

THE HIGH COURT OF SIKKIM: GANGTOK
(Civil Appellate Jurisdiction)

DIVISION BENCH: **THE HON'BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE**
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Arb. A. No. 03 of 2024

Union of India,
Represented by Chief Engineer,
Project Swastik,
C/O 99 A.P.O.,
Pin – 931717.Appellant

Versus

M/s Valecha Shivalaya – Interdril (JV),
Through the General Manager,
137, Avtar Enclave,
Paschim Vihar,
New Delhi – 110063. Respondent

Appeal under section 37(1) of the Arbitration & Conciliation Act, 1996

[against the judgment and order dated 09.02.2024 passed by the Id. Judge, Commercial Court at Gangtok in Commercial (Arbitration) Case No. 05 of 2023 in the matter of M/s Valecha Shivalaya-Interdril (JV) vs. Union of India]

Appearance:

Ms Sangita Pradhan, Deputy Solicitor General of India assisted by Ms Natasha Pradhan and Ms Sittal Balmiki, Advocates for the Appellant.

Mr. Sidhant Dwibedi and Mr. Hem Lall Manger, Advocates for the Respondent.

J U D G M E N T
(8th May, 2025)

Bhaskar Raj Pradhan, J.

The learned Commercial Court at Gangtok, has set aside the arbitral award dated 23.02.2023 on the ground that the sole Arbitrator had become *functus officio* after the

period provided under section 29(A)(4) of *the Arbitration and Conciliation Act, 1996 (for short, the Arbitration Act)* [as amended by *the Arbitration and Conciliation (Amendment) Act, 2015 (for short, the 2015 Amendment)*] was over and the arbitral award passed on 23.2.2023 was consequently *non-est* in law and unenforceable. The learned Commercial Court relied upon the judgment of the High Court of Telangana at Hyderabad in the matter of **Roop Singh Bhatti vs. Shriram City Union Finance Limited**¹, in support of its opinion.

2. The Union of India is aggrieved by the impugned judgment and order dated 09.02.2024 passed by the learned Commercial Court at Gangtok. It is submitted that since the arbitration proceeding was pending as on 30.8.2019 when *the Arbitration and Conciliation (Amendment) Act, 2019 (for short, the 2019 Amendment)* came into force, section 29-A as amended by *the 2019 Amendment*, would be applicable.

3. As per the petition, on 15.12.2009, the appellant and the respondent entered into an agreement for formation and surfacing work on Gangtok - Nathula road, Sikkim. On 12.12.2013, the agreement was terminated by the appellant

¹ 2022 SCC OnLine TS 1049

as the work could not be completed within the period of extension. The respondent invoked the arbitration clause and approached the appellant for appointment of an arbitrator. On 21.03.2019, the sole Arbitrator was appointed. On 18.04.2019, communication with regard to the appointment of the arbitrator was made to the parties. On 27.01.2022, pleadings in the arbitration proceeding was completed.

4. On 07.02.2023, according to the appellant, the respondent gave consent for extension of time to complete the arbitration proceedings till 30.03.2023. The respondent contests this and submits that the consent was conditional with a caveat.

5. On 23.02.2023, the arbitral award was passed in favour of the appellant and against the respondent. On 14.07.2023, the respondent filed a petition under section 34 of *the Arbitration Act* before the learned Commercial Court at Gangtok, challenging the arbitral award. On 09.02.2024, the impugned judgment and order was passed by which the arbitral award was set aside.

6. Elaborate and extensive arguments were made by the learned Deputy Solicitor General of India and the learned Counsel for the respondent. Essentially, these arguments are all on whether section 29-A(1) as amended by *the 2015 Amendment* or *the 2019 Amendment* would be applicable to the facts of the case. While the Deputy Solicitor General of India relied upon the judgment of the Hon'ble Supreme Court in ***Tata Sons Pvt. Ltd. vs. Siva Industries and Holdings Ltd.***², the learned Counsel for the respondent distinguished the judgment as it related to international commercial arbitration and relied upon judgments passed by the Delhi High Court in ***National Skill Development Corporation vs. Best First Step Education Private Limited & Others***³; Bombay High Court in ***Mahaveer Realities & Ors. vs. Shirish J. Shah***⁴; and High Court of State of Telangana in ***Roop Singh Bhattu*** (supra). The judgment of the High Court of Telangana was also the judgment referred to by the learned Commercial Court in the impugned judgment.

7. We will first examine whether the respondent had given consent for extension of time to complete the

² 2023 INSC 13

³ 2024:DHC:1676

⁴ 2023:BHC-AS:21586

arbitration proceeding till 30.03.2023 as pleaded by the appellant.

