



Arbitration Newsletter

October 2024

**Punjab State Civil Supplies Corporation Ltd. VS M/S. Sanman Rice Mills SLP No. 010889-010889/024– The Supreme Court holds that an Appellate Court cannot set aside a Tribunal’s Order merely on the grounds that their view is a ‘Better View’ –** The Court held that an Award passed by a Tribunal cannot be touched or altered in any manner unless the Award is contrary to the substantive provisions of law, any provision of the Arbitration and Conciliation Act, 1996, (“the Act”), or the provisions of the agreement between the parties.

The bench noted that the Award cannot be invalidated solely on the basis that the Appellate Court's perspective is superior to that of the Arbitral Tribunal. The Award itself cannot be altered unless it is in violation of the substantive provision of the law, including any provision of the Act or the terms of the agreement, the bench stated.

The major ratio of the decision is quoted as below  
"In the case at hand, the Arbitral Award dated 08.11.2012 is based upon evidence and is reasonable. It has not been found to be against public policy of India or the fundamental policy of Indian law or in conflict with the most basic notions of morality and justice. It is not held to be against any substantive provision of law or the Act. Therefore, the Award was rightly upheld by

the Court exercising the powers under Section 34 of the Act. The Appellate Court, as such, could not have set aside the Award without recording any finding that the Award suffers from any illegality as contained in Section 34 of the Act or that the Court had committed error in upholding the same. Merely for the reason that the view of the Appellate Court is a better view than the one taken by the Arbitral Tribunal, is no ground to set aside the Award."

The Appellate Court's limited power to interfere with Arbitral Awards was justified by the judgment, which stated that "the Appellate Courts power under Section 37 of the Act is not akin to the normal Appellate jurisdiction vested in the civil Courts for the reason that the scope of interference of the Courts with Arbitral proceedings or Award is very limited, confined to the ambit of Section 34 of the Act only and even that power cannot be exercised in a casual and a cavalier manner."

In the event that the Arbitral Award is in conflict with the public policy of India, or if it is induced or affected by fraud or corruption, or if it is in contravention with the fundamental policy of Indian law, or if it is in conflict with the most basic notions of morality and justice, the primary criteria for interference or setting aside an Award under Section 34 of the Act are met.

Section 34 of the Indian Arbitration & Conciliation Act, 1996 outlines the grounds on which an arbitral award can be challenged in court. It permits a party to apply for setting aside the award under limited circumstances. These include situations where the arbitration agreement was invalid or one of the parties was incapacitated, where a party did not receive proper notice of the arbitrator's appointment or the arbitral proceedings, or when the award addresses issues beyond the scope of the arbitration agreement.

Additionally, an award can be set aside if it conflicts with the public policy of India, which includes instances of fraud, corruption, or violations of fundamental legal principles. Applications under Section 34 must be filed within three months from the receipt of the award, with a possible extension of up to 30 days at the court's discretion. The section underscores the principle of minimal judicial interference in arbitration, allowing courts to intervene only in cases of significant procedural or legal violations.

**The Court pointed out that a plain reading of Section 34 reveals that the scope of interference by the Court with the Arbitral Award under Section 34 is very limited and the Court is not supposed to travel beyond the aforesaid scope to find out if the Award is good**

**or bad. It further observed that an Arbitral Award is not subject to interference solely on the basis of its illegality or erroneousness in law, even after a reassessment of the evidence presented during the Arbitral trial, as per the judgment in *Bharat Coking Coal Ltd. v. L.K. Ahuja*, (2004) 5 SCC 109.**

The Court further stated that the Arbitrator's perspective must be accepted, even if two perspectives are feasible, and that the Appellate Court has no authority to intervene and adopt a different perspective in order to invalidate the Award. It noted that the arbitrator's perspective is generally acceptable and should be permitted to prevail, stating that *"It is also well settled that even if two views are possible there is no scope for the Court to reappraise the evidence and to take the different view other than that has been taken by the arbitrator. The view taken by the arbitrator is normally acceptable and ought to be allowed to prevail."*

The case of *Dyna Technologies (P) Ltd. v. Crompton Greaves Ltd.*, (2019) 20 SCC 1 was noted, in which it was determined that (Appellate) Courts should not interfere with an Award merely because an alternative view on facts and interpretation of contract exists. The Court ultimately held that Courts should exercise caution and defer to the Arbitral Tribunal's perspective, even if the reasoning in the Award is

implied, unless the Award demonstrates perversity that is unpardonable under Section 34 of the Arbitration Act. The Court noted that the scope of interference in an appeal under Section 37 of the Act is limited and subject to the same grounds on which an Award can be challenged under Section 34 of the Act.

