

OCD 9

ORDER SHEET
AP-COM/428/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

ROHAN BUILDERS (INDIA) PVT. LTD.
VS
BERGER PAINTS INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 21st July, 2025.

Appearance:
Mr. Amitesh Banerjee, Sr. Adv.
Mr. Soumya Roy Chowdhury, Adv.
Mr. Chayan Gupta, Adv.
Mr. Sarosij Dasgupta, Adv.
Mr. Ritesh Ganguly, Adv.
Ms. Susrea Mitra, Adv.
Mr. Ramanuj Ray Chowdhuri, Adv.
. . .for the petitioner.

Mr. Anirban Ray, Sr. Adv.
Mr. Snehashis Sen, Adv.
...for the respondent

The Court:

1. This is an application for extension of the mandate of the learned Arbitrator which expired on May 31, 2025. This is the second application for extension.

2. The first application for extension was filed before a learned predecessor Judge and by a judgment dated September 6, 2023, the said application was rejected. The rejection was on the ground that the applications for extension were filed after the mandate had, admittedly, terminated. The application filed by the petitioner vide A.P. 328 of 2023 was, thus, rejected along with two other similar applications. The petitioner challenged the said order before the Hon'ble Apex Court vide Civil Appeal No.10620 of 2024. The said civil appeal was disposed of along with similar civil appeals in which the questions involved were whether the application for extension of the mandate should be filed prior to termination of the mandate and whether the orders extending the mandate upon allowing applications filed after termination of mandate were sustainable in law. In other words, the question was whether the Court lacked jurisdiction to extend the mandate under Section 29A(4) if such application for extension of mandate was filed after the mandate had terminated by operation of law.
3. The Hon'ble Apex Court while disposing of the appeals came to the conclusion that Section 29A did not support a narrow interpretation of the expression 'terminate'. The Hon'ble Apex Court was of the view that the word 'terminate' under Section 29A in its contextual form did not reflect termination of the proceedings in the sense that the proceedings had come to an end and could not be continued even after filing of an application for extension. The Hon'ble Apex held as follows:

“13. An interpretive process must recognize the goal or purpose of the legal text. 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* observed:

“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. 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 party to a fresh reference or appointment of an arbitrator under the A & C Act, thereby impeding arbitration rather than facilitating it. The legislature vide the 2015 Amendment envisions arbitration as a litigant-centric process by expediting disposal of cases and reducing the cost of litigation. 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.

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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.(...)

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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.”

4. Upon observing as hereinabove, the Hon’ble Apex Court allowed the appeal filed by the petitioner and extended the mandate upto May 31, 2025. Mr. Amitesh Banerjee, learned senior advocate submits that the award could not be published within the aforementioned period and as such, this application has been filed for further extension. The grounds set out in paragraphs 6, 7, 8, 9 and 10 of the application, for extension of time are quoted below:

“6. It is pertinent to state that the Arbitration Proceeding has been resumed on and from 4th March, 2025 pursuant to the order dated 23rd October, 2024 reported in 2024 SCC OnLine SC 3108. After the extensive cross examination of the first witness of the

petitioner which was conducted for nearly a year, the petitioner has now produced its second witness for the proper and effective adjudication of the claims raised by the petitioner, which forms an indispensable part of the arbitration proceeding. Voluminous documents containing challans, tax invoices, letters to the respective banks for making payment to the vendors and bank statements generated by the respective banks have been disclosed by the petitioner through its second witness to substantiate its claim for damages.

7. Not only are the challans and the other documents extremely voluminous in nature and has been filed before the Learned Arbitral Tribunal by way of compilations exceeding thousand pages, the proof of payment was also required to be tallied by the second witness at the time of preparation of his affidavit of evidence.

8. The second witness of the petitioner/claimant had to correlate each and every invoice with the payment advises for the same and further correlate the same with the bank statements of the petitioner/claimant and file a detailed chart with regard to the same. The second witness of the claimant had to cull out all the payment advises and also the relevant bank statements which are also extremely voluminous. This entire exercise had taken a considerable period of time and it was only in March, 2025, that such exercise was completed and the affidavit of evidence of the second witness could be filed.