8. The communication dated 07.02.2023 has been placed on record. The respondent does not dispute that they had made this communication. They, however, contest that the consent was with a caveat, i.e., as they had already given extension for six months by letter dated 27.04.2020 they did not have statutory right for further extension.

9. On a perusal of the communication dated 07.02.2023, we find that even after the caveat the respondent had very clearly expressed *“However only because Hon’ble Tribunal order dated 27.01.2023, we are extending the period of reference mentioned above, in anticipation of the fact that the Hon’ble Tribunal shall pass order as per the provision of the law for passing the Award.”*

10. Section 29-A(3) provides that the parties may, by consent, extend the period specified in sub-section (1) for making an award for a further period not exceeding six months. If we take 27.01.2022 as the date of completion of pleadings, the communication dated 07.02.2023 would

obviously be a consent as per section 29-A(3). In such view of the matter, the caveat loses its relevance since the parties have been given the power for extension of time for a period not exceeding six months. Therefore, the time of twelve months as provided in section 29-A(1) for the sole Arbitrator to pass the award would be till on or around 26.01.2023. The consent vide letter dated 07.02.2023 would give the sole Arbitrator a further period of six months till on or around 26.07.2023. Therefore, the award dated 23.02.2023 would be within time envisaged in section 29-A(1) and (3).

11. As contended by the learned Deputy Solicitor General of India, we also find that during the pendency of the arbitral proceeding, COVID-19 pandemic had set in and the Hon'ble Supreme Court in *Suo Moto Writ Petition (C) No. 3/2020* in *Re: Cognizance for extension of limitation*, had directed that the period between 15.03.2020 till 28.02.2022 shall stand excluded in computing the period prescribed under section 23(4) and section 29-A of *the Arbitration Act*. This would have been a relevant fact to be considered by the learned Commercial Court while examining whether the arbitral award was passed within the time frame envisaged

in section 29-A(1). However, the learned Commercial Court did not examine it.

12. The learned Counsel for the respondent heavily relied upon judgments passed by the Delhi High Court in ***National Skill Development Corporation*** (supra), Bombay High Court in ***Mahaveer Realities*** (supra); and High Court of State of Telangana in ***Roop Singh Bhattu*** (supra).

13. The judgment of the Delhi High Court rendered in ***National Skill Development Corporation*** (supra) and the Bombay High Court in ***Mahaveer Realities*** (supra) while examining a petition under section 29-A of *the Arbitration Act* for extension of the mandate of the arbitral tribunal constituted to adjudicate disputes between the parties are not relevant to the facts of the present case.

14. In ***Roop Singh Bhattu*** (supra), the High Court of Telangana at Hyderabad, while deciding a revision against the over ruling of the objection raised by the petitioners therein and declaring the decree holder entitled to recovery of the amount allowing the execution petition, examined section 29-A as amended by *the 2015 Amendment*. It noted

that section 29-A was thereafter substituted by way of *the 2019 Amendment* dated 9.8.2019. It was, thus, held:

“We see no merit in the contention of the learned senior counsel that the effect of substitution of Section 29-A of the Act, 1996, operates retrospectively and, therefore, award made is legal. As held consistently, merely because word substitution is used, the amended provision does not relate back to the date of original provision that was amended. It depends on the language employed, effect of the amendment and the intendment of the legislature. This issue need not detain further having regard to the intendment of the Parliament. Section 29-A was amendment vide Section 6 of the Amendment Act dated 9.8.2019.”

15. The Hon’ble Supreme Court in **Tata Sons** (supra) also noted three judgments of the Delhi High Court and one of the High Court of Judicature for Orissa on the aspect of whether section 29-A(1) of *the Arbitration Act* was procedural in nature. These decisions were:-

- (i) **Shapoorji Pallonji & Co. (P) Ltd. vs. Jindal India Thermal Power Ltd.**⁵
- (ii) **ONGC Petro Additions Ltd. vs. Ferns Construction Co. Inc.**⁶
- (iii) **SARA International (P) Ltd. vs. South Eastern Railways**⁷

16. The Hon’ble Supreme Court held:

“36. *In Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611], the Delhi High Court had held that amended Section 29-*

⁵ 2020 SCC OnLine Del 2611

⁶ 2020:DHC:2320

⁷ 2020 SCC OnLine Ori 973

A(1) of the Arbitration and Conciliation Act, being procedural law, would apply to the pending arbitrations as on the date of the amendment. However, a coordinate Bench in MBL Infrastructures Ltd. v. Rites Ltd. [MBL Infrastructures Ltd. v. Rites Ltd., 2020 SCC OnLine Del 2612] held that the amended Section 29-A would be prospective in nature, without referring to the earlier order in Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611] . Finally, the Delhi High Court in ONGC Petro Additions [ONGC Petro Additions Ltd. v. Ferns Construction Co. Inc., 2020 SCC OnLine Del 2582] settled the controversy and reiterated the position of law as laid down in Shapoorji Pallonji [Shapoorji Pallonji & Co. (P) Ltd. v. Jindal India Thermal Power Ltd., 2020 SCC OnLine Del 2611] . The Court, inter alia, stated that Section 29-A(1) shall be applicable to all pending arbitrations seated in India as on 30-8-2019 and commenced after 23-10-2015, and there is no strict timeline prescribed to the proceedings which are in nature of international commercial arbitration as defined under the Act, seated in India.”