**Emco Ltd. v. Delhi Transco Ltd., 2024 SCC OnLine Del 6518 – *The Court held that the computation period of Twelve Months for Arbitral Awards begins from the Completion of Pleadings, not from the Submission of the Statement of Defense* - The Delhi High Court has determined that the Arbitral Tribunal's mandate is terminated if the Tribunal fails to issue the Award within twelve months of concluding the pleadings under Section 23(4), when reading Section 29A(1) of the Arbitration and Conciliation Act, 1996, in conjunction with Section 29A (4).**

The bench determined that the twelve-month period should be computed from the conclusion of pleadings, rather than the date of submitting the Statement of Defense (SOD).

The Court ruled that the phrase "*under Sub-Section (4) of Section 23*" is included because Section 23(4) pertains to the submission of the SOD. However, this does not imply that the twelve-month period should commence from the

SOD filing date. It was determined that the provision would be substantially altered if Section 29A(1) were to be interpreted as mandating that the Award be issued within twelve months of the SOD filing date.

Section 23(4) mandates that the statement of claim and the statement of defense must be finalized within six months of the arbitrator receiving notification of his appointment, unless the parties reach an agreement to the contrary.

The provisions pertaining to the Judgement are as follows; Section 29A (1) provides that the Arbitral Tribunal is obligated to render its Award within twelve months of the completion of the pleadings. Section 29A (4) provides that the Tribunal's mandate will expire unless the Court extends it, if the Award is not rendered within the twelve-month period specified in Section 20A (1).

The High Court observed that DIAC's statements in the case, in their appearance in front of the Arbitral Tribunal, could not be the primary determinant of whether the Arbitral mandate had been terminated. Rather, it necessitated the application of the pertinent statutory provisions to the facts of the case. Section 23(4) and Section 29A (1) of the Arbitration Act were the primary provisions that were being examined. The termination of the Arbitral mandate is not explicitly addressed in Section 23(4), which

pertains to the conclusion of the statement of claim and defense within six months of the arbitrator receiving notice of their appointment. The interplay between the termination of the mandate and Section 23(4) is elucidated in Section 29A (1), which mandates that the Arbitral Tribunal determine the Award within twelve months of the conclusion of pleadings, as defined in Section 23(4).

The HC examined the language of Section 29A (1) and Section 29A (4), which collectively stipulate that the Arbitral Tribunal's mandate will terminate unless the Court extends it if the Award is not rendered within the designated twelve-month period following the completion of pleadings. This interpretation implies that the twelve-month period should be determined from the conclusion of pleadings, rather than the date of the statement of defense's filing. The High Court determined that the phrase "under Sub-Section (4) of Section 23" pertains to the conclusion of the pleadings in their entirety, rather than the specific date of the statement of defense's filing.

In addition, the High Court reviewed whether a rejoinder should be included in the definition of "pleadings" for the purposes of Section 29A (1). The inclusion of rejoinders and replications in pleadings has been confirmed by previous judgments, such as the Division Bench of the

Andhra Pradesh High Court in *Nicholas Piramal India Ltd. v. Cultor Food Science Inc.*, 2002 SCC OnLine AP 964 and the judgment of *Anant Construction (P) Ltd. v. Ram Niwas*, 1994 SCC OnLine Del 615. The Court added that the Karnataka High Court's decision in *Buoyant Technology Constellations Pvt. Ltd. v. Manyata Infrastructure Developer Pvt. Ltd.* WP No. 8654 of 2024, order dated 5-4-2024 (Kar) has further solidified this perspective.

The Respondent's argument that the petitioner should have filed the rejoinder despite the pendency of CIRP proceedings was then addressed by the High Court. The High Court rejected this argument, as the Respondent had independently requested the adjournment of proceedings sine die. The High Court observed that the Petitioner could not have been anticipated to complete the rejoinder during the adjournment period, particularly in light of the uncertainties surrounding CIRP.

