THE HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Neutral Citation No. - 2024:AHC:32773

Court No. 1

CIVIL MISC. ARBITRATION APPLICATION NO.2 OF 2022

M/S JAYPEE INFRATECH LIMITED

v.

M/S EHBH SERVICES PRIVATE LIMITED AND ANOTHER

WITH

CIVIL MISC. ARBITRATION APPLICATION NO.5 OF 2023

M/S VERMA CONSTRUCTIONS

v.

UP PUBLIC WORKS DEPARTMENT

For the Applicant : Rohan Gupta, Advocate
Kashif Zaidi, Advocate

For the Respondents : Sudhanshu Kumar, Advocate

Last heard on January 25, 2024

Judgement on February 26, 2024

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Hon'ble Shekhar B. Saraf, J.

1. These are applications filed under Section 29(A)(4) and Section 29(A)(5) of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as the 'Act'), praying for the extension of the mandate of the Arbitral Tribunal in order to complete the arbitration proceedings.

2. Since Civil Misc. Arbitration Application No.2 of 2022 and Civil Misc. Arbitration Application No.5 of 2023 raise similar question of law, they are being taken up together.

FACTS

3. The factual matrix in ARBT 2 of 2022 has been delineated below:

a. By an agreement dated February 7, 2003 executed between Taj Expressway Industrial Development Authority (now known as the Yamuna Expressway Industrial Development Authority, hereinafter referred to as the 'YEIDA') and M/s Jaiprakash Industries Limited (subsequently name changed to M/s Jaipraksh Associates Limited (hereinafter referred to as the 'JAL'), JAL was granted concession for arrangement of finances, design, engineering, construction and operation, of the expressway between Noida and Agra, and to collect & retain toll from the vehicles using the expressway during the term of 36 years, commencing from the date of commercial operation of the expressway plus any extension thereto (hereinafter referred to as the 'Yamuna Expressway Project').

b. A Special Purpose Vehicle (SPV) was incorporated by JAL for the implementation of the project under the name of Jaypee Infratech Limited (hereinafter referred to as the 'Applicant'). All the rights and obligations of JAL under the agreement dated February 7, 2003, were transferred to the Applicant by an assignment agreement dated October 19, 2007, executed by and between YEDIA, JAL, and the Applicant. Thereafter, a project

transfer agreement was executed between JAL and the Applicant on October 22, 2007, and all assets, rights, and privilege and all liabilities, obligations, and duties relating to the Yamuna Expressway Project were transferred to the Petitioner.

c. YEIDA, in discharge of its obligations under the agreement dated February 7, 2003, transferred lands for development of the Yamuna Expressway Project and other facilities etc. to the Applicant through various lease agreements. The Applicant was desirous of setting up Dhaba facility at locations namely Km 107 LHS and Km 100 RHS, respectively, across the Yamuna Expressway Project from Greater Noida to Agra. For this purpose, the Applicant, constructed & developed structures i.e. Permanent Facility Complexes at places located at Km 107 LHS and Km 100 RHS respectively.

d. M/S Ehbh Services Private Limited (hereinafter referred to as the 'opposite party No.1') approached the Applicant to set up, operate, and run a Dhaba and submitted its offer to provide the same at both Km 107 LHS and Km 100 RHS. Thereafter, the opposite party No.1 acting through Mr. Furkan Khan, Authorized Signatory of the opposite party No.1 (hereinafter referred to as the 'opposite party No.2') entered into Rent Agreements on December 9, 2013, for both the locations i.e. Km 107 LHS and Km 100 RHS for the aforesaid purpose.

e. Due to certain disputes having arisen between the parties, the Applicant sent a legal notice dated January 12, 2019, under Section 106 of the Transfer of Property Act, 1872 terminating the lease deed on expiry of the lease period. Thereafter, by a letter dated March 07, 2019, pursuant to Clause 14 of the agreement between the parties, the Applicant advised the opposite parties to be present for a meeting to amicably resolve the dispute on March 15, 2019.

f. Since the disputes between the parties could not be resolved through amicable settlement, the Applicant vide its letter dated June 15, 2019, invoked the arbitration clause under Clause 14.1 of the Rent Agreement. Vide another letter dated June 22, 2019, the Applicant appointed the Sole Arbitrator to decide the disputes between the parties. The Sole Arbitrator entered into reference on June 25, 2019.

g. Vide email dated October 17, 2019, the opposite parties informed the Sole Arbitrator that they desire to settle the matter through negotiations and sought suspension of the arbitral proceedings till November 20, 2019, without prejudice to their legal rights. This was agreed to by the Applicant. Thereafter, arbitral proceedings were suspended till December 12, 2019, at the request of the opposite parties.

h. On February 26, 2020, the Sole Arbitrator passed an order rejecting the application of the opposite parties filed under Section 12 & 13 of the Act and fixed schedule for completion of the pleadings and put the next date for May 16, 2020. Thereafter, vide its email dated March 21, 2020, the opposite parties submitted an application under Section 16 of the Act and sought adjournment of the date fixed for hearing on account of the outbreak of Covid – 19 epidemic.

i. Vide its order dated May 10, 2021, the Sole Arbitrator rejected the application under Section 16 of the Act filed by the opposite parties.

j. On October 10, 2021, another meeting was held and a fresh schedule for completion of the pleadings was fixed and the case was listed on January 7, 2022. The meeting fixed for January 7, 2022, was postponed as the counsel of the opposite party had tested positive for Covid – 19 and finally the case was fixed for February 7, 2022.

k. Parties had filed their pleadings, but the opposite party objected to the filing of the rejoinder on the ground that the same was filed beyond the time fixed. The delay was condoned vide order dated February 7, 2022, and case was fixed for admission, denial of the documents, and filing of the necessary affidavits on March 15, 2022. The counsel of the opposite parties fell ill and the time to file the affidavits by the opposite parties was extended till March 31, 2022.

l. The case was taken up on March 31,2022. The opposite parties filed an application under Order 11 of the Code of Civil Procedure, 1908 seeking interrogatories and discoveries. The Applicant was granted time to file its reply. The case was again taken up on May 28, 2022, and arguments were heard on the application of the opposite party preferred under Order 11 of the Code of Civil Procedure, 1908. The matter was reserved for June 30, 2022, as there were vacations in June. There were directions issued to the opposite party to file an affidavit to the effect whether the opposite party is willing to extend the time by six months as provided under Section 29A of the Act.

m. Vide email dated July 14, 2022, the opposite party refused to extend the time by another six months. Accordingly vide its order dated July 16, 2022, the Sole Arbitrator asked the Applicant to take appropriate action under the provisions of the Act.

n. The Applicant then filed the instant application being ARBT 2 of 2022 under Section 29A(4) of the Act seeking extension of time by another one year so that the arbitration proceedings can be completed.

4. The factual matrix in ARBT 5 of 2023 is delineated below:

a. Claims/Disputes in the instant case arise out of and in connection with a contract agreement bearing bond no. 06/SE

Meerut Circle/12-13 dated December 21, 2012 executed between the Applicant (M/S Verma Constructions) and the opposite party (UP Public Works Department) pertaining to the work related to the construction of the approach road and the additional approach road of bridge over river Ganga on Chetawala Ghat near Bhikund village in Hastinapur, Tehsil Mawana, District Meerut (UP) on Bill of Quantity Basis.

b. Due to failure of the parties to resolve such claims/disputes amicably, the Applicant (M/S Verma Constructions) invoked arbitration vide Arbitration vide its notice dated January 9, 2021, in accordance with the Contract Agreement, which was thereafter referred before the Sole Arbitrator for adjudication in terms of the said Contract Agreement.

c. The Arbitral Tribunal fixed the first date of hearing as April 29, 2021, and directed the Parties to file their Claim Petition, Defence, Rejoinder, etc. The parties were only able to complete their pleadings on May 16, 2022. The period prescribed under Section 29A of the Act expired on May 16, 2023. The Arbitral Tribunal vide its order dated June 26, 2023, requested the parties to seek appropriate approval from the management with respect to mutual extension of six months as provided under Section 29A(3) of the Act.

d. Counsel for the applicant gave its consent vide email dated August 8, 2023. However, the counsel for the Respondent vide email dated August 8, 2023, refused to give consent.

e. Due to failure of the parties to mutually extend the mandate of the Arbitral Tribunal, the Applicant filed the instant application being ARBT 5 of 2023 under Section 29A(4) of the Act before this Court.