17. In **SARA International** (supra), on a similar issue raised before the High Court of Orissa at Cuttack, it was held that for domestic arbitration the clock for timeline of twelve months envisaged in *the 2019 Amendment* of section 29-A(1) for passing of the award would now start ticking from the date of completion of pleadings as per section 23(4) of *the Arbitration Act*.

18. Identical issue was raised in **Union of India vs. M.K. Infrastructures (P) Ltd.** in **Arb. A. No. 04 of 2024**, wherein it has been held, *inter alia*, that:

- i) The learned Commercial Court had failed to consider the limited jurisdiction it had while examining the challenge to the arbitral award under section 34 of *the Arbitration Act*.
- ii) The ambit and scope of section 34 of *the Arbitration Act* is limited to the extent provided in sub-sections (2) and (3), thereof. An appeal under section 34 is not a regular appeal.
- iii) In the facts of the present case, the learned Commercial Court exceeded its jurisdiction under section 34 of *the Arbitration Act*.
- iv) Section 29-A(1) of *the Arbitration Act* is a procedure to be followed by the arbitral tribunal and does not confer any right or impose any obligation on the parties. It is also remedial in nature.
- v) Section 29-A(1) does not lay down any sacrosanct timeline as sub-section (3) permits further extension of six months by consent of parties. Even thereafter, sub-section (4) gives the power to the Court to extend the period further by six months.
- vi) Section 29-A(1) as amended by *the 2019 Amendment* and not *the 2015 Amendment* would govern the procedure to be followed by the arbitrator as

the arbitration was pending when *the 2019 Amendment* was brought into force on 30.08.2019.

19. We find that as on 30.08.2019, the arbitration proceeding in the present case was also pending. Thus, ***Union of India vs. M.K. Infrastructures (P) Ltd.*** (supra), would also cover the present case.

20. As the issue raised in the present case has been examined by us in ***M.K. Infrastructure (P) Ltd.*** (supra), we would rather agree with the opinion of the Delhi High Court in ***Shapoorji Pallonji*** (supra) and ***ONGC Petro Additions Ltd.*** (supra) which examined the amended sections 23(4) and 29-A(1) as amended by *the 2019 Amendment* and concluded that *the Arbitration Act*, being procedural law, would apply to pending arbitrations as on the date of amendment. These opinions were also approved by the Hon'ble Supreme Court in ***Tata Sons*** (supra). We are also in agreement with the view rendered by the High Court of Orissa in ***SARA International*** (supra).

21. Therefore, it is held that:

- (i) The learned Commercial Court travelled beyond the four corners of sub-sections (2) and (3) of section 34 of *the Arbitration Act* by setting aside the arbitral award rendered by the sole Arbitrator on the ground that he had become *functus officio* beyond the time frame provided in section 29-A(1) of *the Arbitration Act* as amended by *the 2015 Amendment*.
- (ii) The opinion of the learned Commercial Court that section 29-A(1) as amended by *the 2015 Amendment* would be the governing procedure is incorrect and it is held that since *the 2019 Amendment* which was brought into force on 30.08.2019, when the arbitration proceeding was pending, would govern the procedure and as such, the arbitral award was within the twelve months timeframe provided in section 29-A(1).
- (iii) Section 29-A, as amended by *the 2019 Amendment*, is both procedural and remedial in nature.
- (iv) The learned Commercial Court failed to consider that during the period of arbitration, COVID-19 pandemic had hit the nation and the Hon'ble Supreme Court had directed that the period between 15.03.2020 till 28.02.2022 shall also stand excluded

in computing the period prescribed under section 23(4) and section 29-A of *the Arbitration Act*.

22. In such circumstances, the impugned judgment and opinion of the learned Commercial Court dated 09.02.2024, is set aside. The parties shall bear their respective costs.

23. Arbitration appeal is allowed and stands disposed of, accordingly.

(Bhaskar Raj Pradhan)
Judge

(Biswanath Somadder)
Chief Justice

Approved for reporting : Yes
Internet : Yes

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