Consequently, the High Court ruled that the Arbitral process should not be interrupted without justification and that it is advisable to refrain from pursuing a course of action that results in unresolved disputes. It was held that the Arbitrator demonstrated a willingness to continue with the proceedings, and the High Court subsequently extended the mandate by

**one year to guarantee that the arbitration could be resolved.**

**Rohan Builders (India) (P) Ltd. v. Berger Paints India Ltd., 2024 SCC OnLine SC 2494 – *The Supreme Court holds that an Application to pass an Arbitral Award under Section 29A (4) will be maintainable even post the lapse of the prescribed Limitation Period* – Even after the twelve-month or extended six-month period has expired, the Apex Court has determined that an application for an extension of the time for the passing of an Arbitral Award may be submitted. It noted that an application for an extension of the time period for passing an Arbitral Award under Section 29A (4) read with Section 29A (5) is maintainable even after the expiration of the twelve-month or extended six-month period, as the case may be.**

The Supreme Court's decision served as a clarification on the highly contested issue in the arbitration domain that litigants frequently encounter. Since the addition of Section 29A with the 2019 amendment, the issue of "whether an application for an extension of a time period for passing an Arbitral Award is maintainable under Section 29A (4) read with Section 29A (5) even after the expiration of the mandated period" had remained ambiguous, without any decisive rulings on the matter by the Supreme Court. The position before the judgement was that Arbitral

Awards must be rendered within twelve months of the conclusion of pleadings, as stipulated in Section 29A. With the parties' agreement, this extension may be extended by an additional six months. Therefore, the maximum duration is 18 months. Section 29A (4) stipulates that the Arbitral mandate will be terminated unless it is extended by a Court order if the Award is not granted within this timeframe.

Nevertheless, High Courts held a variety of opinions on the aforementioned matter, necessitating a clarification from the Supreme Court. It was argued in the case that the Courts were unable to extend the time period if the application for an extension of the time period was not submitted within the prescribed period under Section 29A (4) of the Act, as the Arbitral Tribunal's mandate was considered to have been terminated. The Patna and Calcutta High Courts, in previous judgements, expressly refused to entertain applications for maintaining applications post the expiry of the period of limitation, while the Courts of Delhi, Bombay, and a few others had been more accepting of such applications, instead judging the cases on their merits.

**Section 29A of the Arbitration and Conciliation Act, 1996, introduced in 2015, imposes a time limit of 12 months for completing arbitral proceedings, with the possibility of a six-month**

extension if both parties consent. While intended to expedite arbitration, it created several ambiguities in its application. The strict timeline often proved impractical, particularly in complex, high-value disputes requiring extensive evidence and deliberation. Arbitrators and parties faced difficulties in adhering to the rigid deadlines, frequently needing to approach the courts for further extensions beyond the initial 18 months. This contradicted the intended minimal judicial intervention in arbitration.

Another challenge arose from the provision that an arbitrator's mandate automatically terminates if the time limit is exceeded without an extension. This automatic termination led to uncertainties, especially when delays were caused by one party or procedural complications beyond the arbitrator's control, disrupting the arbitration process. To mitigate these challenges, the 2019 amendment offered more flexibility by stating that the 12-month period would start after the completion of pleadings, and international arbitrations were given more leeway. Despite these reforms, Section 29A still poses challenges in ensuring a balance between expediency and the need for a thorough, fair arbitration process.

The Court rejected this argument and instead applied a purposive interpretation to the term

"terminate" as defined in Section 29A (4), rather than a strict interpretation, stating that "The Arbitral Tribunal is rendered functus officio by the term "terminate" in Section 29A (4), but this is not an absolute. The true meaning of the term "terminate" must be interpreted in the context of the provision's syntax. It is important to observe that the term "terminate" is not followed by a complete stop. The term "terminate" is followed by the word "unless," which qualifies the initial portion of the Section with the subsequent limb, namely "unless the Court has, either prior to or after the expiry of the period so specified, extended the period." The Court noted that the phrase "prior to or after the expiry of the period so specified" must be interpreted in connection with the Court's authority to grant a time extension.

