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Supreme Court grants extension of the arbitral tribunal's mandate post-expiry of such mandate and clarifies the expression 'sufficient cause' employed under Section 29(A) of the Arbitration and Conciliation Act, 1996

In the decision of *M/s Ajay Protech Pvt Ltd vs. General Manager and Anr.*¹ ("Ajay Protech"), the Hon'ble Supreme Court of India ("Supreme Court") held that after *Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Ltd.*,² ("Rohan Builders"), it is a settled legal position that an application to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") can be filed after the expiry of such mandate. Further, the Supreme Court noted that the determination whether there is 'sufficient cause' to grant such extension under the provision should be done to facilitate the efficiency of the arbitration process.

The Supreme Court's decision goes a long way in providing clarity on relevant considerations for assessing whether there is 'sufficient cause' for the court to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration Act.

Brief facts

The dispute arose between the parties out of a works contract. A notice to initiate arbitration was issued and a sole arbitrator was appointed. The pleadings of the parties in the arbitral proceedings were completed on October 9, 2019, from which date the 12 (twelve) month period stipulated under Section 29A(1) of the Arbitration Act commences. As per Section 29A(3) of the Arbitration Act, this period, bound to expire on October 8, 2020, is extendable by another 6 (six) months. Consequently, by mutual agreement between the parties, the time period was extended and the 18 (eight) month period expired on April 9, 2021. Before expiry of this period, the COVID-19 pandemic occurred and the Supreme Court declared that the period between March 15, 2020 and February 28, 2022 will be excluded from limitation period under Section 29A of the Arbitration Act.³ The arbitral proceedings got adjourned due to the pandemic, and resumed in 2022, with hearings concluding on May 5, 2022. An application was filed by the Appellant under Section 29A(4) of the Arbitration Act for appropriate orders for extension of time for making the award on August 1, 2023. However, the High Court rejected the application noting that the 18 (eighteen) month period got over on April 9, 2021 and that there was an unexplained delay of over 2 (two) years in preferring the application as the mandate of the arbitral tribunal stood terminated on April 9, 2021.

¹ 2024 SCC OnLine SC 3381

² 2024 SCC OnLine SC 2494.

³ In re: *Cognizance for Extension of Limitation*, (2022) 3 SCC 117

Issue

The Supreme Court formulated 2 (two) issues:

1. whether an application for extension can be entertained if it is filed after the expiry of the arbitral tribunal's mandate? and
2. whether there was 'sufficient cause' to extend the mandate of the arbitral tribunal under Section 29A(4) of the Arbitration Act?

Analysis and findings

Issue 1: The Supreme Court in its decision in Rohan Builders, had placed emphasis on party autonomy and clarified that an application for extension of time can be filed even after the expiry of the period in sub-sections (1) and (3) of Section 29A of the Arbitration Act. Further, the language of Section 29A(4) of the Arbitration Act itself clarifies that the court can extend the time period '*either prior to or after the expiry of the period*'. Thus, this issue is no longer *res integra* and an application can be filed after the expiry of the tribunal's mandate.

Issue 2: The Supreme Court held that the facts of the case did warrant an extension. As per Section 29A(5) of the Arbitration Act, such an extension can only be done when 'sufficient cause' is shown and is at the discretion of the Supreme Court. To come to this determination, the Supreme Court took the following factors into consideration:

1. the COVID period which was to be excluded (i.e., from March 15, 2020, and February 28, 2022) had started even before the expiry of the initial 12 (twelve) month period. From the start of the 12 (twelve) month period, i.e. October 9, 2019, till March 15, 2020, only 5 (five) months lapsed. Thereafter, from February 28, 2022, the remaining of the 18 (eighteen) month period expired on March 31, 2023. The current application for extension was filed on August 1, 2023. Thus, there was a delay of 4 (four) months, and not over 2 (two) years as held by the High Court;
2. even in 2022, while the arbitral tribunal proceeded with online hearings, adjournments were sought on several occasions by the respondents as the panel from which the arbitrator was appointed had been changed;
3. the dispute involved technical and legal questions and had a bulky case record;
4. the delay was not attributable to the parties or the tribunal;
5. the hearing was completed and only the declaration of the award was pending; and
6. the parties had agreed on May 5, 2023, to seek an extension of time by filing an application before the court.

The Supreme Court emphasised on the efficiency of the arbitration proceedings, which it noted was essential for an effective dispute resolution remedy through arbitration. It further noted that 'sufficient cause' under Section 29A of the Arbitration Act should be interpreted in the context of facilitating effective dispute resolution. In the facts of the case, the Supreme Court held that there is sufficient cause to extend time and set aside the impugned judgment of the High Court.

Conclusion

In Rohan Builders, the Supreme Court had settled the position on whether extension of time in arbitration can be sought after the expiry of the arbitral tribunal's mandate, on which several High Courts had previously provided conflicting answers. It had also emphasised that courts should not mechanically allow such applications, and extension should only be granted if there is sufficient cause to deter parties from abusing the process of law or filing frivolous applications. The judgement of the Supreme Court in Ajay Protech has reinforced this legal position.

The Supreme Court has further clarified the purport and meaning of the expression 'sufficient cause' in the context of Section 29(A) of the Arbitration Act. The Supreme Court clarified that though the statute emphasises on party autonomy, however, there is statutory recognition of the power of the court to step in wherever it is necessary to

ensure that the process of resolution of the dispute is taken to its logical end. Efficiency in arbitration proceedings as well as the several factors which were considered by the Supreme Court, including whether the delay was attributable to the parties or the tribunal and whether the case involves a bulky record involving technical questions, will provide guidance to courts in determining whether there is sufficient cause to grant extension of time under Section 29A of the Arbitration Act.

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