QUESTION OF LAW FRAMED BY THIS COURT

5. During the course of the hearings, this Court had formulated the following question of law and asked the parties to make their submissions in accordance with the same:

> *"Whether in the case of domestic arbitration, the powers under Sections 29A(4), 29A(5), and 29A(6) of the Act can be exercised by the Commercial Court/Principal Civil Court or the powers can exclusively be exercised by a High Court irrespective of the fact that the High Court does not have ordinary original civil jurisdiction and irrespective of the fact that the original appointment was not made by the High Court?"*

CONTENTIONS OF THE APPLICANT IN ARBT 2 OF 2022

6. Mr. Rohan Gupta, counsel appearing on behalf of the applicant in ARBT 2 of 2022 has made the following submissions based on the question of law formulated by this Court:

a. The word 'Court' occurring in Section 29A of the Act should be interpreted to mean the High Court, irrespective of whether in a particular case, the arbitrator has been appointed by mutual consent of the parties or under Section 11 of the Act.

b. The word Court stands defined under Section 2(1)(e) of the Act, as the commercial court or the High Court with original jurisdiction, for domestic arbitrations. Since the power under Section 29A of the Act to substitute an arbitrator necessarily includes the power to appoint an arbitrator, the term Court in Section 29A of the Act must be read with Section 11 of the Act in order to make the Act workable and to avoid conflict in the appointments done under Section 11 of the Act and Section 29A of the Act. It was not the intention of the legislature to give the power of appointment to the Commercial Courts.

c. The phrase "unless the context otherwise requires" used in Section 2(1)(e) of the Act requires the definition of the word

"Court" used in Section 29A of the Act to be interpreted in the context it has been used in and the definition as provided in Section 2(1)(e) of the Act will not apply. Section 29A of the Act is required to be read with Section 11 of the Act.

d. The phrase "If the Context otherwise requires" occurring in Section 2(1)(e) of the Act has been interpreted in the judgments of the Gujarat High Court in **Nilesh Ramanbhai Patel and Others v. Bhanubhai Ramanbhai Patel** reported in **MANU/GJ/ 1549/2018**, the Kerala High Court in **Lots Shipping Company Limited v. Cochin Port Trust** reported in **MANU/KE/1142/2020**, the Delhi High Court in **Delhi Development Authority v. Tara Chand Sumit Construction Co.** reported in **MANU/DE/1034/2020**, and the Calcutta High Court in **Amit Kumar Gupta v. Dipak Prasad**, reported in, **2021 SCC OnLine Cal 2174**.

e. In **Lots Shipping Company (supra)**, the Kerala High Court has given a purposive interpretation to the term "Court" used in Section 29A of the Act, in the context of Section 11 of the Act rather than literal interpretation.

f. Power to appoint an arbitrator lies only with the High Courts and the Supreme Court under Section 11 of the Act. Power to substitute an arbitrator under Section 29A(6) of the Act or an arbitral panel is akin to the power to appoint an arbitrator or an arbitration panel and therefore this provision is not to be read in isolation but along with Section 11 of the Act. Reliance in this regard was placed on the judgments in **Nilesh Raman Bhai Patel (supra)**, **Indian Farmers Fertilisers Cooperative Ltd. v. Manish Engineering Enterprises** reported in **MANU/UP/ 0515/2022**, **Amit Kumar Gupta (supra)**, **Cobra Instalaciones Y Servicious, S.A. v. Maharashtra State Electricity Distribution Company Limited** delivered in **MA No. 1920/2019**, and **Tara Chand (supra)**.

g. If the power to substitute (which is akin to appointment) is given to Civil Court under Section 29A of the Act, it would be in teeth of the powers conferred under Section 11 of the Act. Conflict would arise between the power of the superior courts to appoint an arbitrator under Section 11 of the Act and those of the Civil Court to substitute those arbitrators under Section 29A of the Act. Reliance was placed on the judgments in **Nilesh Raman Bhai Patel (supra)**, and **Tara Chand (supra)**.

h. An anomalous situation will arise if the word Court used in Section 29A of the Act is interpreted in a literal manner, wherein identical powers could be exercised in a contrary manner, prejudicial to the hierarchy of the Courts. Section 11 of the Act was amendment by Act 3 of 2016 w.e.f. October 23, 2015, along with the insertion of Section 29A. There is no other purpose of substituting the words Chief Justice or his designate with the words High Court and Supreme Court in Section 11, unless the legislature wanted to clarify that the power to appoint an arbitrator is only to vest with the High Courts and Supreme Court. Reliance was placed in this regard on the judgments in **Lots Shipping Company (supra)**, and **Nilesh Raman Bhai (supra)**.

i. The term Court referred to in Section 29A of the Act would mean the High Court irrespective of whether the appointment of the arbitrator was made under Section 11 of the Act. Section 29A of the Act empowers the Court to substitute an arbitrator or an arbitral panel, which is akin to the power of appointment and therefore, it would be the High Court only in case of domestic arbitration which would have exclusive jurisdiction to hear an application under Section 29A of the Act.

CONTENTIONS OF THE OPPOSITE PARTY IN ARBT 2 OF 2022

7. Mr. Sudhanshu Kumar, counsel appearing on behalf of the opposite parties has made the following submissions on the question of law framed by this Court:

a. Section 29A of the Act was added by Act 3 of 2016 w.e.f. October 23, 2015, prescribing the time limit for making an arbitral award. Clause 4 of Section 29A of the Act provides for termination of the mandate of the arbitrator on the expiry of the time period unless the same is extended by the "Court". Clause 6 leaves it open for the Court to substitute one or all of the arbitrators while considering the extension of the time period under Clause 4. On applying the definition of the word "Court" given in Section 2(1)(e) of the Act to the word "Court" as appearing in Section 29A of the Act it is clear that the powers under Section 29A of the Act can only be exercised by the principal Civil Court or High Court having ordinary original civil jurisdiction, but not by a High Court not exercising ordinary original civil jurisdiction, such as this Court.

b. The phrase "Unless the context otherwise requires" qualifying the definition clause in Section 2, can be applied to deviate from a clear and unambiguous definition of a word only when the otherwise context is discernible from the intention of the legislature and adhering to definition clause would lead to absurdity.

c. It is important to state here that the current definition of "Court" has also been inserted by the means of the Act No. 3 of 2016 whereby in case of an arbitration other than international commercial arbitration, the 'Court' means the principal Civil Court of original jurisdiction in a district and includes the High Court in exercise of its ordinary original civil jurisdiction. In the case of international commercial arbitration, it is only the High Court which comes under the definition of 'Court' with

the principal Civil Court being excluded. Thus, the Union Legislature, intentionally and consciously, while making a distinction between the definition of the "Court" under Section 2(1)(e) of the Act as applicable to international commercial arbitration (Clause ii) vis a vis arbitration other than international commercial arbitration (Clause i), did not make any such distinction for the purposes of Section 29A of the Act. Under such circumstances, to hold that the powers under Section 29A of the Act can exclusively be exercised by the High Court even if it does not have ordinary original civil jurisdiction would go against the intention of the Legislature.

d. Similarly, the explanation to Section 47 of the Act was also amended by the very same Act 3 of 2016 and the meaning of "Court" was amended to exclude the Principal Civil Court and to include only High Court. However, no such explanation was incorporated in Section 29A of the Act. Even though Section 47 of the Act relates to foreign awards but the fact that no clarification was made in Section 29A of the Act similar to Section 47 of the Act further suggests that the intention of the legislature was to make the definition of "Court" as appearing in Section 2(1)(e) of the Act applicable to Section 29A of the Act.

e. It is also important to remember that when Section 29A of the Act was inserted by Act 3 of 2016, Section 11 of the Act was also amended and the words "Chief Justice or any person or institution designated by him" were substituted by "Supreme Court or, as the case may be, the High Court or any person or institution designated by such court". Thus, while legislature specifically used the words "High Court" in Section 11 of the Act, it did not do so in Section 29A of the Act and conferred that jurisdiction under "the Court". This further shows the clear

intention of the legislature in not conferring the power to High Court for exercise of jurisdiction under Section 29A of the Act.

f. It is necessary to state here that the jurisdiction for appointment of arbitrator has been conferred upon the High Courts or the Supreme Court by the statute i.e. the Act. The same is not exercised by High Courts or the Supreme Court as a Constitutional Court and is not an inherent power of the High Courts or the Supreme Court. In fact, by Section 3 of the Amendment Act of 2019, which is yet to be notified, the jurisdiction to appoint arbitrator has been conferred under Section 11 of the Act to the arbitral institutions and the same has been taken away from the High Courts and the Supreme Court. Thus, the power to appoint an arbitrator is not considered by the Legislature as so sacrosanct or holy that the same can only be exercised by the High Courts or the Supreme Court. In fact, even in the existing provision, the power to appoint an arbitrator can be exercised by "any person or institution" designated by High Courts or the Supreme Court.