The Court determined that the termination of the Arbitral mandate is contingent upon the non-filing of an extension application and cannot be considered a *stricto sensu* termination. *"The contextual form of the word "terminate" does not indicate that the proceedings have reached a legal and definitive conclusion, and it is not possible to continue even after an application for further time has been submitted."* Consequently, the Court stated that termination under Section 29A (4) is not absolute or inflexible.



In essence, the Court refrained from assigning a narrow and restrictive interpretation to Section 29A (4), as "a rigid interpretation would equate to legislating and prescribing a limitation period for filing an application under Section 29A, when the Section does not conspicuously state." The Court posited that "we must endeavor to imbue an enactment or rule with tangible life and prevent cadaveric repercussions that lead to unworkable or impracticable scenarios."

It further held that *"The provision that necessitates interpretation is Section 29A (4)."* It specifies that the Arbitral Tribunal's mandate will expire if the Award is not rendered within the designated twelve or eighteen months. However, this provision is not applicable if the Court has extended the period, whether before or after the initial or extended term has expired. In other words, Section 29A (4) allows the Court to extend the deadline for the Arbitral Award beyond the standard twelve or eighteen-month period. The phrase "either before or after the expiration of the period so specified" is unambiguous. In the event that an application is submitted after the expiration of the period under Sub-Section (1) or the extended period in provisions of Sub-Section (3), the Court has the authority to extend the time. This is evident from the language. The Court ruled that the Court has the authority to extend the period for making an Award at any

point, whether before or after the mandated period.

**OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions India (P) Ltd., 2024 SCC OnLine SC 2600 – The Supreme Court clarifies that mere violation of the law alone will not render an Arbitral Award invalid. In order to render an Award invalid, it must be against the Public Policy of India – The Supreme Court** clarified the extent of judicial interference in Arbitral Awards under Section 34 of the Arbitration and Conciliation Act, which is based on the violation of public policy. It emphasized that the scope of this interference is extremely restricted, particularly in light of the 2015 Amendment. The bench noted that a plain violation of the law is insufficient to interfere with an Award; rather, it must be in conflict with the most fundamental aspects of public policy, which are justice and fairness.

The primary issue was whether the Respondent breached the contract by delaying the delivery of the cooling systems and whether the Petitioner provided sufficient evidence to substantiate its claims of financial loss. the Petitioner argued that the delays were severe enough to impact the operation of its power plant, leading to considerable losses. the Respondent, on the other hand, contended that the delays were either justified or minimal and that the Petitioner had



not adequately demonstrated a direct causal link between the delays and the financial harm it claimed to have suffered.

The contractual terms around the delivery and installation timelines, as well as performance obligations, became central to the dispute. Both parties relied on different interpretations of these terms, and the core issue revolved around whether the Respondent's conduct amounted to a fundamental breach. Additionally, the Petitioner raised questions about the financial losses incurred due to operational setbacks, asserting that the Respondent's delayed performance had a cascading effect on the company's revenue.

The Supreme Court, while examining the evidence and contractual obligations, concluded that although there were delays in the Respondent's performance, they were not substantial enough to constitute a breach of the contract. The Court determined that the Respondent had, to a large extent, complied with the terms of the contract. The delays, the Court noted, were either excusable or did not fundamentally alter the nature of the Respondent's obligations under the contract.

The Court emphasized the need for a detailed and accurate presentation of evidence, particularly in complex commercial disputes. It found that the Petitioner failed to present concrete evidence

directly linking the Respondent's delays to the claimed financial losses. The Court reiterated that damages claim in breach of contract cases require a clear causal relationship between the breach and the alleged losses. Since the Petitioner could not demonstrate this link with sufficient clarity, the damages it sought were not Awarded.

In addressing the arbitration aspects of the case, the Court applied the principles of the Arbitration and Conciliation Act, 1996, particularly concerning the setting aside of Arbitral Awards. The Petitioner had earlier challenged the Arbitral Award, arguing that it was contrary to the public policy of India, a ground under Section 34 of the Act. The Court, however, held that the Arbitral Tribunal's decision did not violate public policy.

