

India—time limits to complete arbitration proceedings (Jayesh Pandya v Subhtex)

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Arbitration analysis: The Supreme Court of India in *Jayesh Pandya v Subhtex India Limited* has allowed an appeal against a 2008 order of the Bombay High Court, essentially relegating the parties back in time to the initiation of their dispute. In doing so, the Supreme Court has set aside more than ten years of contemporaneous litigation between the parties with respect to the same issue, namely the time limit to conclude their arbitration proceedings. Payel Chatterjee & Sahil Kanuga of the International Dispute Resolution and Investigations Practice at Nishith Desai Associates consider the decision.

Jayesh Pandya and Another v Subhtex India Limited and others Civil Appeal No 6300 of 2009

[Jayesh Pandya and Another v Subhtex India Limited and others](#)

What is the background to the issue of duration in Indian arbitration proceedings?

The Indian arbitration regime has faced difficulties due to the amount of time taken from the commencement of arbitral proceedings until the award is made. Prior to the amendments to the Arbitration and Conciliation Act 1996 (ACA 1996), it was not unheard of for an arbitration to run for even over a decade.

The courts have upheld prescribed time-lines in contractual agreements and rendered decisions beyond the time-period as bad law (*Oman Refineries Limited v M/s Mantech Consultants* Appeal No 702/ 2011 in Arbitration Petition No 477 of 2006). It is settled law that an arbitrator has no power to further extend the time beyond that which is fixed in the agreement without the consent of the parties to the dispute. In the absence of an extension, the mandate of a tribunal automatically terminates after the expiry of the fixed time (*NBCC Limited v JG Engineering Private Limited* (2010) 2 SCC 385).

ACA 1996 does not specifically provide for the court to fix a time-limit for the conclusion of arbitration proceedings, but courts could do so in the exercise of its inherent power on the application of either party. To address this situation and ensure arbitration continues to be an efficacious remedy, the Arbitration and Conciliation Amendment Act 2015 (the 2015 Amendments) inserted a new provision, s 29A, which provides a time-limit for the completion of arbitral proceedings. As per the 2015 Amendments, an award has to be made within a period of twelve months from the date the arbitral tribunal is appointed and such period may be extended by a maximum period of six months by the parties. For any subsequent extension, an application to the court would need to be made. With the latest round of amendments which have recently been notified, the Arbitration & Conciliation (Amendment) Act, 2019 (the 2019 Amendment), have brought in further changes, extending the time-lines by incorporating a 12-month time frame post completion of the pleadings.

What was the background to these proceedings?

The present appeal arises from a dispute between parties with respect to time limit for rendering an award under an agreement dated 28 April 2000 (the Agreement). As per the provisions of the Agreement, the arbitrator appointed was required to make an award within a period of four months from the date of service of

copy of the Agreement. The arbitrator had the power to extend the period under the Agreement for making and publishing the award, with the consent of both parties. The sequence of events is provided below:

- Respondent No 1 filed an application for the appointment of an arbitrator under ACA 1996, s 11 before the Bombay High Court (the Bombay HC)
- The Bombay HC appointed Justice Tulzapurkar as a sole arbitrator by order dated 14 November 2003. All issues on the existence, validity and effect of the arbitration agreement were kept open to be determined by the tribunal under ACA 1996, s 16
- The above decision was challenged by way of a writ petition before the Division Bench of the Bombay HC by the Appellants. The writ petition was dismissed due to existence of adequate remedies under ACA 1996, s 16
- The Division Bench ruling was challenged before the Supreme Court, which stayed the arbitration proceedings by order dated 8 March 2004. During the pendency of the proceedings, the sole arbitrator passed away. By order dated 24 April 2007, the Supreme Court dismissed the petition and appointed a new arbitrator, Justice Variava, to decide on the existence, validity and enforceability of the Agreement
- The first preliminary meeting was held before the arbitrator on 4 May 2007. At the hearing, timelines were agreed to exchange pleadings, for discovery and inspection and statements of admission and denial. A preliminary meeting took place on 13 August 2007 where it emanated that time had been consumed in the exchange of claims, counterclaim and compilation of documents

A preliminary meeting took place on 27 August 2007 where the appellant argued that even assuming the Agreement is genuine, the time limit for making an award had passed. The appellants refused to provide consent to extension of time

The four-month period for passing an award expired on 4 September 2007

The tribunal on hearing the parties held that such objection should have been raised at an earlier stage and directed the respondent No 1 to obtain extension of time or to approach court for a clarification

- No application was filed by the respondents and the jurisdiction of the tribunal expired on 4 September 2007. The arbitral tribunal scheduled the next meeting on 26 October 2007
- The appellants filed an application stating that the tribunal had become functus officio with no power to proceed as the four-month period had expired. The application was rejected by the arbitrator by order dated 31 December 2007
- The appellants challenged the order before the Bombay HC under ACA 1996, s 14 of seeking a declaration that the arbitrator had become de jure unable to perform his functions and mandate to act as arbitrator had terminated. The Bombay HC dismissed the application and held that appellant had waived their rights by participating in the proceedings and such an objection at this stage would frustrate the very purpose. This led to the current petition before the Supreme Court

What were the parties' submissions before the Supreme Court?

The respondents contended that the appellants, by their continued participation in the arbitration proceedings, had, by implied consent, waived their right to object. The respondents, relying on the Bombay HC decision, reiterated that if such objections were considered by the arbitrator, it would defeat the object of having an arbitration agreement. The Bombay HC had rightly held that no interference was required from courts.

The appellants submitted that they categorically refused to consent to an extension of time and despite objection and filing an application, the Arbitrator rejected it arbitrarily. The appellants relying on *NBCC Limited v JG Engineering Private Limited* argued that Bombay HC had failed to analyse the provisions of the Agreement and passed an unsustainable order.

What did the Supreme Court decide?

The Supreme Court interpreting the provisions of ACA 1996, ss 14 and 15 of held that mandate of an arbitrator terminated if they fail to act without undue delay. The facts established that during arbitral proceedings, the appellants had objected to the extension of time, thus in the absence of any consent, the mandate of the tribunal stood terminated automatically. The Supreme Court was of the view that the time limit prescribed under the Agreement was well within the scope of ACA 1996 and the arbitrator became functus officio after the four-month period. The Supreme Court allowed the appeal, setting aside the Bombay HC decision.

While interpreting the object and purpose of ACA 1996, the Supreme Court agreed that ACA 1996 was enacted for speedy resolution of disputes—but the terms and conditions agreed between the parties contractually cannot be ignored. Failure to pay heed to the contractual provisions would frustrate the very intent of ACA 1996 ie to resolve disputes as per terms decided by the parties. The arbitration proceedings need to be conducted as per the terms and conditions agreed between the parties under the Agreement.

What are the practical implications?

In the given fact pattern, while the Supreme Court has expressly given parties the liberty to ventilate their grievance as admissible under law, it would be interesting to see what practical options are left for the parties at this belated stage.

An aspect that possibly requires some consideration and which will come up in due course will be how courts would interpret ACA 1996 in a situation where a contract provides a time limit less than the statutory period prescribed under the 2019 Amendment.

Be that as it may, at the time of entering into contracts, when parties are contemplating the idea of putting in a time limit within which arbitration proceedings are to be concluded, parties would be well advised to keep in mind that (i) extremely aggressive timelines may actually be counterproductive, especially in situations where one is dealing with a recalcitrant respondent—and (ii) the law now provides for a time limit within which proceedings are required to be concluded.

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