g. The same statute which confers High Courts with the jurisdiction to appoint an arbitrator, has conferred the principal civil courts with the jurisdiction to substitute an arbitrator and there is no inconsistency or absurdity in this. In fact, conferring powers under Section 29A of the Act to the Court within the meaning of Section 2(1)(e) of the Act brings consistency to the arbitration proceedings, irrespective of the fact as to who appointed the arbitrator. An anomaly would arise in a situation where an arbitrator is being appointed by the parties or a person or institution as referred above, while powers under Section 29A of the Act are being exercised by the High Courts.

h. The jurisdiction to appoint an arbitrator is different from the jurisdiction to substitute an arbitrator as both operate in separate fields. While an arbitrator is required to be appointed by the

High Courts under Section 11 if the parties fail to reach an agreement regarding the initial appointment of the arbitrator, the power to substitute an arbitrator under Section 29A(6) comes into picture only when the time limit for making an arbitral award expires. While exercising jurisdiction under Section 29A(6), the Court is not examining the legality of the initial appointment but the conduct of the arbitrator in the arbitral proceedings and whether the continuation of such arbitrator would further delay the proceedings. The enquiry entailed under Section 29A(6) of the Act is completely different from that under Section 11(5) or Section 11(6) of the Act. Thus, the view that the substitution of arbitrator appointed by the High Court, by the principal Civil Court would be in the teeth of the powers of the High Court is erroneous and imaginary.

i. Once the arbitration proceedings commence, the procedure remains same, irrespective of the fact that whether arbitrator has been appointed by the parties or the High Court or Supreme Court. A High Court appointed arbitrator is also subject to the provisions of Sections 12 and 13 of the Act and his mandate can also be terminated under Sections 14 and 15 of the Act in the same manner as an arbitrator appointed by the parties. Similarly, the time limit and procedure contemplated in Section 29A of the Act is also same for High Court appointed arbitrators and arbitrators appointed by the parties. High Courts do not exercise any supervisory or other control over the arbitrator appointed by them and such arbitrator has the same status as an arbitrator appointed by parties.

j. This, there is no conflict in the power of the High Courts or the Supreme Court to appoint an arbitrator under Section 11 of the Act and power of the Court including Principal Civil Court to substitute an arbitrator under clause 6 of Section 29A of the Act. High Courts or the Supreme Court exercise a limited

jurisdiction under Section 11(5) or Section 11(6) of the Act for appointment of arbitrator. The Court does not retain any jurisdiction over the arbitrator appointed/nominated by it and they become functus officio after the appointment of the arbitrator(s). Reference is made to the judgment of the Supreme Court in **Nimet Resources Inc. and Another v. Essar Steels Ltd.** reported in **2009 (17) SCC 313**.

k. If the powers under Section 29A(4), Section 29A(5), and Section 29A(6) are held to be exercised exclusively by the High Courts irrespective of the fact that the original appointment was not made by the High Courts, it would amount to judicial legislation and adding or incorporation something which is neither in the statute or nor is in conformity with the intention of the legislature. Reliance is placed on the judgment of this Court in **A'Xykno Capital Services Private Limited v. State of U.P.** reported in **2023 (4) AWC 3662 (All).**

l. Therefore, it is submitted that the powers under Section 29A(4), Section 29A(5), and Section 29A(6) of the Act can be exercised only by the Court as defined under Section 2(1)(e) of the Act i.e. the principal Civil Court/Commercial Court or the High Court exercising original civil jurisdiction but not by a High Court not exercising original civil jurisdiction, particularly when the initial appointment of the arbitrator was not done by the said High Court.

ANALYSIS

8. I have heard the learned counsel appearing on behalf of the parties, and perused the materials on record.

9. Before delving into the legal controversy in the instant case, I feel it is pertinent to discuss the genesis of Section 29A of the Act and the purpose behind the said section.

SECTION 29-A GENESIS

10. Before the Act came into force, the Arbitration Act, 1940 (hereinafter referred to as the 'Act of 1940') in the First Schedule (read with Section 3 of the Act of 1940) contained the time limit for making an arbitral award:

> *"**3. Provisions implied in arbitration agreement**.—An arbitration agreement, unless a different intention is expressed therein, shall be deemed to include the provisions set out in the First Schedule in so far as they are applicable to the reference.*
>
> *THE FIRST SCHEDULE*
>
> *[See Section 3]*
>
> *IMPLIED CONDITIONS OF ARBITRATION AGREEMENTS*
>
> *1. Unless otherwise expressly provided, the reference shall be to a sole arbitrator.*
>
> *2. If the reference is to an even number of arbitrators the arbitrators shall appoint an umpire not later than one month from the latest date of their respective appointments.*
>
> *3. The arbitrators shall make their award within four months after entering on the reference or after having been called upon to act by notice in writing from any party to the arbitration agreement or within such extended time as the Court may allow.*
>
> *4. If the arbitrators have allowed their time to expire without making an award or have delivered to any party to the arbitration agreement or to the umpire a notice in writing stating that they cannot agree, the umpire shall forthwith enter on the reference in lieu of the arbitrators.*
>
> *5. The umpire shall make his award within two months of entering on the reference or within such extended time as the Court may allow."*

11. Section 28 of the Act of 1940 provided the Court with the power to enlarge the time for making an award :

> *"**28. Power to Court only to enlarge time for making award**.—(1) The Court may, if it thinks fit, whether the time for making the award has expired or not and whether the award has been made or not, enlarge from time to time, the time for making the award.*
>
> *(2) Any provision in an arbitration agreement whereby the arbitrators or umpire may, except with the consent of all the parties*

> *to the agreement, enlarge the time for making the award, shall be void and of no effect."*

12. As can be seen, under the Act of 1940, specific provisions regulated the time limits for making arbitral awards. Section 3 of the Act of 1940, as outlined in the First Schedule, mandated that arbitrators must issue their award within four months of commencing the reference, or after receiving written notice from any party to the arbitration agreement. Additionally, the Act of 1940 allowed for extensions of this period at the sole discretion of the Court. Unlike the Act, there was no provision allowing the parties to extend the period by mutual consent. Section 28 of the Act of 1940 empowered the court to enlarge the time for making an award, regardless of whether the initial deadline had passed or whether an award has been made. Notably, any provision in the arbitration agreement granting arbitrators or the umpire authority to extend the time for making the award without unanimous consent from all the parties was deemed void under this provision.

13. When the Act came into force in 1996, it lacked a provision regarding the time limit for making an award, a feature present in the preceding Act of 1940. In its 176th Report on "The Arbitration and Conciliation (Amendment) Bill, 2001", the Law Commission of India (hereinafter referred to as the "LCI") underscored the necessity for substantial reforms to expedite the arbitral process comprehensively, whether proceedings were under the Act or the Act of 1940. As part of its recommendations, the Commission proposed the introduction of Section 29A to the Act, stipulating that arbitrators should have one year to render an award, with an option available to the parties to grant an extension of up to one additional year. If the award remained outstanding beyond this period, parties have the liberty to approach the Court for resolution. Notably, under the envisaged Section 29A outlined in the LCI's report, arbitrators themselves could request an extension from the Court if the parties failed to do so. This proposed amendment aimed to instil a more structured and time-bound approach to the arbitration process, facilitating efficiency and expediency in dispute resolution. Relevant paragraph from the 176th LCI Report is being extracted below:

> *"Next, for future arbitrations under the 1996 Act, the arbitrators will have one year and thereafter another period not exceeding one year as agreed by the parties, under the proposed S. 29-A, for passing the award. Thereafter, if the award is not passed, parties are to move the Court for extension and if the parties do not apply, the arbitrators can also apply for the same. Till the application is made, the arbitration proceedings are suspended, but once an application is made to the Court, the arbitration proceedings shall continue and are not to be stayed by the Court. On the other hand, the Court shall pass an order within one month fixing the time schedule or it may also pass orders as to costs taking into account various factors which have led to the delay and also the amount already spent towards fee etc. The Court will continue to pass such orders granting time and fixing the procedure, till the award is passed. The above procedure is also to be applied to arbitrations which are pending under the 1996 Act for more than three years as provided in S. 33 of the amending Act. Applications under S. 34(1) to set aside awards and appeals under S. 37(1) are to be disposed of within six months and appeals under S. 37(2) within three months from the date of commencement of the amending Act. A similar procedure is envisaged for future applications and appeals."*

14. The Section 29-A as was proposed by the 176th Report of the LCI to be inserted in the Act has been extracted below:

> *"**21. Insertion of new Section 29-A**.— After S. 29 of the Principal Act, the following section shall be inserted, namely:—*
>
> *"29-A. Speeding up of proceedings and time-limit for making awards.— (1) The arbitral tribunal shall make its award within a period of one year after the commencement of arbitral proceedings, or within such extended period as specified in sub-ss. (2) to (4).*
>
> *(2) The parties may, by consent, extend the period specified in sub-s. (1) for a further period not exceeding one year.*
>
> *(3) If the award is not made within the period specified in sub-s. (1) and the period agreed to by the parties under sub-s. (2), the arbitral proceedings shall, subject to the provisions of sub-ss. (4) to (6), stand suspended until an application for extension is made to the Court by any party to the arbitration, or where none of the parties makes an application as foresaid, until such an application is made by the arbitral tribunal.*
>
> *(4) Upon filing of the application for extension of time under sub-s. (3), suspension of the arbitral proceedings shall stand revoked and pending consideration of the application for extension of time before the court under that sub-section, the arbitral proceedings shall*

continue before the arbitral tribunal and the court shall not grant any stay of the arbitral proceedings.

