

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
ARBITRATION PETITION (L) NO. 25809 OF 2024

ITI Finance Ltd

...Petitioner

Vs.

Maina Associates

...Respondent

Mr. Ranjeev Carvalho (through VC) a/w Vinod Kothari and Chinmay Bhojane
i/by Apex Law Partners for the Petitioner.

Mr. Sagar Ghogre a/w Sarvesh Gawade i/by Govind Solanki for the Respondent.

CORAM : ARIF S. DOCTOR, J.

DATE : 12TH SEPTEMBER, 2024

P.C.-

1. This is a Petition filed under Section 29A of the Arbitration and Conciliation Act, 1996 and seeks extension of the mandate of the Tribunal, who came to be appointed vide an order of this Court dated 9th January 2023. This is the first extension of time..

2. Mr. Ghogre Learned Counsel appearing on behalf of the Respondent opposed the Application solely on the ground that the Application has been filed after the mandate of the Tribunal had already come to an end. He pointed out that the mandate of the Tribunal had come to an end on 16th July, 2024, whereas, the present application was filed on 13th August, 2024. In

support of his contention that an application for extension of the mandate of a Tribunal could not be filed after the mandate had expired, he placed reliance upon a judgment of the Calcutta High Court in the case of ***Rohan Builders (India) Pvt. Ltd. vs. Berger Paints India Limited***¹ from which he pointed out that the Calcutta High Court had held as follows:-

“61. Section 29-A of the Arbitration and Conciliation Act, 1996 contemplates making of the award within the prescribed statutory timelines. The timelines are to be read as mandatory limits where the arbitrator and the parties to the arbitration are required to be conscious and vigilant of the cut-off dates for applying for extension of the mandate of the arbitral tribunal. The application for extension must be made during continuation of the mandate and not thereafter.”

Mr. Ghogare then also then also placed reliance upon a judgment of a Learned Single Judge of this Court in the case of ***Smt. Hetal Alpesh Muchhala Vs. Adityesh Educational Institute & Ors.***², to submit that if the language of the statute itself restricts the power of the court to condone the delay, the same would curtail the powers of the court with exclusion of operation of Section 5 of The Limitation Act, 1963. It was thus that he submitted that an Application for extension of the mandate of an Arbitral Tribunal filed after the mandate had expired was not maintainable and thus ought to be dismissed.

3. Mr. Carvalho, Learned Counsel appearing on behalf of the

1 2023 SCC OnLine Cal 2645

2 2009 SCC OnLine Bom 1454

Petitioner placed reliance upon a judgment of this Court in the case of **Nikhil H. Malkan & Ors. vs. Standard Chartered Investment and Loans (India) Limited**³ to submit that this Court had after considering the judgment of the Calcutta High Court in the case of **Rohan Builders (India) Pvt. Ltd.** (supra) upon which reliance was placed by the Mr. Goghare differed from the view taken by the Calcutta High Court and held that an Application could be filed even after the expiry of the mandate. He then from the judgement in the case of **Nikhil H. Malkan & Ors.** pointed out that this Court had held as follows:-

“15. Having perused Section 26A(4) of the said Act, particularly in the light of use of the words “either prior to or after the expiry of the period so specified”, this Court finds that the purpose for which Section 29A was introduced in the aforesaid Act would be defeated, 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. The aforesaid provision i.e. Section 29A of the aforesaid Act, is a provision that enables the Court to pass appropriate orders in order to ensure that the arbitral proceeding reaches its logical conclusion. No purpose would be served in holding that if such an application or petition for extension of mandate of the learned Arbitrator is filed after the expiry of the mandate, the Court would be in no position to entertain the same. Any apprehension regarding inordinate and unexplained delay on the part of the party approaching the Court can be addressed by holding that the Court would extend the mandate only when it is satisfied that sufficient grounds are made out for granting extension of mandate of the learned Arbitrator.

3 2023 SCC OnLine Bom 2575

16. In view of the above, this Court respectfully disagrees with the view expressed by the learned Single Judge of the Calcutta High Court in the case of Rohan Builders (India) Private Limited v. Berger Paints India Limited (supra) and the Division Bench of the Patna High Court in the case of South Bihar Power Distribution Company Limited v. Bhagalpur Electricity Distribution Company Private Limited a Private Limited Company registered under the Companies Act, 1956 (supra) in the aforementioned judgments. This Court is in agreement with the view adopted by the Delhi High Court in the case of ATC Telecom Infrastructure Private Limited v. Bharat Sanchar Nigam Limited (supra).

17. Accordingly, the objection raised on behalf of the Respondent with regard to maintainability of the petition is rejected."

4. After having heard Learned Counsel for the Parties, I find that I am unable to accept the contentions of Mr. Goghare. This Court has in the case of ***Nikhil H. Malkan & Ors.*** expressly held that an Application for extension of time can be filed after the expiry, ***already*** taken a view, I am in respectful agreement with the view taken by Learned Single Judge in the aforesaid judgment and I hold that mere fact that the present Petition has been filed after the termination of the mandate is not a ground on which its dismissal is warranted. What I have to consider when granting an extension of time is whether there is sufficient cause for the grant of such extension or whether there has been delay or negligence on the part of the Tribunal or parties in arbitration such as to disentitle them from the grant of an extension of time.

5. To this, Mr. Carvalho points out from the Petition that during the

arbitral meeting held on 13th January, 2024, parties have recorded consent to have the mandate of the Tribunal extended by a period of 6 months. He further points out that the lis pending before the Tribunal was extremely voluminous, however, cross-examination of the Claimant was on the verge of completion and the parties have invested time and efforts in the arbitration proceedings. He also pointed out that the Learned Arbitrator was a practicing Advocate of this Court who had at all times made an endeavour to appear and adjudicate upon the lis pending between the parties. Furthermore and crucially, Mr. Carvalho pointed out from the Affidavit-in-Reply filed by the Respondent that it is the Claimant's own case that three arbitration references had been consolidated. Thus, substantial cross-examination was pending in the present matter which would also necessitate the grant of an extension of time. Mr. Carvalho also submitted that the judgment of the Calcutta High Court in the case of ***Rohan Builders (India) Pvt. Ltd.*** (supra) has been subsequently followed in the judgment of ***Vrindavan Advisory Services LLP Vs. Deep Shambhulal Bhanushali***⁴ which was challenged before the Hon'ble Supreme Court and has been stayed by the Hon'ble Supreme Court.

6. After having heard Learned Counsel and considering the rival contentions, I have no hesitation in allowing the present application. I do so because (a) the sole ground on which the same was opposed to my mind is untenable in view of the view taken by this Court in the case of ***Nikhil H. Malkan***

4 Special Leave to Appeal (C) No.24489 of 2023

& Ors. (supra) and (b) I find that compelling case for grant of extension has in fact been made out. I am satisfied that the arbitration proceedings are progressing satisfactorily and there is no delay, inadvertence or negligence on the part of the parties or the Tribunal in proceeding with the same. Hence, in my view it is in the overwhelming interest of justice that the time be extended and it is thus I allow the Petition in terms of prayer clause (a) which reads as under:-

“(a) That this Hon'ble Court be pleased to extend the period of the Arbitral Tribunal as prescribed under Section 29A of the Arbitration and Conciliation Act, 1996 (as amended from time to time), which are pending before the Learned Sole Arbitrator, Mr. Rohan Kelkar (Advocate), for adjudication of the lis, filed by the Petitioner for such extended period as this Hon'ble Court deems fit and proper;”

7. It is made clear that the time is extended for a period of one year from the date on which a copy of this order is uploaded.

(ARIF S. DOCTOR, J.)