



## *The Madras High Court clarifies that an award passed after the mandate of the arbitrator has expired cannot be subsequently ratified by the Court<sup>1</sup>*

### **Brief Facts**

Suryadev Alloys & Power Pvt. Ltd. (“**Suryadev**”) and Shri Govindaraja Textiles Pvt. Ltd. (“**Govindaraja**”) entered into a power purchase agreement. Disputes arose between the parties when Govindaraja failed to clear certain invoices of Suryadev, resulting in Suryadev invoking the bank guarantees held by it. However, even after invoking the bank guarantees, there was a balance amount due, which led to Suryadev invoking arbitration. Govindaraja contended that Suryadev had not allotted power as per the contracted demand of energy and by September 2015, it had completely stopped the power supply. Govindaraja filed a counter claim for the losses incurred in purchasing power from TANGEDCO. The arbitrator entered reference on 20 March 2017.

During the arbitration proceedings, the time period for making an award was about to expire. Suryadev therefore filed an application under Section 29A of the Arbitration and Conciliation Act, 1996 (“**Act**”) seeking an extension of time (“**Application**”). By its order dated 4 September 2018, the Application was allowed and the time period for making the award was extended by six months from the date of receipt of the order. Thereafter, the parties concluded their arguments on 9 February 2019 and the award was reserved.

The arbitrator passed the award dated 13 September 2019 (“**Award**”) rejecting the counterclaim of Govindaraja and allowing Suryadev’s claim, but awarded interest only

from the date of the Award. Therefore, both parties challenged the Award.

### **Issue**

Whether an award passed after the termination of the mandate of the arbitrator is valid?

### **Judgment**

Govindaraja contended that the Award is not valid as it was passed after the mandate of the arbitrator expired. It was contended that the Award was passed on 13 September 2019, which was much beyond the time extension granted by the Court. Suryadev, on the other hand, contended that the court, in a Section 34 petition, had the power to extend the time till the date of passing of the award. It relied on a previous judgment of a Single Judge of the Delhi High Court, where the Court had extended the time after the award was passed by exercising its powers under Section 29A(4) of the Act. It was further contended that the foundation of the powers under Section 29A can be found in Section 28 of the Arbitration and Conciliation Act, 1940 (“**1940 Act**”), whereby courts were given wide powers to enlarge the time for making the award even after the expiry of the time for making the award or even after the award had been made.

The Court undertook a detailed examination of Section 28 of the 1940 Act and Section 29A of the Act to come to the conclusion that Section 29A had greatly curtailed the powers of the court and that even though court has the power to extend the time for making the

### **In this Issue**

#### **Brief Facts**

#### **Issue**

#### **Judgment**

#### **Analysis**





award, it cannot ratify an award ex post facto by extending the time period in a challenge petition. Section 29A(4) clearly states that if the award is not made within the stipulated time period or the extended time period, the mandate of the arbitrator stands terminated.

The Court relied on the judgment of the Supreme Court in **NBCC Ltd v. J.G. Engineering Pvt. Ltd.**<sup>2</sup> wherein the arbitrator's mandate was terminated upon the expiry of the time period that was extended with the consent of the parties. In the instant case, the Court passed an order on 4 September 2018, extending the time by six months from the date of receipt of the order. After receiving this order, sittings were held and the Award was reserved on 9 February 2019. However, the Award was pronounced only on 13 September 2019, much after the expiry of the six-month extension granted by the Court. Once the extension granted by the Court

expired, the arbitrator became *functus officio* as his mandate had terminated. The Court disagreed with the decision of the Delhi High Court relied upon by Suryadev on the ground that Section 29A of the Act does not grant the same power as Section 28 of the 1940 Act. Since the Award was made after the termination of the mandate of the arbitrator, it was set aside and the Section 34 petition filed by Govindaraja was allowed, whereas the one filed by Suryadev was rejected.

## Analysis

By this decision, the Court has highlighted that timelines under the Act are strict and must be adhered to. The judgment sends out a strong signal to both litigants and arbitrators that non-compliance with timelines under the Act can have serious consequences.

## In this Issue

Brief Facts

Issue

Judgment

Analysis

1 Authored by Ila Kapoor, Partner, Ananya Agarwal, Senior Associate and Mitali Daryani, Associate; *Suryadev Alloys and Power Pvt. Ltd. v. Shri Govindaraja Textiles Pvt. Ltd.*, O.P. Nos. 955/2019 and 15/2020, Madras High Court, judgment dated 8 May 2020.

Coram: PT. Asha, J.

2 (2010) 2 SCC 385.

## PRACTICE AREA EXPERTS

### Pallavi Shroff

Managing Partner and  
National Practice Head Dispute Resolution  
+91 98100 99911  
E: pallavi.shroff@AMSShardul.com

### Rishab Gupta

Partner  
+91 98217 80313  
E: rishab.gupta@AMSShardul.com

### Binsy Susan

Partner  
+91 96500 80397  
E: binsy.susan@AMSShardul.com

### Smarika Singh

Partner  
+91 97170 98075  
E: smarika.singh@AMSShardul.com

### Tejas Karia

Partner and Head, Arbitration Practice sub-group  
+91 98107 98570  
E: tejas.karia@AMSShardul.com

### Siddhartha Datta

Partner  
+91 90070 68488  
E: siddhartha.datta@AMSShardul.com

### Nitesh Jain

Partner  
+91 96507 00833  
E: nitesh.jain@AMSShardul.com

### Anirudh Das

Partner  
+91 98100 98329  
E: anirudh.das@AMSShardul.com

### Ila Kapoor

Partner  
+91 98717 92737  
E: ila.kapoor@AMSShardul.com

### Aashish Gupta

Partner  
+91 98189 19857  
E: aashish.gupta@AMSShardul.com

## Disclaimer

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.