(5) The Court shall, upon such application for extension of time being made under sub-s. (3), whether the time for making the award as aforesaid has expired or not and whether the award has been made or not, extend the time for making of the award beyond the period referred to in sub-s. (1) and the period agreed to by the parties under sub-s. (2).

(6) The Court shall, while extending the time under sub-s. (5), pass such orders as to costs or as to the future procedure to be followed by the arbitral tribunal, after taking into account—

(a) the extent of work already done;

(b) the reasons for delay;

(c) the conduct of the parties or of any person representing the parties;

(d) the manner in which proceedings were conducted by the arbitral tribunal;

(e) the further work involved;

(f) the amount of money already spent by the parties towards fee and expenses of arbitration;

(g) any other relevant circumstances,

and the Court shall pass such orders from time to time with a view to speed up the arbitral process, till the award is passed:

Provided that any order as to future proceedings passed by the Court shall be subject to such rules as may be made by the High Court in this behalf for expediting the arbitral proceedings.

(7) The parties cannot by consent, extend the period beyond the period specified in sub-s. (1) and the maximum period referred to in sub-s. (2) and save as otherwise provided in the said sub-sections, any provision in an arbitration agreement whereby the arbitral tribunal may further extend the time for making the award, shall be void and of no effect.

(8) The first of the orders of extension under sub-s. (5) together with directions, if any, under sub-s. (6), shall be passed by the court, within a period of one month from the date of service on the opposite party."

15. The proposal for the insertion of Section 29-A in the Act by the LCI stemmed from a critical need to address the extensive delays and associated costs plaguing arbitral awards in India. LCI recognized the pressing need for

time-bound processes to expedite arbitral proceedings comprehensively. Crucially, the proposed Section 29-A aimed to imbue the court with the authority to grant extensions strictly, imposing costs if necessary, and delineating future procedural steps for the tribunals to follow, thereby fostering efficiency and expediency. LCI's proposal was underpinned by the observation of delays ranging from five to fourteen years in arbitration proceedings, even without court intervention, emphasizing the adverse consequences of eliminating time-limits. Consequently, the proposed Section 29-A sought to strike a balance between expediting proceedings and ensuring fairness by allowing for extension under judicial oversight while preventing undue delays through stringent court scrutiny.

16. In the proposed Section 29-A by the 176th LCI Report, the High Court was granted the power to prescribe "future procedure" by making rules. Relevant paragraph from the said report has been extracted below:

> *"(27) Section 29-A : This section is proposed to be introduced fix time-limits for passing of the award and also for speeding up the arbitral process. No provision was made in the 1996 Act fixing time-limit for the passing of the award, on the ground that extension applications in the Court were not being disposed of early enough and that there were long delays. It is proposed to initially grant a period of one year, after commencement of the arbitration and also to permit parties to agree for extension up to a maximum of another one year. Thereafter, if there is further delay, the proceedings will stand suspended until an application is made in the Court, either by the parties or if the parties do not do so, until an application for extension is filed by the arbitral tribunal. The moment an application, is filed the arbitration proceedings can restart. It is proposed to be provided that there will be no stay of the arbitration proceedings pending consideration of the application for extension of time and that, pending the application, the arbitral tribunal shall proceed with the arbitration proceedings. The Court shall extent the time for passing the award and shall fix the time schedule and further procedure, by taking into consideration the reasons for the delay, the conduct of the parties, the manner in which proceedings were conducted by the arbitral tribunal, the amount of money spent already towards fee and expenses, the extent of work that is already done and the extent of work that remains to be done. The Court will passed orders from time to time till the award is passed. This provision has become necessary in view of the peculiar conditions prevailing in India even after the 1996 Act. Sub-s. 8 of the proposed*

> *S. 29-A requires that the first order on the extension application shall be passed within one month from the date of service on the opposite party.* ***The 'future procedure' can be prescribed by the High Court by making rules under S. 82. (para 2.21.6)***
>
> *(Emphasis Added)*

17. Thereafter, based on the recommendations of the 176th Report by LCI, Arbitration and Conciliation (Amendment) Bill, 2003 was introduced in the Rajya Sabha on December 22, 2003. Then, in July 2004, Government of India constituted a committee under the chairmanship of Dr. Justice B.P. Saraf to study the implication of the recommendations made by the 176th LCI Report. As far as Section 29A as proposed by the 176th LCI Report was concerned, Justice Saraf Committee recommended the deletion of the proposed Section 29A. Relevant paragraph from Justice Saraf Committee's Report has been extracted below:

> *"The Committee is, of the opinion that neither any time limit should be fixed as contemplated by the proposed section 29A nor should the court be required to supervise and monitor arbitrations with a view to expediting the completion thereof. None of these steps is conducive to the expeditious completion of the arbitral proceedings. Moreover, court control and supervision over arbitration is neither in the interest of growth of arbitration in India nor in tune with the best international practices in the field of arbitration. The Committee is of the opinion that with the proposed amendment the arbitral tribunal will become an organ of the court rather than a party-structured dispute resolution mechanism. The Committee, therefore, recommends the deletion of the proposed section 29A from the Amendment Bill."*

18. After Justice Saraf Committee submitted its report, the Amendment Bill was referred to the Department Related Standing Committee on Personnel, Public Grievances, Law and Justice for examination. The Committee recommended that since many provisions of the proposed Amendment Bill were contentious and the Amendment Bill gave room for excessive court intervention, the Amendment Bill may be withdrawn. Given the same, the Arbitration and Conciliation (Amendment) Bill, 2003 was withdrawn from the Rajya Sabha.

19. Nearly a decade after the 2003 Amendment Bill was withdrawn, the Arbitration and Conciliation (Amendment) Bill, 2015 was introduced in the Lok Sabha on December 3, 2015. While majority of the amendments proposed by the 2015 Amendment Bill were based on the 246th Report By LCI, the insertion of Section 29A as proposed by the 2015 Amendment Bill was on the basis of the 176th Report by LCI, since the 246th Report by LCI contained no recommendation for the insertion of Section 29A into the Act or any such section regulating the time limit for making an arbitral award.

20. The Section 29A as proposed by the 2015 Amendment Bill is extracted below:

> *"15. After section 29 of the principal Act, the following new sections shall be inserted, namely:—*
>
> *"29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference. Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.*
>
> *(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*
>
> *(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*
>
> *(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period: Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.*
>
> *(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.*

> *(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.*
>
> *(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.*
>
> *(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.*
>
> *(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party."*

21. Section 29A as inserted by the Amendment Act of 2015 was recommended to be further amended by the "High Level Committee to Review The Institutionalisation of Arbitration Mechanism In India" constituted under the chairmanship of Justice B.N. Srikrishna. The Committee recommended the following amendments to Section 29A as it existed then:

> *"1. A new sub-section may be inserted in section 29A limiting the applicability of the section to domestic arbitrations only. International commercial arbitrations may be left outside the purview of the timelines provided in section 29A.*
>
> *2. Section 29A(1) may be amended such that the time in section 29A(1) starts to run post completion of pleadings. Further, a time period of 6 months may be provided for submission of pleadings.*
>
> *3. Section 29A(4) may be amended to provide that if an application under section 29A(5) is filed before a court, the mandate of the arbitral tribunal continues till the application is disposed.*
>
> *4. Section 29A(9) may be amended to add that if the application is not disposed of within the period mentioned therein, it is deemed to be granted.*
>
> *5. A new sub-section should be inserted in section 29A providing that where the court seeks to reduce the fees of the arbitrator(s), sufficient opportunity should be given to such arbitrator(s) to be heard."*

22. Based on the aforesaid report, the Arbitration and Conciliation (Amendment) Bill, 2019 was introduced and the Section 29A of the Act as it exists today came into force.

