁶, the time-limit for Provided that while extending the period under this 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.

(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. (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. (7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.’ ” 16 Section 29A was further amended vide the Arbitration and Conciliation (Amendment) Act, 2019 (Act No. 33 of 2019) which read:

“6. Amendment of Section 29-A.— In Section 29-A of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely:— ‘(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.’;

making an arbitral award under Section 29A(1) is not applicable to international commercial arbitration. As per the amendment made by Act No. 33 of 2019, the twelve-month period commences from the date of completion of pleadings under Section 23(4) of the A & C Act. Earlier, Section 29A(1) had stipulated that the twelve-month period would begin from the date the arbitral tribunal enters upon reference. Section 29A(2) states that if the award is made within six months, the arbitral tribunal will be entitled to receive such amount as additional fees as the parties may agree.

6. Section 29A(4) is the provision which requires interpretation. It states that where the award is not made within the specified period of twelve or eighteen¹⁷ months, the mandate of the arbitral tribunal will terminate. However, this provision does not apply if the court has extended the period, either before or after the expiry of the initial or the extended term. In other words, Section 29A(4) empowers the court to extend the period for making of the arbitral award beyond a period of twelve months

or eighteen months, as the case may be. The expression “either prior to or after the expiry of the period so specified” is unambiguous. It can be deduced by the language that the court can extend the time where an application is filed after the expiry of the period under sub-

section (1) or the extended period in terms of sub-section (3). The court has the power to extend the period for making an award at any time before or after the mandated period.

(b) in sub-section (4), after the proviso, the following provisos shall be inserted, namely:— ‘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:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.’”

17 This includes the period of twelve months under Section 29A(1) and the extended period of six months under Section 29A(3).

7. Section 29A(5) states that a party to the arbitration proceedings can file an application in court for an extension of time for making the award. As per the second proviso to Section 29A(4), where an application for an extension of time under Section 29A(5) has been filed and is pending, the mandate of the arbitral tribunal shall continue till the disposal of the application. Thus, the second proviso to Section 29A(4), by specific mandate, allows the arbitration proceedings to continue during the pendency of the extension application under Section 29A(5) before the court. Lastly, the extension of time is to be granted by the court only for ‘sufficient cause’ and on such terms and conditions as may be imposed by the court. We will elaborate on the last aspect, and why this interpretation is preferable. First, we will refer to the ratio and reasoning in Rohan Builders (India) Pvt. Ltd. (supra).

8. The core of the ratio and reasoning of Rohan Builders (India) Pvt. Ltd. (supra) is based on the use of the expression “terminate” in Section 29A(4). The judgment relies on the recommendations made by the 176 th Report of the Law Commission of India, which had suggested using the term “suspend”. Juxtaposing the words “terminate” and “suspend”, it is noted that the use of the expression “terminate” reflects the legislative intent of terminating the mandate of the arbitral tribunal upon the expiry of the specified period. Therefore, the reasoning observes that on the termination of the mandate, the arbitral tribunal becomes de jure incapable of performing its function. Along the same lines, it is argued before us that, as a sequitur, and in view of Sections 14, 15, 29A and 32 of the A & C Act, a party must file an application for an extension of time to make an arbitral award before the culmination of the initial twelve-month period or the extended six-month period.

9. In our opinion, the aforesaid reasoning is fallacious and unacceptable.

Language serves as a means to express thoughts and intentions.¹⁸ Words can have various meanings and connotations; thus, an interpretive exercise must be conducted with careful consideration of both the text and the context of the provision. Therefore, sometimes the court eschews a literal construction if it produces manifest absurdity or unjust results.¹⁹

10. The word “terminate” in Section 29A(4) has to be read in the context of the said provision.²⁰ It should not be read as an isolated word with a strict dictionary meaning, but rather in conjunction with the surrounding words and expressions which warrant recognition and consideration. This evinces the legislative intent. Secondly, the legislative preference for the term “terminate” over “suspend” is apparent, since the word “suspend” could cause incongruity and a legal conundrum if no party files an application for an extension of time. In such a scenario, the arbitral proceedings would stand suspended ad infinitum. Therefore, the legislature by using the word “terminate” intends to affirm the principle of party autonomy. Resultantly, if neither party moves an application for an extension of time for making the award, the arbitration proceedings are terminated. Consequences follow. Clearly, the use of the word “suspension” would have led to infeasible ramifications.

18 *Oswal Agro Mills Ltd. and Others v. Collector of Central Excise and Others*, 1993 Supp (3) SCC 716. 19 *Babu Manmohan Das Shah and Others v. Bishun Das*, (1967) 1 SCR 836. 20 This Court in *Renaissance Hotel Holdings Inc. v. B. Vijaya Sai and Others*, (2022) 5 SCC 1 at ¶66 held that “It is thus trite law that while interpreting the provisions of a statute, it is necessary that the textual interpretation should be matched with the contextual one. The Act must be looked at as a whole and it must be discovered what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.(...)”

