

# "Part II - Navigating Section 29A: Supreme Court Clarifies Timing for Extension Applications, Yet Post-Award Uncertainty Remains"

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Section 29A of the Arbitration and Conciliation Act, 1996 (“**A&C Act**”) has long been a focal point of debate within India’s arbitration community, raising several interpretational challenges, particularly regarding the time period for filing an application to extend the arbitral tribunal’s mandate. In Part I of the article, we had covered the jurisdictional issue concerning applications under Section 29A of the A&C Act. Part I can be accessed [here](#).

This part covers two other pivotal issues that have emerged from this provision:

1. **Timing of filing an Extension Application:** *Whether an application to extend an arbitral tribunal’s mandate can be filed after the expiry of the initial 12 months or extended period of 18 months; and*
2. **Post-Award Applications:** *Whether an extension application can be filed after the arbitral award has already been pronounced.*

## 1. TIMING OF APPLICATION: PRE-EXPIRY VS. POST-EXPIRY OF THE PRESCRIBED PERIOD

### 1.1. Conflicting decisions by the High Courts

In *Wadia Techno-Engineering Services v. Director General of Married Accommodation Project*,<sup>1</sup> the High Court of Delhi held that an application under Section 29A (4) of the A&C Act can be filed even after the expiration of the statutory time limit. The Court emphasized that the mandate of the arbitral tribunal remains valid until the application for extension is resolved.

Similarly, in *Reliance Infrastructure Limited v. MVVNL*,<sup>2</sup> a coordinate bench of the High Court of Delhi reaffirmed that the arbitrator tribunal’s mandate can be extended after the period for rendering the award has lapsed, and this interpretation has been consistently upheld.<sup>3</sup>

The High Court of Bombay in *Nikhil H. Malkan v. Standard Chartered Investment and Loan*,<sup>4</sup> ruled that restricting applications for extension to those filed before the mandate’s expiry would undermine the provision’s purpose. It clarified that delays can be addressed by the Court, and failure to show sufficient cause may result in refusal of an extension, thus maintaining efficiency.

Similarly, the High Court of Kerala in *Hiran Valiyakkil Lal v. Vineeth M.V.*<sup>5</sup> held that an application for extension can be filed both during the prescribed time or after the mandate’s expiry.

However, the High Court of Calcutta in *Rohan Builders v. Berger Paints*<sup>6</sup> held that an application must be filed before the expiry of the prescribed period of 12 months or the extended time period of 18 months, as the mandate cannot be revived once it terminates. The Court stated that Section 29A (4) of the A&C Act allows for the extension of an existing mandate, and not for the revival of an expired mandate.

Similarly, the High Court of Patna in *SBPDCL v. Bhagalpur Electricity Distribution Company*,<sup>7</sup> ruled that the application must be made within the specified time, as the section only allows for the extension of an existing mandate, not its renewal.

## **1.2. Supreme Court's Dicta**

The judgment of the High Court of Calcutta in *Rohan Builders (supra)* was challenged before the Supreme Court. The Supreme Court has held that the expression “*either prior to or after the expiry of the period so specified*” under Section 29A (4) of the A&C Act is clear and unambiguous, allowing an application seeking extension of the arbitral tribunal's mandate to be filed even after the expiry of the 12 months' period plus a 6 months' extension, if any granted by consent.<sup>8</sup>

Further, the Apex Court held that Section 29A of the A&C Act imposes a time limit for the delivery of the arbitral award but does not specify a limitation period for filing an extension application. Consequently, the Supreme Court found no basis to read such a limitation into the statute, as doing so would lead to unnecessary procedural hurdles. It reasoned that prescribing a limitation period, unless clearly stated should not be accepted, as bar by limitation has penal and fatal consequences.

The Supreme Court also emphasized that a court should grant an extension based on ‘sufficient cause’ rather than granting the extension on the mere asking. It reasoned that Section 29A of the A&C Act has built-in mechanisms to deter parties from causing undue delays, such as the power to substitute arbitrators under Section 29A (6) of the A&C Act and imposing exemplary costs under Section 29A (8) of the A&C Act. Lastly, the Supreme Court clarified that arbitral proceedings may continue during the pendency of an extension application, while clarifying that no award shall be passed during the pendency of the extension application. It held that even if an award is passed during the pendency of the extension application, such an application must still be adjudicated by the Court.

## **2. Ex post facto ratification: Is Application Under Section 29A maintainable post award?**

The High Court of Kerala in *RKEC Projects Ltd v. The Cochin Port Trust*<sup>9</sup> held that an application under Section 29A (4) of the A&C Act can be filed even after the award has been delivered and the Court can extend the mandate of the arbitral tribunal till the date of the award based on the application. It was further held that ex post facto ratification of an award is permissible provided a sufficient cause is shown for the delay in filing the extension application. Thereafter, the Court held that termination of the arbitration proceedings under Sections 32 and 29A of the A&C Act is not absolute and is subject to the power of the Court to consider an application for extension of the mandate.