23. To summarise, Section 29A of the Act which regulates the time limit for making arbitral awards, emerged from a series of legislative and consultative processes aimed at addressing the need for expeditious dispute resolution in India. The genesis of Section 29A of the Act can be traced back to the Act of 1940, which contained provisions specifying time limits for making arbitral awards. Under Section 3 of the Act of 1940, arbitrators were required to issue their awards within four months of commencing the reference, with the option for extensions which could solely be granted by the Courts contained under Section 28 of the Act of 1940. However, when the Act originally came into force in 1996, it lacked a provision addressing time limits for making arbitratal awards, leading to delays in arbitration proceedings. Recognizing the need for substantial reforms to expedite the arbitration process, LCI proposed the introduction of Section 29A in its 176th Report on the Arbitration and Conciliation (Amendment) Bill, 2001. This proposed section mandated that arbitrators must issue awards within one year of commencing proceedings, with an option for parties to grant a further one-year extension. If the award remained outstanding beyond this period, parties could approach the court for resolution. The proposed Section 29A aimed to instil a more structured and time-bound approach to arbitration, facilitating efficiency and expediency in dispute resolution. It empowered the court to grant extensions strictly, imposing costs if necessary, and also granted the power to the Courts to delineate future procedural steps for arbitral tribunals to follow. However, Justice Saraf Committee recommended the deletion of Section 29A, arguing against fixing time limits and excessive court intervention in arbitration proceedings. Subsequently, the Arbitration and Conciliation (Amendment) Bill, 2015, reintroduced Section 29A based on the LCI's recommendations, emphasizing the need for time-bound arbitration proceedings. The inserted section mandated that awards be made within

twelve months of the tribunal entering upon the reference, with an option for parties to agree to a six-month extension. Failure to meet these deadlines would result in termination of the arbitrators' mandate unless the court granted an extension, with potential fee reductions for delays attributable to the tribunal. The High-Level Committee to Review The Institutionalisation of Arbitration Mechanism In India, chaired by Justice B.N. Srikrishna, recommended further amendments to Section 29A to refine its applicability and streamline procedural aspects. The resulting Arbitration and Conciliation (Amendment) Bill, 2019, incorporated these recommendations, leading to the enactment of the current Section 29A. In summary, Section 29A of the Act originated from efforts to expedite arbitration proceedings in India. It represents a balance between time-bound processes and fairness in dispute resolution, empowering courts to oversee extensions and streamline procedural aspects while preserving the autonomy of arbitrators.

SECTION 29-A: DEFINING THE "COURT"

24. The origin of the instant dispute revolves around the definition of the term "Court" occurring in Section 29A of the Act. I have extracted the Section 29A of the Act below:

> *"[**29-A. Time limit for arbitral award**. — [(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23:*
>
> > *Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of Section 23.]*
>
> *(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.*
>
> *(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.*
>
> *(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3),*

the mandate of the arbitrator(s) shall terminate unless the court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent for each month of such delay:

[Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.]

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the court.

(6) While extending the period referred to in sub-section (4), it shall be open to the court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.]"

25. The word "Court" is defined in Section 2(1)(e) of the Act as follows:

2. Definitions.

(1) In this Part, unless the context otherwise requires,

(a) ...

(b) ...

(c) ...

(d) ...

(e) "Court" means—

(i) in the case of an arbitration other than international commercial arbitration, the principal civil court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such principal civil court, or any Court of Small Causes;

(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]"

26. Generally, while interpreting a particular term in a statute, Courts tend to defer to the meaning of that term provided in the definition clause. The definition clause is a crucial component of any statute or legislation. While it may appear to be a mere introductory section, the definition clause plays a pivotal role in providing clarity, precision, and consistency in the application and interpretation of the statute. Its importance cannot be overstated, as it significantly influences the understanding and implementation of the law by the Courts, legal professionals, and individuals or entities affected by the statute. While the definition clause is a fundamental aspect of interpreting a statute, there are certain circumstances under which it may not be applied or given primacy in the interpretation process. One of these circumstances is contextual ambiguity. In some cases, the definition provided in the statute's definition clause may not fully address the ambiguity or uncertainty present in the statutory provision being interpreted. Courts may look beyond the definition clause and consider extrinsic sources such as legislative history, statutory purpose, and the context of the provision to ascertain the legislature's intent.

27. To my mind, the usage of term “unless the context otherwise requires” as it occurs in the begning of Section 2 that precedes all the definitions equires emphasis. The phrase “unless the context otherwise requires” often accompanies definition clauses, introducing an element of flexibility in the interpretation of defined terms. The including of “unless the context otherwise requires” in a definition clause acknowledges that while a specific definition may be provided, there are circumstances where the context of the statute may necessitate a different interpretation to achieve the legislative intent or purpose. This flexibility ensures that the defined term is not rigidly interpreted in isolation but is instead considered within the broader context of the statute. The phrase “unless the context otherwise requires” serves as a safeguard against interpreting a defined term in a manner that would lead to absurd or unreasonable results. In cases where strict adherence to the literal definition would produce outcomes contrary to the legislative intent or purpose, courts can invoke this phrase to adopt a more contextual interpretation that aligns with the overall objectives of the statute.

28. Legislative intent is a central consideration in statutory interpretation, aiming to discern the purpose or objective behind the enactment of a statute. The inclusion of “unless the context otherwise requires” acknowledges the primacy of legislative intent in interpretation. Courts must consider the broader context of the statute, including its purpose, objectives, and underlying policy considerations, to determine whether a deviation from the literal definition is warranted to give effect to legislative intent.

29. In **K. Balakrishna Rao v. Haji Abdulla Sait** reported in **(1980) 1 SCC 321**, the Supreme Court, stated that the definition clause in a statute does not necessarily apply in all possible contexts in which a word defined by the definition clause is used in a statute:

> *“17. It is appropriate to refer at this stage to the following passage occurring in Craies on Statute Law (Sixth Edn.) at p. 99:*
>
> > *“In Brett v. Brett [(1826) 2 Addams 210, 216] Sir John Nicholl, M.R. said as follows: ‘The key to the opening of every law is the reason and spirit of the law; it is the animus imponentis, the intention of the law-maker expressed in the law itself, taken as a whole. Hence, to arrive at the true*

> *meaning of any particular phrase in a statute, the particular phrase is not to be viewed detached from its context in the statute; it is to be viewed in connection with its whole context, meaning by this as well the title and preamble as the purview or enacting part of the statute'."*
>
> ***
>
> *24. A definition clause does not necessarily in any statute apply in all possible contexts in which the word which is defined may be found therein. The opening clause of Section 2 of the principal Act itself suggests that any expression defined in that section should be given the meaning assigned to it therein unless the context otherwise requires. The two-fold reasoning of the Division Bench for holding that the building in question was not a 'buildine' is that on June 10, 1964 (i) there was no lease in force and hence it was not let, and (ii) that on that date the plaintiff had no intention to lease it and therefore it was not to be let. We are of the view that the words "any building . . . let . . .", also refer to a building which was the subject-matter of a lease which has been terminated by the issue of a notice under Section 106 of the Transfer of Property Act and which has continued to remain in occupation of the tenant. This view receives support from the definition of the expression "tenant" in Section 2(8) of the principal Act which includes a person continuing in possession after the termination of the tenancy in his favour. If the view adopted by the Division Bench is accepted then it would not be necessary for a landlord to issue a notice of vacancy under Section 3 of the principal Act when a building becomes vacant by the termination of a tenancy or by the eviction of the tenant when he wants to occupy it himself. In law he cannot do so. He would be entitled to occupy it himself when he is permitted to do so under Section 3(3) or any of the provisions of Section 3-A of the principal Act. This also illustrates that the view of the Division Bench is erroneous. We, therefore, hold that the building in question was a "building" within the meaning of that expression in Section 2(2) of the principal Act on the date on which Section 3 of the Amending Act became operative."*

30. The importance of the phrase "unless the context otherwise requires" in a definition clause was propounded by the Supreme Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others** reported in **(1998) 8 SCC 1**:

> *"26. High Court has been defined in Section 2(h) as the "High Court having jurisdiction under Section 3" which, in its turn, provides that it shall be that High Court within the limits of whose*

appellate jurisdiction the office of the Trade Marks Registry referred to in each of the sub-clauses (a) to (e) is situate.

27. We have to consider the meaning of these definitions in the context of other relative provisions of the Act so as to find an answer to the question relating to the extent of jurisdiction of the Registrar and the High Court functioning as "Tribunal".