11. The word “terminate” in Section 29A(4) makes the arbitral tribunal functus officio, but not in absolute terms. The true purport of the word “terminate” must be understood in light of the syntax of the provision. The absence of a full stop after the word “terminate” is noteworthy. The word “terminate” is followed by the connecting word “unless”, which qualifies the first part with the subsequent limb of the section, i.e. “unless the court has, either prior to or after the expiry of the period so specified, extended the period.” The expression “prior to or after the expiry of the period so specified” has to be understood with reference to the power of the court to grant an extension of time.

12. Accordingly, the termination of the arbitral mandate is conditional upon the non-filing of an extension application and cannot be treated as termination *stricto sensu*. The word “terminate” in the contextual form does not reflect termination as if the proceedings have come to a legal and final end, and cannot continue even on filing of an application for extension of time. Therefore, termination under Section 29A(4) is not set in stone or absolutistic in character.²¹

13. An interpretive process must recognize the goal or purpose of the legal text.²² Section 29A intends to ensure the timely completion of arbitral proceedings while allowing courts the flexibility to grant extensions when warranted. Prescribing a limitation period, unless clearly stated in words

or necessary, should not be accepted. Bar by limitation has penal and fatal consequences. This Court in *North Eastern Chemicals Industries (P) Ltd. and Another v. Ashok Paper Mill (Assam) Ltd. and Another*²³ observed:

²¹ *Supra* note 11.

²² *Shailesh Dhairyawan v. Mohan Balkrishna Lulla*, (2016) 3 SCC 619. ²³ 2023 SCC OnLine SC 1649.

“When no limitation stands prescribed it would be inappropriate for a Court to supplant the legislature’s wisdom by its own and provide a limitation, more so in accordance with what it believes to be the appropriate period.” Courts should be wary of prescribing a specific period of limitation in cases where the legislature has refrained from doing so.²⁴ If we give a narrow and restrictive meaning to Section 29A(4), we would be indulging in judicial legislation by incorporating a negative stipulation of a bar of limitation, which has a severe annulling effect. Such an interpretation will add words to widen the scope of legislation and amount to modification or rewriting of the statute. If the legislature intended such an outcome, it could have stated in the statute that – “the Court may extend the period only if the application is filed before the expiry of the mandate of the arbitrator, not after”. Indeed, there would have been no need to use the phrase “after the expiry of the period” in the statute. In other words, a rigid interpretation would amount to legislating and prescribing a limitation period for filing an application under Section 29A, when the section does not conspicuously so state. Rather, the expression and intent of the provision are to the contrary.

14. In our opinion, a restrictive interpretation would lead to rigour, impediments and complexities. A party would have to rush to the court even when the period of arbitral mandate of twelve months has not expired, notwithstanding the possibility of a consent-based extension of six months under Section 29A(3). Narrow interpretation presents an additional challenge by relegating a faultless ²⁴ *Ajaib Singh v. Sirhind Cooperative Marketing-cum-Processing Service Society Ltd. and Another*, (1999) 6 SCC 82.

party to a fresh reference or appointment of an arbitrator under the A & C Act²⁵, thereby impeding arbitration rather than facilitating it.²⁶ The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation.²⁷ A narrow interpretation will be counterproductive. The intention is appropriately captured in the following observations made in the 176th Report of the Law Commission of India :

“2.21.1 (...)But the omission of the provision for extension of time and therefore the absence of any time limit has given rise to another problem, namely, that awards are getting delayed before the arbitral tribunal even under the 1996 Act. One view is that this is on account of the absence of a provision as to time limit for passing an award.

xx xx xx 2.21.3 (...)The time limit can be more realistic subject to extension only by the court. Delays ranging from five years to even fourteen years in a single arbitration have come to the Commission’s notice. The Supreme Court of India has also referred

to these delays of the arbitral tribunal. The point here is that these delays are occurring even in cases where there is no court intervention during the arbitral process. The removal of the time limit is having its own adverse consequences. There can be a provision for early disposal of the applications for extension, if that is one of the reasons for omitting a provision prescribing a time limit, say one month.

Parties can be permitted to extend time by one year. Pending the application for extension, we propose to allow the arbitration proceedings to continue.(...) xx xx xx 25 We have not examined and pronounced on the legal consequence when the proceedings “terminate” in terms of Section 29A of the A & C Act and the legal remedy available to the parties. 26 This Court in *Interplay Between Arbitration Agreements under Arbitration and Conciliation Act, 1996 & Stamp Act, 1899*, In re, (2024) 6 SCC 1 at para ¶94 held:

“The Arbitration Act represents the principles of modern arbitration, which seeks to give effect to the mutual intention of the parties to resolve their disputes by a neutral third-party Arbitral Tribunal, whose decision is final and binding on all the parties. Arbitration law allows the parties to design arbitral procedures, which ensures efficiency and expediency of the arbitration process. One of the reasons that business and commercial entities prefer arbitration is because it obviates cumbersome judicial processes, which can often prove expensive, complex and interminable. (...) It is the duty of this Court to interpret the Arbitration Act in a manner which gives life to the principles of modern arbitration in India.”