9. There was no deliberate or intentional laches on the part of the petitioner /claimant in filing the affidavit of evidence of its second witness. Several documents had to be culled out, tallied with the challans and the payment advises which had taken a huge time. Moreover, the second witness of the claimant being the main person in the accounts department of the petitioner/claimant has to look after all the ongoing projects of the claimant and deal with every financial aspect of each and every project. Taking out time to concentrate solely on the present reference and the preparation of the affidavit of evidence was a difficult challenge which he managed amidst his regular official duties. There is no intentional laches on his part and a perusal at the nature of documents would justify the time consumed by the petitioner/claimant's second witness in preparing his affidavit of evidence.

10. Moreover, the petitioner/claimant is situated in Pune and he had to come down to Kolkata on several occasions to instruct the Advocates for the petitioner/claimant to draft and finalize his affidavit of evidence. This has also taken a substantial time and thus it was only in February 21, 2025 that the affidavit of evidence of the second witness of the petitioner/claimant could be filed."

5. Reliance has been placed on the decision of the Madras High Court in the case of '**M/s. Powergear Limited Chennai vs. M/s. Anu Consultants, Hyderabad**' reported in **MANU/TN/0532/2025** and on the decision of **Punjab and Haryana High Court at Chandigarh in the case of 'HMT Limited, Pinjore vs. S.K.V. Agro Distributors and Ors.'** reported in **MANU/PH/3293/2024**, both in support of the contention that multiple applications for extension of mandate of the learned Arbitrator may be filed and the Court should not give a restricted meaning to the provision of Section 29A(4), by holding that the power of the Court to extend the mandate can be only exercised only once.
6. In the decision of **M/s. Powergear Limited (supra)**, the Madras High Court held as follows:-

“7. Section 29A intends to ensure a timely completion of arbitral proceedings while allowing the Courts flexibility to grant extension when warranted. Prescribing a prohibition by the Court restricting the number of times a party can approach seeking for extension of the Arbitrator's mandate, though the statute does not contain such a prohibition, will lead to penal and fatal consequences resulting in grave injustice. A restrictive interpretation of Section 29A will cause disservice to the objects of introducing such a provision by the legislature, which has been introduced only to meet the ends of justice whenever a need arises for extending the mandate of the Arbitrator by giving sufficient reasons. A narrow interpretation of Section 29A should not be given by Courts, which may result in injustice to one of the parties to the dispute. If the intention of the legislature was to restrict the filing of Section 29A application under the Act, the legislature would have thought it fit to do so. Section 29A(5) of the Act only stipulates as to how such an application seeking for extension of the mandate of the Arbitrator will have to be considered by the Court and it has not restricted a party to seek for further extension, even though one extension was granted by the

Court earlier. The only requirement for a party seeking extension of the Arbitrator's mandate is to show sufficient cause for filing such an application.”

7. Mr. Anirban Ray, learned senior advocate for the respondent submits that although the Hon'ble Apex Court fixed May 31, 2025 for publication of the award, the petitioner was lackadaisical in its approach and did not file the affidavit of evidence upto 150 days from the date of the decision of the Hon'ble Apex Court. Only on the 151st day, affidavit of evidence of the second witness for the petitioner was filed. This conduct itself stands testimony to the fact that the petitioner was not a vigilant litigant but a rogue litigant. It is next submitted that, when the Hon'ble Apex Court had fixed May 31, 2025 as the date when the award was to be published, further extension cannot be granted by this Court. Objection is raised to the grounds stated in the application in justification for extension of the mandate. He submits that the grounds are frivolous and do not fall within the meaning of the expression 'sufficient cause' under Section 29A(5).
8. In Civil Appeal No. 10620 of 2024, the Hon'ble Apex Court was of the view that while interpreting the statutory provision, the Court must give a meaningful life to the enactment or rule and avoid cadaveric consequences that result in unworkable or impracticable scenarios. An interpretation which produced an unreasonable result, could not be imputed to the statute, if there was some other equally possible construction which was acceptable, practical and pragmatic. Thus, it

