



## Delhi High Court interprets the meaning of ‘Court’ under Section 29A of the Arbitration Act to mean court that has the power to appoint an arbitrator under Section 11<sup>1</sup>

### Brief Facts

DDA (“**Petitioner**”) filed a petition under Section 29A (“**Petition**”) of the Arbitration and Conciliation Act, 1996 (“**Act**”) before the Delhi High Court (“**Court**”) to extend the mandate of the arbitrator. M/s Tara Chand Construction Co. (“**Respondent**”) objected to the maintainability of the said Petition on the ground of lack of pecuniary jurisdiction as the claim value was less than INR 20 million.

The Petitioner argued that it is a fit case for extension of the mandate of the arbitrator as the final arguments had nearly concluded. On the point of maintainability of the Petition, the Petitioner argued that the term ‘Court’, as used in Section 29A, would mean the High Court in the case of domestic arbitration, which also has exclusive power to appoint the arbitrator under Section 11 of the Act, and not the District Court as per Section 2(1)(e) of the Act.

### Issues

**Issue (i):** Whether the meaning of ‘Court’ under Section 29A includes the District Court?

**Issue (ii):** Whether a petition under Section 29A is maintainable in a court that does not have pecuniary jurisdiction?

**Issue (iii):** Whether the arbitrator should be substituted in the present case?

### Judgment

**Issue (i):** The Court first explained the meaning and scope of Section 29A(4). The Court stated that the said provision seeks to extend the mandate of the arbitral tribunal if the award is not made within 12 months plus 6 months, and such extension can be sought either prior to or after the expiry of the 12

month period. The Court further explained that under sub-section (6) of Section 29A, the ‘Court’ also has significant power to substitute one or more arbitrators if the need arises and after such substitution takes place, the arbitration is to continue from the stage already reached. The Court held that the present arbitration was a domestic arbitration and therefore, the High Court will have jurisdiction to entertain a petition under Section 29A of the Act. Relying on **Nilesh Ramanbhai Patel v. Bhanubhai Ramanbhai Patel**,<sup>2</sup> the Court opined that under Section 29A, the court has the power to extend the mandate of the arbitrator coupled with the power to substitute the arbitrator. Thus, the power of substitution of arbitrator is concomitant to the principal power of granting extension. Therefore, ‘Court’ under Section 29A should be read as the one which appointed the arbitral tribunal under Section 11 of the Act. In the opinion of the Court, this was a necessary interpretation to avoid complications and overreach of jurisdiction. Similarly, the Court held that in an international commercial arbitration under Section 2(1)(f) of the Act, a petition under Section 29A should be filed before the Supreme Court of India.

The Court further explained that under Section 2(1)(e) of the Act, in case of domestic arbitration, ‘Court’ means Principal Civil Court of original jurisdiction in a district and includes a High Court in exercise of its original civil jurisdiction. However, the term ‘Court’ can be interpreted differently in the context of Section 29A. The Court opined that it is inconceivable that the legislature would vest the power in the Principal Civil Judge to substitute an arbitrator who may have been appointed by a High Court or the Supreme Court. Section 2(1) itself gives the answer as it starts with the expression “in this part, unless the context otherwise requires”.

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**Issue (ii):** The Court held that since petitions under Section 11 are filed irrespective of pecuniary jurisdiction, the same reasoning will apply to petitions under Section 29A. Therefore, the Court decided the second issue too in favour of the Petitioner.

**Issue (iii):** Lastly, the Respondent argued that if the mandate of the arbitrator is extended, the arbitrator should be substituted as the present arbitrator was delaying proceedings in connivance with the Petitioner. The Court rejected the Respondent's plea on the ground that the Respondent was unable to prove dilatory tactics on part of the arbitrator. The Court held that since the arbitration had almost reached its conclusion, any substitution of arbitrator at this stage would put a financial burden on the parties.

## Analysis

This judgment has given much needed clarity on filing of petitions under Section 29A. The Court has harmoniously construed seemingly contrary provisions of the Act to hold that a court that does not have power to appoint the arbitrator, can certainly not have the power to extend the arbitrator's mandate or substitute the arbitrator. If a contrary view is taken, it would directly be in teeth of Section 11 of the Act. Therefore, the conflict can only be resolved if the term 'Court' is read as the High Court/Supreme Court exercising powers under Section 11 of the Act. Any other interpretation would be contrary to the entire scheme of the Act. The Court also considered the judgment of the Bombay High Court in an international commercial arbitration, **Cabra Instalacionies Y. Servicios S.A. v. Maharashtra State Electricity Distribution Company Ltd.**<sup>3</sup> to clarify the law in case of international commercial arbitrations.

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1 Authored by Siddhartha Datta, Partner, Surabhi Binani and Sejal Agarwal, Associates; *DDA v. Tara Chand Sumit Construction Co.*, O.M.P. (Misc.) (Comm) No. 236 of 2019, Delhi High Court, judgment dated 12 May 2020.

**Coram:** Jyoti Singh, J.

2 Misc. Civil Application (O.J.) No. 1 of 2018, Gujarat High Court.

3 2019 SCC Online Bom 1437.

## 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

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