28. Now, the principle is that all statutory definitions have to be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. That is why all definitions in statutes generally begin with the qualifying words, similar to the words used in the present case, namely "unless there is anything repugnant in the subject or context". Thus there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word had been used and that will be giving effect to the opening sentence in the definition section, namely "unless there is anything repugnant in the subject or context". In view of this qualification, the court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words "under those circumstances". (see Vanguard Fire and General Insurance Co. Ltd. v. Fraser & Ross [AIR 1960 SC 971 : (1960) 3 SCR 857])"

31. Further reference on the importance of the interpreting a particular definition in the context in which it is used can be made to the judgment of the Supreme Court in **K.V. Muthu v. Angamuthu Ammal** reported in **(1997) 2 SCC 53:**

"10. Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to

> *the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.*
>
> *12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."*

32. As far as occurrence of the term "unless the context otherwise required" in Section 2(1)(e) of the Act is concerned and its significance in interpreting the term "Court" as used in Section 29A of the Act, reference can be made to the judgment of the Kerala High Court in **Lots Shipping Company (supra)**, wherein the Kerala High Court laid emphasis on the rule of purposive interpretation and held that the term "Court" contained in Section 29A of the Act requires a contextual interpretation since interpreting the term in its literal meaning under Section 2(1)(e) of the Act would lead to a situation where identical powers are being exercised in a contrary manner, affecting the hierarchy of the courts. Relevant paragraphs have been reproduced below:

> *"9. Question to be decided is whether the term "court" contained in Section 29A(4) requires a contextual interpretation apart from the meaning contained in Section 2(1)(e)(i) of the Act. A contextual interpretation is clearly permissible in view of the rider contained in sub-section (1) of Section (2), "unless the context otherwise requires". As argued by the counsel on either side and as submitted by the learned Amicus Curiae, a contextual interpretation is required since the power conferred on the court under Section 29A, especially under sub-sections (4) and (5), are more akin to the powers conferred on the Supreme Court and the High Court, as the case may be, under Sections 11(6), 14 & 15 of the Act, for appointment, termination of mandate and substitution of the arbitrator. It is pointed out that, the amendments introduced in the year 2015, with effect from 23.10.2015, has recognized the judgment of the Constitutional Bench of the apex court in SBP & Company v. M/s. Patel Engineering Company Ltd. and another [MANU/SC/1787/2005 : (2005) 8 SCC 618] and conferred the power of appointment on the Supreme Court or the High Court. The amendment has not in any manner enhanced the power of the principal civil court, which continues only with respect to matters*

provided under Sections 9 and 34 of the Act. It is significant to note that the orders passed by the principal civil court of original jurisdiction under Sections 9 and 34 are made appealable under Section 37 of the Act. So also, order if any passed refusing to refer the parties to arbitration under Section 8 of the Act, was also made appealable under Section 37(1)(a) of the Act. Section 29A was introduced to make it clear that, if the arbitration proceedings is not concluded within 18 months, even if the parties have consented for an extension, it cannot be continued unless a judicial sanction is obtained. The power to grant extension by the court is introduced under an integrated scheme which also allows the court to reduce the fees of the arbitrator or to impose cost on the parties and/or to substitute the arbitrator(s). The power of extension is to be exercised on satisfying "sufficient cause' being made out. In all respect, such power conferred under Section 29A for permitting extension with respect to the proceedings of arbitration, is clearly akin to the powers conferred under Sections 14 & 15 of the Act. The absence of any provision for an appeal with respect to the exercise of such power under Section 29A, in the nature as mentioned above, would indicate that the power under Section 29A is not to be exercised by the principal civil court of original jurisdiction. Otherwise, it will create anomalous situation of identical powers being exercised in a contrary manner, prejudicial to the hierarchy of the courts. In a case where appointment of an arbitrator is made under Section 11(6) of the Act by the High Court or the Supreme Court, as the case may be, it would be incongruous for the principal civil court of original jurisdiction to substitute such an arbitrator or to refuse extension of the time limit as provided under Section 29A, or to make a reduction in the fees of the Arbitrator. Therefore a purposive interpretation becomes more inevitable.

10. In Shailesh Dhairyawan(supra) it was observed that, "the principle of "purposive interpretation" or "purposive construction" is based on the understanding that the court is supposed to attach the meaning of the provisions which will serve the "purpose" behind such a provision. The basic approach should be to ascertain what is it designed to accomplish. In the interpretive process, the court is supposed to realise the goal that the legal text is designed to realise. The statutory interpretation of a provision is never static, but is always dynamic. Though the literal rule of interpretation, till some time ago, was treated as the "golden rule", it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end, which is at variance with the purpose of statute, that cannot be countenanced.

> *11. Taking note of the principle enunciated herein above and on the basis of the detailed analysis, we are inclined to hold that the term "court" used in Section 29(4) has to be given an contextual and purposive interpretation, which is to be in variance with the meaning conferred to the said term under subsection Section 2(1)(e)(i) of the Act. The term "court" contained in Section 29(4) has to be interpreted as the 'Supreme Court' in the case of international commercial arbitrations and as the 'High Court' in the case of domestic arbitrations. Hence it is held that, either of the party will be at liberty to file an arbitration petition before the High Court under Section 29A(5) of the Act, seeking extension of time for continuance of the arbitration proceedings in exercise of the power conferred under Section 29A(4) of the Act, in the case of any domestic arbitration. The reference is answered accordingly."*

33. Reference can also be made to the judgment of the Gujarat High Court in **Nilesh Ramanbhai Patel (supra)**, wherein the Gujarat High Court propounded that the term "Court" in Section 29A of the Act must be interpreted in a matter which does not conflict with Section 11 of the Act. Relevant paragraphs have been extracted below:

> *"11. Perusal of this Section would show that time limits have been introduced for completion of arbitral proceedings. Sub-section (1) of Sec. 29A provides that the award shall be made within a period of twelve months from the date the Arbitral Tribunal enters upon the reference. This expression "to have entered upon the reference" is also explained through the explanation below sub-sec. (1). Sub-section (2) is in the nature of incentive for completing the arbitral proceedings expeditiously. Sub-section (3) of Sec. 29A provides for extension of such period as specified in sub-sec. (1) by consent of the parties for a period not exceeding six months. Sub-section (4) of Sec. 29A provides that if the award is not made within the period specified in sub-sec. (1) or the extended period specified in sub-sec. (3), the arbitrator's mandate shall terminate, unless the Court has, either prior to or after expiry of the period, extended the period. Sub-section (5) of Sec. 29A provides that the extension under sub-sec. (4) would be granted on an application of any of the parties only for sufficient cause and on such terms and conditions as may be imposed by the Court. Sub-section (6) of Sec. 29A which is of considerable importance, provides that while extending the period referred under sub-sec. (4), it would be open for the Court to substitute one or all of the arbitrators and if such substitution is made, the arbitral proceedings shall continue from the stage already reached and on the basis of evidence or material already collected. As per sub-sec. (7), the re-constituted Tribunal shall be deemed to*

be in continuation of the previously appointed arbitral Tribunal. Under sub-sec. (8), the Court is given power to impose actual or exemplary cost on any of the parties. This Section makes detailed provisions providing time period for completion of arbitration, for extension of time, such time who can extend such time and under what circumstances and subject to what conditions the time may be extended. It also provides that if the award is not passed within the initial period or extended period, the mandate of the arbitrator would terminate. Section 29A of the Act is thus a complete Code by itself.

12. In case of State of West Bengal v. Associated Contractors, reported in MANU/SC/0793/2014 : 2015 (1) SCC 32, the Supreme Court interpreted the term 'Court' as defined under Sec. 2(1)(e) of the Act as to mean only the Principal Civil Court of original jurisdiction in a District or High Court having civil jurisdiction in the State. No other Court, including the Supreme Court, is contemplated under Sec. 2(1)(e) of the Act. In case of State of Jharkhand v. Hindustan Construction Company Ltd., reported in MANU/SC/1596/2017 : 2018 (2) SCC 602, this was further elaborated by a Constitutional Bench of the Supreme Court holding that the definition of term 'Court' contained in Sec. 2(1)(e) of the Act, was materially different from its predecessor Section contained in Sec. 2(c) of the Arbitration Act, 1940 and that Supreme Court cannot be considered to be a Court within the meaning of Sec. 2(1)(a) even if it retains seisin over the arbitral proceedings. The decision in case of Associated Contractor (supra) was affirmed.