was held that a prayer for extension of the mandate could be filed even after the mandate had terminated and even after expiry of 12 months or the extended six months, as the case would be. The principle for extension of a mandate would be guided by the principle of showing sufficient cause for such extension and not by fixing a period of limitation in exercise of powers under Section 29A(4). When the legislature was conscious not to import any kind of period of limitation for filing an application for extension of the mandate, the court should desist from prescribing a period within which the application for extension should be filed. The order of the Hon'ble Apex Court, if applied in the given context, clearly recognizes the principle of liberal interpretation of the provisions of Section 29A(4) to the extent that the Court was denuded of the power not only to prescribe a period of limitation to file an application under section 29A(4), but also of limiting the number of times the mandate can be extended. The legislature did not restrict the prayer for extension of mandate under section 29(4) only once. While the parties have been enabled to extend the mandate by consent, for a further period of six months, no such period has been prescribed under section 29A(4) for the court to extend the mandate. Even at a belated stage, if sufficient cause is shown for extension of the time within which the Arbitrator should make and publish the award, such application can be entertained.

9. The mandate was extended by the Apex Court for the first time upto May 31, 2025. The order of the Hon'ble Apex Court will not limit the power of this Court, as the 2(1)(e) Court, to extend the mandate for a further period if the Court is satisfied that the party seeking extension has been able to show sufficient cause for such extension. The order of the Hon'ble Apex Court was passed in an appeal from the order by which the first application for extension of the mandate was rejected by a coordinate Bench. Thus, while allowing the appeal, the first extension was allowed by the Hon'ble Apex Court upto May 31, 2025. The law does not prohibit a second application for extension. This is the Court of competent jurisdiction to entertain such application. The appeals before the Hon'ble Apex Court were disposed of upon holding that applications for extension of the mandate need not be filed before expiry of the mandate. The Hon'ble Apex Court had extended the mandate upto a certain period upon taking note of the facts and circumstances of the cases involved in each of the appeals. The mandate had to be extended as a consequence of success of the petitioner in the appeal.
10. Thus, in my view, the first prayer for extension of the mandate culminated in the order of the Hon'ble Apex Court dated October 23, 2024. As the proceeding could not be completed within the aforementioned period, the petitioner once again made an application before this Court for extension of the mandate. The grounds for extension have already been elaborately quoted hereinabove. From the

order of the Hon'ble Apex Court dated October 23, 2024, it appears that, the fact that examination of the first witness had taken nearly a year and that extensive cross examination had been held in respect of the said witness, were noted. Thus, the grounds given by the petitioner as to why the affidavit of evidence was submitted by the second witness for the petitioner after 150 days, are reasonable grounds for extension of the mandate. It has been averred by the petitioner that in view of the extensive cross examination of the first witness, it was necessary to bring on record several challans, invoices, bank statements, tax deduction invoices etc. to prove the claim of the petitioner. It further appears that the compilation of the documents to be relied upon by the second witness to prove the petitioner's case, extends to more than thousand pages. The second witness had to correlate each of the invoices with the payment advices and the bank statements in order to file a detailed chart before the learned Arbitrator. Such exercise took time. Moreover, the claimant resides at Pune, but had to come down to Kolkata to instruct his learned advocates.

11. Thus, this Court cannot disregard such grounds taken by the petitioner while explaining the reason for the delay and continuation of the proceeding beyond the time stipulated by the Hon'ble Apex Court in the first round of extension. This Court is also conscious of the fact that the respondent has a counterclaim and is also pursuing the counterclaim.

12. Mr. Ray submits that in the light of the order of the Hon'ble Supreme Court, this order should not be construed as an opinion of this Court on the failure of the petitioner to file the supplementary affidavit of evidence within time. It goes without saying that the learned tribunal has the jurisdiction to decide on the conduct of the petitioner and pass necessary orders with regard to the allegations made by Mr. Ray. This order is restricted to the extension of the mandate of the learned Arbitrator to make and publish the award. Upon the court being satisfied that sufficient cause has been shown as to why the proceeding could not be completed within May 31, 2025 and that the delay in disposal of the proceeding was not solely attributable to petitioner, the mandate of the learned Arbitrator is extended by a period of one year from date of communication of this order. The proceedings are at the stage of evidence and have advanced substantially.

13. Accordingly, the mandate is extended.

14. The application is disposed of.

(SHAMPA SARKAR, J.)