The judgment underscored that public policy, as defined under Indian law, includes considerations such as fundamental principles of law, justice, and morality. The Court clarified that **disagreements over factual findings by the Arbitral Tribunal do not automatically qualify as violations of public policy unless there is clear perversity, illegality, or a breach of the fundamental principles of Indian Law.**

The term "public policy of India" under Section 34 of the Arbitration and Conciliation Act, 1996, serves as a basis for challenging arbitral awards that conflict with fundamental legal

principles. While not explicitly defined, it has been interpreted by courts to cover three main aspects: the fundamental policy of Indian law (basic legal principles like fairness and due process), the interests of India (including national security and economic interests), and morality and justice (to prevent awards tainted by fraud or corruption). The Supreme Court in past judgements expanded the scope of public policy to include "patent illegality." However, the 2015 amendments to the Act limited the use of public policy to minimize unnecessary judicial interference, particularly in international arbitration. This ensures that only awards fundamentally at odds with Indian legal principles can be set aside.

The Court upheld the findings that the Tribunal had ruled upon post the conclusion of the Arbitration Proceedings, ruling that there was no patent illegality or procedural infirmity in the Arbitral process.

**It reinforced the notion that Courts should adopt a hands-off approach in Arbitral Awards unless there are exceptional circumstances like procedural impropriety or fundamental errors in the application of law.**

Importantly, the Court observed that the Respondent had not acted in bad faith and had substantially met its contractual obligations. Thus, the Court dismissed the Petitioner's appeal,

reaffirming the Arbitral Award as valid and binding.

***Gita Refractories Pvt Ltd Vs Tuaman Engineering Limited AP-COM/707/2024 – The Calcutta High Court holds that the MSME Act does not bar Independent Arbitration under the Arbitration and Conciliation Act, 1996, Parties may choose to pursue Arbitration if agreed upon***  
**- The Calcutta High Court bench has determined that Section 18 of the MSME Act does not establish any substantive rights or liabilities; rather, it provides an alternative approach to resolving disputes outside of Court proceedings. The bench determined that the MSME Act does not impede the claimant from pursuing arbitration independently under the Arbitration and Conciliation Act, 1996, if a party involved in a dispute chooses to do so based on an arbitration clause in the agreement between the parties.**

The petitioner sought arbitration under Section 11 of the Arbitration Act, despite being an MSME, arguing that the provisions of Section 18 of the MSMED Act—which mandates mediation and arbitration through the MSME Facilitation Council—were not mandatory for the dispute in question. The central issue was whether Section 18(1) of the MSMED Act prevents an MSME from opting for arbitration outside the MSME

framework when an arbitration agreement exists between the parties.

The Petitioner contended that the use of the term "may" in Section 18(1) allows parties the option to choose arbitration independently under the Arbitration Act. Moreover, their claim extended beyond the recovery of payment for goods supplied, which is covered under Section 17 of the MSMED Act, to include demands for the procurement of goods and compensation for the respondent's failure to honor the contract.

**The Court ruled in favor of the petitioner, emphasizing that the MSMED Act does not bar a party from pursuing arbitration under the Arbitration Act if an arbitration clause exists between the parties. The Court noted that the non-obstante clause in Section 18(1) of the MSMED Act only applies if parties opt for the Facilitation Council's jurisdiction. Since the dispute extended beyond simple payment recovery, the petitioner's broader claims necessitated arbitration under the Arbitration Act.**

Arbitration for Micro, Small, and Medium Enterprises (MSMEs) in India is primarily governed by the Micro, Small, and Medium Enterprises Development (MSME) Act, 2006, alongside the Arbitration and Conciliation Act, 1996. The MSME Act was enacted to foster the

growth and competitiveness of MSMEs, which constitute a significant part of India's economy. It aims to facilitate quicker resolution of disputes involving these enterprises through mechanisms like the MSME Facilitation Council, which can conduct conciliation and arbitration processes.

However, the relationship between the MSME Act and the Arbitration Act presents several challenges due to overlapping provisions. For instance, Section 18 of the MSME Act mandates that disputes involving MSMEs be referred to the Facilitation Council, which has the authority to either mediate or arbitrate. This often raises questions about the applicability of arbitration clauses present in contracts, particularly when one party is a non-MSME, as the MSME Act tends to prioritize the interests of small businesses.

Conflicts have arisen regarding which legal framework takes precedence in arbitration proceedings involving MSMEs, leading to differing interpretations by various High Courts. The Indian Supreme Court has attempted to clarify these issues, suggesting that the MSME Act, being a later enactment, may override certain provisions of the Arbitration Act, particularly regarding jurisdiction and the conduct of arbitration.