13. Ordinarily, therefore, I would have accepted the contention of learned Advocate Shri Mehta that the term 'Court' defined in Sec. 2(1)(e) in the context of the power to extend the mandate of the arbitrator under sub-sec. (4) of Sec. 29A would be with the principal Civil Court. However, this plain application of the definition of term 'Court' to Sec. 29A of the Act poses certain challenges. In this context, one may recall that the definition clause of sub-sec. (1) of Sec. 2 begins with the expression "in this part, unless the context otherwise requires". Despite the definition of term 'Court' contained in Sec. 2(1)(e) as explained by the Supreme Court in above-noted judgments, if the context, otherwise requires that the said term should be understood differently, so much joint in the play by the statute is not taken away.

14. As is well-known, the arbitration proceedings by appointment of an arbitrator can be triggered in number of ways. It could be an agreed arbitrator appointed by the parties outside the Court, it could be a case of reference to the arbitration by Civil Court in terms of agreement between the parties, it may even be the case of appointment of an arbitrator by the High Court or the Supreme

Court in terms of sub-secs. (4), (5) and (6) of Sec. 11 of the Act. The provisions of Sec. 29A and in particular sub-sec. (1) thereof would apply to arbitral proceedings of all kinds, without any distinction. Thus, the mandate of an arbitrator irrespective of the nature of his appointment and the manner in which the Arbitral Tribunal is constituted, would come to an end within twelve months from the date of Tribunal enters upon the reference, unless such period is extended by consent of the parties in term of sub-sec. (3) of Sec. 29A which could be for a period not exceeding six months. Sub-section (4) of Sec. 29A, as noted, specifically provides that, if the award is not made within such period, as mentioned in sub-sec. (1) or within the extended period, if so done, under sub-sec. (3) the mandate of the arbitrator shall terminate. This is however with the caveat that unless such period either before or after the expiry has been extended by the Court. In terms of sub-sec. (6) while doing so, it would be open for the Court to substitute one or all the arbitrators who would carry on the proceedings from the stage they had reached previously.

15. This provision thus make a few things clear. Firstly, the power to extend the mandate of an arbitrator under sub-sec. (4) of Sec. 29A beyond the period of twelve months or such further period it may have been extended in terms of sub-sec. (3) of Sec. 29A rests with the Court. Neither the arbitrator nor parties even by joint consent can extend such period. The Court on the other hand has vast powers for extension of the period even after such period is over. While doing so, the Court could also choose to substitute one or all of the arbitrators and this is where the definition of term 'Court' contained in Sec. 2(1)(e) does not fit. 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 the High Court or Supreme Court. Even otherwise, it would be wholly impermissible since the powers for appointment of an arbitrator when the situation so arises, vest in the High Court or the Supreme Court as the case may be in terms of sub-secs. (4), (5) and (6) of Sec. 11 of the Act. If therefore, there is a case for extension of the term of an arbitrator who has been appointed by the High Court or Supreme Court and if the contention of Shri Mehta that such an application would lie only before the Principal Civil Court is upheld, powers under sub-sec. (6) of Sec. 29A would be non-operatable. In such a situation, sub-sec. (6) of Sec. 29A would be rendered otiose. The powers under sub-sec. (6) of Sec. 29A are of considerable significance. The powers for extending the mandate of an arbitrator are coupled with the power to substitute an arbitrator. These powers of substitution of an arbitrator are thus concomitant to the principal powers for granting an extension. If for valid reasons the Court finds that it is a fit case for extending the mandate

of the arbitrator but that by itself may not be sufficient to bring about an early end to the arbitral proceedings, the Court may also consider substituting the existing arbitrator. It would be wholly incumbent to hold that under sub-sec. (6) of Sec. 29A the Legislature has vested powers in the Civil Court to make appointment of arbitrators by substituting an arbitrator or the whole panel of arbitrators appointed by the High Court under Sec. 11 of the Act. If we, therefore, accept this contention of Shri Mehta, it would lead to irreconcilable conflict between the power of the superior Courts to appoint arbitrators under Sec. 11 of the Act and those of the Civil Court to substitute such arbitrators under Sec. 29A(6). This conflict can be avoided only by understanding the term "Court" for the purpose of Sec. 29A as the Court which appointed the arbitrator in case of Court constituted Arbitral Tribunal.

16. Very similar situation would arise in case of an international commercial arbitration, where the power to make an appointment of an arbitrator in terms of Sec. 11 vests exclusively with the Supreme Court. In terms of Sec. 2(1)(e), the Court in such a case would be the High Court either exercising original jurisdiction or appellate jurisdiction. Even in such a case, if the High Court were to exercise power of substitution of an arbitrator, it would be transgressing its jurisdiction since the power to appoint an arbitrator in an international commercial arbitrator rests exclusively with the Supreme Court.

17. I am conscious that the learned Single Judge of Kerala High Court in case of M.A.U.R.C. Construction (Private) Ltd. v. M/s. B.E.M.L. Ltd., reported in 2017 SCC OnLine Ker. 20520, has taken a different view. In context of sub-sec. (4) of Sec. 29A of the Act, the learned Judge has concluded that the power would vest only with the Civil Court. In this judgment, the complications which may arise if such a view is adopted in the context of the provisions of sub-sec. (6) of Sec. 29A have not been discussed. I am unable to pursue myself to adopt this view.

18. The rest of the decisions of the other High Courts cited before me do not directly touch this issue. In those judgments the High Courts were concerned with the provisions of Secs. 14 and 15 of the Act pertaining to the challenge procedure in which context the question of appropriate Court was examined. Shri Abhisek Mehta however had also cited the judgment of Supreme Court in case of Lalitkumar V. Sanghavi (D) Through L.Rs. Neeta Lalit Kumar Sanghavi v. Dharamdas V. Sanghavi, reported in MANU/SC/0166/2014 : 2014 (7) SCC 255, in which again the question considered by the Supreme Court was that which Court can examine the question whether the mandate of the arbitrator stood legally terminated or not. In this context, reference was made to the

> *definition of term 'Court' under Sec. 2(1)(e), and it was held that it would be the Court of civil jurisdiction alone which can entertain such a question. Again the situation in the present case is vastly different."*

34. In **Tara Chand (supra)**, the Delhi High Court held that the power to extend the mandate of the arbitrator under Section 29A of the Act would lie before the Court which has the power to appoint the arbitrator under Section 11 of the Act. Relevant paragraphs have been extracted below:

> *"22. Section 11(5) and (6) of the Act relate to appointment of Arbitrators by the High Court or the Supreme Court, as the case may be and details the procedure to do so, therein. In case of International Commercial Arbitration, the power of appointment is vested only with the Supreme Court while in other arbitrations, High Court has the power to make appointment in terms of sub-Sections (5) or (6) of the Act.*
>
> *23. Section 29A came to be inserted in the Statute by the Amending Act 3 of 2016 with effect from 23.10.2015. The Section has been extracted above. Perusal of the Section indicates that it provides for timelines within which the Award has to be made, including the timeline up to which the Tribunal can extend the mandate with the consent of the parties. The power of the Court to extend the mandate has no timelines, as is clear from reading the relevant provision. One of the important provisions of this Section is the power of the Court to substitute one or all of the Arbitrators, while extending the mandate.*
>
> *24. Sub-Section (1) of Section 29A provides a time limit of 12 months within which the Award shall be made. Prior to the Amendment of 2019, the starting point of the 12 months was the date when the Arbitral Tribunal entered upon reference, but post 2019 Amendment, the commencement date is when the pleadings before the Arbitral Tribunal are completed. Sub-Section (3) enables the Arbitral Tribunal to extend the period of 12 months by a further period of six months, with the consent of the parties. Sub-Section (4) of Section 29A provides that if the Award is not made within the statutory period of 12 months or the extended period under sub-Section (3), the mandate of the Arbitrator shall terminate, unless the Court, either prior thereto or after the expiry of the period, extends the mandate. The extension, of course, would be granted on an application by any of the parties, but only for sufficient cause and on such terms and conditions as may be imposed by the Court and this is so stipulated in sub-Section (5) of Section 29A.*
>
> *25. Section 29A of the Act, incorporates an important provision by way of sub-Section (6) and which, in my opinion, is relevant for*

deciding the controversy in the present case. This provision confers on the Court a significant power of substituting one or all of the Arbitrators, while extending the mandate under sub-Section (4), if the need arises and in case, such substitution is made by the Court, the Arbitral proceedings shall continue from the stage already reached and on the basis of evidence or material, already collected. Therefore, when it comes to the time limits for passing the Award or the extension of mandate, the Section is a complete Code in itself.

26. When one looks at the definition of the term 'Court' under Section 2(1)(e) of the Act, it is clear that in case of International Commercial Arbitration, the Court would mean the High Court, in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been the subject matter of the sui or the High Court having jurisdiction to hear appeals of Courts subordinate to that High Court. However, in cases of arbitration other than International Commercial Arbitration, Court would be the Principal Civil Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide questions forming subject matter of the arbitration if the same had been the subject matter of the suit. This definition has been substituted by way of the Amendment Act 3 of 2016, which came into effect from 23.10.2015.

27. If the definition of the term 'Court' is looked into, no doubt the contention of the respondent seems plausible that the power to extend the mandate of the Arbitrator would lie with the Principal Civil Court. However, on a careful analysis, in my opinion, this interpretation would lead to complications and would perhaps be in the teeth of the powers of the Courts under Section 11 of the Act. Thus, the question that poses a challenge is, whether the term 'Court' can be interpreted differently in the context of Section 29A. In my view, sub-Section (1) of Section 2 of the Act itself gives that answer, as it begins with the expression "in this part, unless the context otherwise requires".

28. Power to extend the mandate of an Arbitrator under Section 29A(4), beyond the period of 12 months and further extended period of six months only lies with the Court. This power can be exercised either before the period has expired or even after the period is over. Neither the Arbitrator can grant this extension and nor can the parties by their mutual consent extend the period beyond 18 months. Till this point, interpreting the term 'Court' to mean the Principal Civil Court as defined in Section 2(1)(e) would, to my mind, pose no difficulty. The complexity, however, arises by virtue of the power of the Court to substitute the Arbitrator while extending the mandate and this complication is of a higher degree if the earlier Arbitrator

has been appointed by the High Court or the Supreme Court. Coupled with this, one cannot lose sight of the fact that the Legislature in its wisdom has conferred the powers of appointment of an Arbitrator only on the High Court or the Supreme Court, depending on the nature of arbitration and as and when the power is invoked by either of the parties. There may be many cases in which while extending the mandate of the Arbitrators, the Court may be of the view that for some valid reasons the Arbitrators are required to be substituted, in which case the Court may exercise the power and appoint a substituted Arbitrator and extend the mandate.

29. In case a petition under Section 29A of the Act is filed before the Principal Civil Court for extension of mandate and the occasion for substitution arises, then the Principal Civil Court will be called upon to exercise the power of substituting the Arbitrator. In a given case, the Arbitrator being substituted could be an Arbitrator who had been appointed by the Supreme Court or the High Court. This would lead to a situation where the conflict would arise between the power of superior Courts to appoint Arbitrators under Section 11 of the Act and those of the Civil Court to substitute those Arbitrators under Section 29A of the Act. This would be clearly in the teeth of provisions of Section 11 of the Act, which confers the power of appointment of Arbitrators only on the High Court or the Supreme Court, as the case may be. The only way, therefore, this conflict can be resolved or reconciled, in my opinion, will be by interpreting the term 'Court' in the context of Section 29A of the Act, to be a Court which has the power to appoint an Arbitrator under Section 11 of the Act. Accepting the contention of the respondent would lead to an inconceivable and impermissible situation where, particularly in case of Court appointed Arbitrators, where the Civil Courts would substitute and appoint Arbitrators, while extending the mandate under Section 29A of the Act.

30. Similarly, in case of International Commercial Arbitration, if one was to follow the definition of the term Court under Section 2(1) (e) and apply the same in a strict sense, then it would be the High Court exercising Original or Appellate jurisdiction which would have the power to extend the mandate and substitute the Arbitrator. In such a situation, the High Court would be substituting an Arbitrator appointed by the Supreme Court which would perhaps lead to the High Court over stepping its jurisdiction as the power to appoint the Arbitrator is exclusively in the domain of the Supreme Court. Thus, in the opinion of this Court, an application under Section 29A of the Act seeking extension of the mandate of the Arbitrator would lie only before the Court which has the power to appoint Arbitrator under Section 11 of the Act and not with the Civil Courts. The interpretation given by learned counsel for the

respondent that for purposes of Section 29A, Court would mean the Principal Civil Court in case of domestic arbitration, would nullify the powers of the Superior Courts under Section 11 of the Act."

35. In **Cabra Instalciones Y Servicios (supra)**, the Bombay High Court came to a conclusion that in light of the fact that substantive powers have been conferred under Section 29A of the Act upon the Court, a High Court cannot hear an application under Section 29A of the Act, when original appointment of the arbitrator in a given case was done by the Supreme Court. Relevant paragraphs have been extracted below:

"6. A perusal of Section 29-A would show that it is a substantive and a comprehensive provision inter alia dealing with the time limits for making of an arbitral award and extension of such time limits. Sub-section (1) provides that the award "shall" be made by the arbitral tribunal within a period of twelve months from the date the arbitral tribunal enters upon the reference. As to what is the deemed date for the tribunal to have entered the reference is provided in the 'Explanation' to sub-section (1). Sub-section (2) provides that if an award is made within a period of six months, from the date the arbitral tribunal enters upon the reference, then the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree. Sub-section (3) provides that the parties may by consent extend the period of twelve months specified in subsection (1) for making an award for a further period not exceeding six months. Sub-section (4) provides that when an award is not pronounced within the time specified in sub-section (1) which is within twelve months or the extended period i.e., six months specified in sub-section (3), the mandate of the arbitral tribunal would stand terminated, unless the Court has, either prior to or after the expiry of the period so specified, extended the period. As per the provisions of sub-section (5), extension of period referred to in sub-section (4) may be granted on an application of any of the parties and which may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court. Sub-section (6) is of significance which provides that while extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrators so appointed under Section 29A would be deemed to have received the said evidence and material. Sub-section (7) provides that in the event of an arbitrator(s) being appointed under Section 29A, the arbitral

tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

7. On a plain reading of Section 29A alongwith its sub-sections, it can be seen that for seeking extension of the mandate of an arbitral tribunal, these are substantive powers which are conferred on the Court and more particularly in view of the clear provisions of sub-section (6) which provides that while extending the period referred to in sub-section (4), it would be open to the Court to substitute one or all the arbitrators, which is in fact a power to make appointment of a new/substitute arbitrator or any member of the arbitral tribunal. Thus certainly when the arbitration in question is an international commercial arbitration as defined under Section 2(1)(f) of the Act, the High Court exercising power under Section 29A, cannot make an appointment of a substitute arbitral tribunal or any member of the arbitral tribunal as prescribed under sub-section (6) of Section 29-A, as it would be the exclusive power and jurisdiction of the Supreme Court considering the provisions of Section 11(5) read with Section 11(9) as also Sections 14 and 15 of the Act. It also cannot be overlooked that in a given case there is likelihood of an opposition to an extension application and the opposing party may pray for appointment of a substitute arbitral tribunal, requiring the Court to exercise powers under sub-section (6) of Section 29-A. In such a situation while appointing a substitute arbitral tribunal, when the arbitration is an international commercial arbitration, Section 11(9) would certainly come into play, which confers exclusive jurisdiction on the Supreme Court to appoint an arbitral tribunal.

8. Thus, as in the present case once the arbitral tribunal was appointed by the Supreme Court exercising powers under Section 11(5) read with Section 11(9) of the Act, in my opinion, this Court lacks jurisdiction to pass any orders under Section 29-A of the Act, considering the statutory scheme of Section 29-A. It would only be the jurisdiction of the Supreme Court to pass orders on such application under Section 29-A of the Act when the arbitration is an international commercial arbitration. The insistence on the part of the petitioner that considering the provisions of sub-section (4), the High Court would be the appropriate Court to extend the mandate of the arbitral tribunal under Section 29-A, would not be a correct reading of Section 29A as the provision is required to be read in its entirety and in conjunction with Section 11(9) of the Act."

36. In **Magnum Opus IT Consulting Private Limited v. Artcad Systems** reported in **MANU/MH/3337/2022**, the Bombay High Court expounded that when the High Court or the Supreme Court appoints the arbitrator, the term "Court" used in Section 29A of the Act would require a

contextual interpretation given the rider provided in Section 2(1)(e) of the Act. Relevant paragraphs have been extracted below:

> *"23. It is pertinent to note that Section 2 begins with "unless the context otherwise requires". In Hindustan Construction Ltd. (supra) the Hon'ble Supreme Court while considering the contention that the term 'Court' can be assigned different meaning depending on the context, referred to a three Judge Bench decision in CST vs. United Medical Agency MANU/SC/0396/1980 : (1981) 1 SCC 51 wherein it was held that "It is a well-settled principle that when a word or phrase has been defined in the interpretation clause, prima facie that definition governs whenever that word or phrase is used in the body of the statute. But where the context makes the definition clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are, therefore, normally enacted subject to the usual qualification- "unless there is anything repugnant in the subject or context", or "unless the context otherwise requires", Even in the absence of the express qualification to that effect such a qualification is always supplied."*
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> *24. In a recent judgment in Pasl Wind Solutions Pvt. