



High Court of Delhi clarifies the scope of Section 29A of the Arbitration Act¹

Brief Facts

Reliance Communications Infrastructure Limited (“**Petitioner**”) filed a petition under Section 29A(5) of the Arbitration and Conciliation Act, 1996 (“**Act**”) through its Resolution Professional, Mr. Anish Niranjana Nanavaty (“**RP**”), to extend the mandate of the arbitral tribunal adjudicating the disputes with Bharat Sanchar Nigam Limited (“**Respondent**”).

The Respondent objected to the maintainability of the petition on the ground that the Corporate Insolvency Resolution Period (“**CIRP**”) of Petitioner of 270 days ended on 22 June 2020 and therefore, the authority of the RP ceased to exist while execution of the petition. The Respondent also contested that no further extensions in the CIRP could be granted to the RP in view of the first proviso to Section 12(3) of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”).

Issue

Whether the Court, in the instant case, exercising its jurisdiction under Section 29A of the Act, has the power to examine the competency of the RP to file the present petition?

Judgment

The Court held that Section 29A(5) of the Act merely authorises the Court to extend the mandate of the arbitral tribunal of the arbitral proceedings. The Court cannot get into the issue of competency of the RP to represent the Petitioner or the impact of the proceedings before the NCLAT on the arbitral proceedings between the parties. All such issues would have to be addressed before the arbitral tribunal.

The Court, however, took the *prima facie* view that the CIRP was continuing and the RP had authority to execute the petition. The Court placed reliance on the order of Hon’ble NCLAT dated 30 March 2020 in *Suo Motu CA(AT) (Insolvency) No. 1 of 2020*, whereby the Hon’ble NCLAT extended the strict timelines under Section 12 of the IBC, till the operation of lockdown in the states where the registered office of the corporate debtor lies. Accordingly, upon presentation of the order of the Government of Maharashtra dated 29 December 2020, it cannot be denied that a lockdown continued to be in operation in the state of Maharashtra till 31 January 2021.

Thereafter, the Court held that in the instant case, the fact that arbitral proceedings are going on between the parties is not denied and the arbitral tribunal was well aware of the fact that the Petitioner was approaching this Court under Section 29A of the Act. Hence by deciding the issue in favour of the Petitioner, the Court extended the mandate of the arbitral tribunal by a period of 12 months.

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Analysis

The judgment has given much needed clarity regarding the limited scope of interference in petitions under Section 29A of the Act. While extending the mandate of the arbitral tribunal, the Court affirmed that the issue of merits and competency of the parties to the arbitration, including the effect of the CIRP on the arbitral proceedings as well as the authority of the RP, cannot be decided by the Court, and can only be agitated before the arbitral tribunal. By shedding light on the powers and the authority of the arbitral tribunal, this judgment reasserts the principle of *Kompetenz-Kompetenz* which states that the arbitral tribunal has wide powers to adjudicate upon issues pertinent to its own jurisdiction and competence of the parties.

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- 1 Authored by Gauhar Mirza, Partner, Prakhar Deep, Senior Associate, Nishant Doshi and Jasvinder Singh, Associates; *Reliance Communications Infrastructure Ltd. v. Bharat Sanchar Nigam Limited*, O.M.P. (MISC.) (COMM.) No. 277/2020, High Court of Delhi, judgment dated 9 February 2021.

Coram: C. Hari Shankar, J.

Reliance Communications Infrastructure Ltd. was represented before the High Court of Delhi by the team of Shardul Amarchand Mangaldas & Co comprising Gauhar Mirza, Partner, Prakhar Deep, Senior Associate and Nishant Doshi, Associate.

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

Gauhar Mirza

Partner
+91 70423 98844
E: gauhar.mirza@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

Aashish Gupta

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

Anirudh Das

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

Ila Kapoor

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

Smarika Singh

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

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