27 See Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Bill, 2015 inserting Section 29A.

2.21.4 It is, therefore, proposed to implement the recommendation made in the 76th Report of the Law Commission with the modification that an award must be passed at least within one year of the arbitrators entering on the reference. The initial period will be one year. Thereafter, parties can, by consent, extend the period upto a maximum of another one year. Beyond the one year plus the period agreed to by mutual consent, the court will have to grant extension. Applications for extension are to be disposed of within one month. While granting extension, the court may impose costs and also indicate the future procedure to be followed by the tribunal . There will, therefore, be a further proviso, that further extension beyond the period stated above should be granted by the Court. We are not inclined to suggest a cap on the power of extension as recommended by the Law Commission earlier. There may be cases where the court feels that more than 24 months is necessary. It can be left to the court to fix an upper limit. It must be provided that beyond 24 months, neither the parties by consent, nor the arbitral tribunal could extend the period. The court's order will be necessary in this regard. But in order to see that delay in disposal of extension applications does not hamper arbitration, we propose to allow arbitration to continue pending disposal of the application.

2.21.5 One other important aspect here is that if there is a delay beyond the initial one year and the period agreed to by the parties (with an upper of another one year) and also any period of extension

granted by the Court, there is no point in terminating the arbitration proceedings. We propose it as they should be continued till award is passed. Such a termination may indeed result in waste of time and money for the parties after lot of evidence is led. In fact, if the proceedings were to terminate and the claimant is to file a separate suit, it will even become necessary to exclude the period spent in arbitration proceedings, if he was not at fault, by amending sec. 43(5) to cover such a situation. But the Commission is of the view that there is a better solution to the problem.

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.”

15. Rohan Builders (India) Pvt. Ltd. (supra) highlights that an interpretation allowing an extension application post the expiry period would encourage rogue litigants and render the timeline for making the award inconsequential. However, it is apposite to note that under Section 29A(5), the power of the court to extend the time is to be exercised only in cases where there is sufficient cause for such extension. Such extension is not granted mechanically on filing of the application. The judicial discretion of the court in terms of the enactment acts as a deterrent against any party abusing the process of law or espousing a frivolous or vexatious application. Further, the court can impose terms and conditions while granting an extension. Delay, even on the part of the arbitral tribunal, is not countenanced.²⁸ The first proviso to Section 29A(4) permits a fee reduction of up to five percent for each month of delay attributable to the arbitral tribunal.

16. Lastly, Section 29A(6) does not support the narrow interpretation of the expression “terminate”. It states that the court – while deciding an extension application under Section 29A(4) – may substitute one or all the arbitrators. Section 29A(7) states that if a new arbitrator(s) is appointed, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. This obliterates the need to file a fresh application ²⁸Supra note 10.

under Section 11 of the A & C Act for the appointment of an arbitrator. In the event of substitution of arbitrator(s), the arbitral proceedings will commence from the stage already reached. Evidence or material already on record is deemed to be received by the newly constituted tribunal. The aforesaid deeming provisions underscore the legislative intent to effectuate efficiency and expediency in the arbitral process. This intent is also demonstrated in Sections 29A(8) and 29A(9). The court in terms of Section 29A(8) has the power to impose actual or exemplary costs upon the parties. Lastly, Section 29A(9) stipulates that an application for extension under sub-section (5) must be disposed

of expeditiously, with the endeavour of doing so within sixty days from the date of filing.

17. As per the second proviso to Section 29A(4), the mandate of the arbitral tribunal continues where an application under sub-section (5) is pending. However, an application for extension of period of the arbitral tribunal is to be decided by the court in terms of sub-section (5), and sub-sections (6) to (8) may be invoked. The power to extend time period for making of the award vests with the court, and not with the arbitral tribunal. Therefore, the arbitral tribunal may not pronounce the award till an application under Section 29A(5) of the A & C Act is sub-judice before the court. In a given case, where an award is pronounced during the pendency of an application for extension of period of the arbitral tribunal, the court must still decide the application under sub-section (5), and may even, where an award has been pronounced, invoke, when required and justified, sub-sections (6) to (8), or the first and third proviso to Section 29A(4) of the A & C Act.

18. While interpreting a statute, we must strive to give meaningful life to an enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios.²⁹ An interpretation which produces an unreasonable result is not to be imputed to a statute if there is some other equally possible construction which is acceptable, practical and pragmatic.

19. In view of the above discussion, we hold that an application for extension of the time period for passing an arbitral award under Section 29A(4) read with Section 29A(5) is maintainable even after the expiry of the twelve-month or the extended six-month period, as the case may be. The court while adjudicating such extension applications will be guided by the principle of sufficient cause and our observations in paragraph 15 of the judgment.

20. We, accordingly, answer the question in the aforesaid terms. The appeals are directed to be listed in the week commencing 30.09.2024 for final hearing and disposal.

.....J. (SANJIV KHANNA)J. (R. MAHADEVAN) NEW
DELHI;

SEPTEMBER 12, 2024.

29 Franklin Templeton Trustee Services (P) Ltd. and Another v. Amruta Garg and Others, (2021) 6 SCC

736.