

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CO 1765 of 2021

Pasari Multi Projects Private Limited

Vs.

Ahluwalia Contract (India) Limited

For the Petitioner : Mr. Surajit Nath Mitra, Sr. Adv.,
Mr. Kumar Gupta,
Mr. Deepak Kumar Jain.

For the Respondent : Mr. Debnath Ghosh, Sr. Adv.,
Ms. Priyanka Prasad,
Mr. Biswaroop Mukherjee,
Ms. R. Goyal.

Judgment reserved on : 10.03.2026

Judgment delivered on : 27.03.2026

Shampa Dutt (Paul), J.:

1. The Civil revision has been preferred challenging an order of the learned Arbitrator dated 09.09.2021.
2. Vide the impugned order dated 09.09.2021, the learned arbitral tribunal held:-

*“.....This law does not provide any continuation of the tribunal as there is no provision for extension meaning a continuation. **The distinction between termination of mandate of arbitrator under section 29A and termination of mandate under sections 14 & 15 is***

clear. One is a continuation of the tribunal by court on extension of mandate of the arbitrator (ordinarily of the same arbitrator) and the other is reconstitution of tribunal by the parties, following initial procedure of appointment of arbitrator, **on compulsory replacement of the earlier arbitrator by a new arbitrator.** Even in case of substitution of one arbitrator or all the arbitrators under section 29A(6), apart from the fact that this substitution of arbitrator is by court and not by parties, it is continuation of the tribunal and of the proceeding, as clearly indicated.

It appears that the heading of Section 29A "Time limit for arbitral Award read with the contents of the section itself undoubtedly indicates that it was intended by the Legislature to get the proceeding concluded within twelve months or within the extended period, if any, under section 29A(3) and mandate of the arbitrator stands terminated on expiry of the said period subject to any extension of time by court. The expression 'extension' indicates continuation of the tribunal on extension. In terms of the provisions of the said section 29A mandate is not terminated finally and power was given to the Court for continuation by extension of such period.

In above view of the findings, it appears that nomination of the new Arbitrator in the present facts is under sections 14 & 15 and amounts to reconstitution of the Tribunal entitling it to continue with the proceeding without there being an extension of time by the Court under Section 29A (5).

The respondent reserved its rights to raise the objections as regards impact of death of arbitrator. This aspect is therefore considered by this tribunal upon hearing both parties. As regards the objections mentioned in its application under section 16 of the Act, the same will be considered at the appropriate time.

The two judgments cited by respondent are on interpretation of statutes. But in the facts of the case and in view of the findings herein, said judgments do not require further consideration.

Therefore, when the new Arbitrator has been nominated/appointed by consent of parties, the Tribunal on such appointment can be effective enjoying fresh period of mandate and there is no requirement of extension of time under section 29A(4)

& (5). In fact, as there was replacement of arbitrator under section 15 of the Act, no extension was permissible under the law. The proceeding, therefore, may continue in accordance with law subject to any decision on the respondent's application under section 16 of the Act....."

3. Being aggrieved with the said order, the present revision has been preferred.
4. **The petitioner has filed written notes wherein it appears that the argument in the said written notes are clearly on merit. There is no argument on the point of maintainability.** The opposite party herein has challenged the maintainability of the revisional application relying upon Section 5, 34 and 37 of the Arbitration Act.
5. The said provisions relied upon by the opposite party, relate to **minimum judicial intervention, wherever an arbitration agreement exists.**
6. The opposite party in their written notes have also put in notes on the merit of the case. The petitioners in their written notes have not argued on the point of maintainability. But this Court holds that the revisional application is maintainable, as the issue here in does not relate to an arbitration agreement, but appointment of fresh arbitration by way of substitution as per Section 14 and 15 of the Act.
7. **Both parties have argued on merit and have submitted written notes also on merit and as such the case is taken up for final order.**

8. It is the case of the petitioner is that:-

- i. Letter of appointment of arbitrator Hon'ble Justice (Retd.) P.K. Biswas was served on 29th October, 2017.
 - ii. **The period of 12 months** as per Section 29A of the Arbitration and Conciliation Act **expired on 28th October, 2018.**
 - iii. Application under Section 16 of the Arbitration and Conciliation Act filed by the petitioner herein, on the ground that there was no arbitration agreement between the parties, was rejected by the learned Arbitrator Hon'ble Justice P.K. Biswas (Retd.) on 16.11.2018.
- 9.** It is further stated by the petitioner that almost five months after 28th October, 2018, the opposite party filed an application under Section 29A(4) of the 1996 Act for extension the tenure of arbitration and/or time to make an award by a further period of one year. At paragraph 4 of the application, the opposite party averred that it had apprised the Arbitrator that "the tribunal had become functus officio" and "the mandate of the arbitral tribunal stood terminated."
- 10. During pendency of this application the learned Arbitrator Justice (Retd.) P.K. Biswas, expired on 27.04.2020.**
- 11.** On 10.10.2020, the petitioner **consented** to the appointment of the Hon'ble Justice Alope Kumar Chakraborty as the Arbitrator, but however, the "consent was subject to the result of the (i.e., the

opposite party) pending application being Misc. Case No. 14 of 2019" (for extension of the period of arbitration).

12. On February 23, 2022, the application before the learned District Judge under Section 29A of the Act, was withdrawn, by the opposite party with leave to file afresh before the learned commercial Court at Alipore for extension, by Court under Section 291(4) of the Act.
13. **On 09.09.2021, Hon'ble Justice Alope Chakrabarty (Retd.) held that his appointment is a new appointment under Section 15 of the 1996 Act and hence there is no question of extension under Section 29A of the 1996 Act.**
14. The petitioner argues that from the letter dated October 10, 2020, it will be apparent that the **consent of the petitioner was a conditional consent** as it categorically stated that the **consent "was subject to the result of the (i.e. the opposite party) pending application, being Misc. Case No. 14 of 2019, pending before the Hon'ble District Judge".**
15. The opposite party states that the **termination** in this case took place as per **Section 14** of the Act (death of learned Arbitrator), while an application under Section 29A of the Act was pending. In such circumstances, **Section 15** of the Act comes into play, and the application under Section 29A becomes infructuous.
16. **Section 15 Arbitration and Conciliation Act lays down:-**
"15. Termination of mandate and substitution of arbitrator.-
(1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate-

- (a) where he withdraws from office for any reason; or
- (b) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal."

17. Section 29A(4) Arbitration & Conciliation Act, lays down:-

"Section 29A(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."

18. Section 29A(3) Arbitration & Conciliation Act, lays down:-

"Section 29A(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."

19. While the application under Section 29A(4) of the Act was pending, the learned Arbitrator, (Retd.) Justice P.K. Biswas expired.

20. The issue as raised by the petitioner herein is:-

"Whether, after the reference before the Arbitral Tribunal is terminated, by efflux of time, continuation of such reference/proceeding without obtaining extension of mandate of Arbitral Tribunal is vitiated by the doctrine of "coram non judice" and there is an inherent lack of jurisdiction."

21. The following judgments have been relied upon by the petitioner:-

(i) Deep Industries Limited vs Oil and Natural Gas Corporation Limited & Anr. (2020) Vol. 15 Supreme Court Cases Pg 706 Para 17, 20.

(ii) Bhaven Construction vs Executive Engineer, Sardar Sarovar Narmada Nigam Limited & Anr. (2022) Vol. 1 Supreme Court Cases Pg 75 Para 19, 20.

(iii) Satyendra Nath Ray vs VCK Share & Stock Broking Services Limited, 2021 SCC ONLINE CALCUTTA 2096-Para 1,18,19,30,31.

(iv) Surender Kumar Singhal & Ors. vs Arun Kumar Bhalotia & Ors., 2021 SCC ONLINE DELHI-3708 Para 17,25.

(v) Yashovardhan Sinha HUF & Anr. vs Satyatej Vyapaar Pvt. Ltd. Unreported Judgment of Hon'ble Calcutta High Court in C.O.No.4125 of 2023-Para 29,30,31,32.

(vi) Rohan Builders (India) Private Limited vs Berger Paints India Limited, (2025) 10 SCC 802.

(vii) Mohan Lal Fatehpuria vs Bharat Textiles & Ors., 2025 SCC OnLine SC 2754.

22. The opposite party relies upon the following judgments:-

- i. Tata Sons Pvt. Ltd. v. Siva Industries: (2023) 5 SCC 421.*
- ii. SBP & Co. v. Patel Engineering: (2005) 8 SCC 618 [7J].*
- iii. Lalit Kumar V. Sanghavi v. Dharamdas V. Sanghavi: (2014) 7 SCC 255 [FB].*
- iv. JKS Infrastructure v. Zamil Steel: C.O. No. 97 of 2024, Cal. HC.*
- v. Deep Industries v. ONGC Ltd.: (2020) 15 SCC 706 [FB].*
- vi. Bhaven Construction v. Executive Engineer: (2022) 1 SCC 75 [FB].*
- vii. Tangirala Srinivasa v. Sanjay Aggarwal: 2019 SCC Online Del 9112.*
- viii. Home and Soul Private Limited v. T.V. Today Network: 2024 SCC OnLine Del 7252.*
- ix. M.D. Creations and Ors. v. Ashok Kumar Gupta: 2023 SCC OnLine Cal 1419.*
- x. Surender Kumar Singhal v. Arun Kumar Bhalotia: 2021 SCC Online Del 3708.*
- xi Space Wood Office Solution v. Anupam Rai Construction: 2019 SCC OnLine Bom 751.*
- xii. Amit Kumar Gupta v. Dipak Prasad - 2021 SCC OnLine Cal 2174.*

- 23. Admittedly, extension** Section 29(A)(4) of the Act was prayed for, when the **previous Arbitrator** was conducting the arbitration proceedings.
- 24.** On his death, the application became infructuous and was withdrawn.
- 25.** The petitioner contends that there was a conditional consent given for the extension, but not for a new Arbitrator being appointed.

26. Admittedly, **the petitioner had submitted to the earlier arbitration and also given consent for its extension.** As such when the said mandate of the earlier arbitral tribunal has terminated as per Section 14 of the Act (on the death of the learned arbitrator), **substitution takes place as per Section 15(2) of the Act, as in the present case.**
27. The petitioner's objection and case of 'conditional consent' in this case, cannot stand, having submitted to arbitration all along, extension and also to the appointment of the present arbitrator by way of **substitution and as such no fresh consent is required. The stand of giving "conditional consent" only for extension of mandate has no merit, in the facts and circumstances of this case.**
28. The learned Arbitrator (Hon'ble Justice Aloke Chakrabarty (Retd.)) in the present case vide his order dated 09.09.2021 **rightly held:-**
- That the appointment is a new appointment, under Section 15 of the 1996 Act and hence there is no question of extension under Section 29A of the 1996 Act.*
29. The impugned order thus calls for no interference, being in accordance with law.
30. **The period in Section 29A(1) of the Act shall start from the date of communication of this order to the learned arbitrator.**
31. **CO 1765 of 2021 is dismissed.**
32. All connected application, if any, stands disposed of.
33. Interim order, if any, stands vacated.

- 34.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)