In *IRCON International v. NHAI*<sup>10</sup> a Single Judge of the High Court of Delhi allowed a post award application and extended the mandate of the tribunal till date of the award after observing that the parties duly participated in the arbitral proceedings and that the arbitral tribunal acted with due dispatch.

In *Harkirat Singh Sodhi v. Oram Foods*<sup>11</sup> the award in question was delivered 15 days after the expiry of the prescribed time limit. The Delhi High Court allowed a post-award application under Section 29A of the A&C Act and extended the mandate of the tribunal retroactively to the date of the award. In its judgment, the Court recognized

that the delay in delivering the award was due to extraordinary circumstances, notably the deaths of two earlier arbitrators during the Covid-19 pandemic.

However, in *Powergrid Corporation of India v. SPML Infra Limited*<sup>12</sup> a coordinate bench of the Delhi High Court has held that an application under Section 29A of the A&C Act is not maintainable once the award is delivered by the tribunal. It held that the judgment of *Chandok (supra)* was delivered in specific facts of the case and does not propound a proposition of law.

Following this, another coordinate bench of the Delhi High Court in *National Skill Development Corporation v. Best First Step Education Pvt Ltd*<sup>13</sup> held that Section 29A (4) of the A&C Act would have no application once an award has been rendered.

Similarly, the High Court of Madras in *Survadev Alloys & Power v. Govindaraja Textiles*<sup>14</sup> held that an application under Section 29A (4) of the A&C Act can only be filed before the award is delivered, ruling out the possibility of filing such an application post-award. The Court emphasized that there cannot be any ex post facto ratification of an award through Section 29A of the Act.

## CONCLUSION

Supreme Court's interpretation of Section 29A of the A&C Act in *Rohan Builders* is both practical and consistent with the clear wording of the law, which allows the mandate of the arbitral tribunal to be extended even after it has expired, keeping in mind that there ought to be a 'sufficient cause'. Terminating the arbitral tribunal's mandate, especially when the arbitration might be close to completion, would in fact be counterproductive. It would only lead to further delays, and a sheer waste of money and resources. Supreme Court's approach recognizes that being too rigid with deadlines can undermine the very essence of arbitration—**quick and costeffective dispute resolution**.

That said, it is important for parties to aim to file applications for extension as soon as possible and within a reasonable time. The judgment should not be interpreted as a license for parties to submit excessively delayed applications. The Apex Court's intention is to provide flexibility in cases where minor delays occur and not to encourage indefinite postponements. The emphasis remains on the timely conduct of arbitration, and any application for extension must still be made within a reasonable timeframe. The Supreme Court has allowed filing an application to extend the arbitral tribunal's mandate beyond the expiry of the stipulated period, thus reminding us of the Latin maxim *Vigilantibus Non Dormientibus Jura Subveniunt*, "The Law supports the waking, not the sleeping".

In this context, the decision of the High Court of Delhi in *Skylark Cagers India v. Institute of Liver and Biliary Sciences*,<sup>15</sup> is significant, where an application under Section 29A (4) of the A&C Act filed 17 months after the expiry of the original mandate was dismissed, underscoring that such an inordinate delay was unacceptable. The High Court decision reinforces that while post-expiry applications are maintainable, they must be filed promptly. Courts retain the discretion to reject applications that are unreasonably delayed.

However, the question of whether an application for extension under Section 29A of the A&C Act can be filed after an arbitral award has been delivered remains unresolved in light of the conflicting views of different High Courts. In the opinion of the authors, such an application should not be maintainable after an award has been delivered. There cannot be an ex post facto ratification of an award through Section 29A of the A&C Act.

Further, Section 29A (6) of the A&C Act which contains provision for removal or substitution of an arbitrator as well as for reduction of an arbitrator's fees, would become meaningless if a post award application is entertained as logically the question of removal/substitution of an arbitrator or reduction of an arbitrator's fees does not arise once

an award has been delivered.

Therefore, it is essential that an application under Section 29A of the A&C Act must be made before the award is delivered to ensure that the arbitral tribunal remains accountable throughout the arbitration proceedings and that any delays are addressed in a timely manner.

*The content of this document does not necessarily reflect the views / position of Khaitan & Co but remain solely those of the author(s). For any further queries or follow up, please contact Khaitan & Co at [editors@khaitanco.com](mailto:editors@khaitanco.com).*

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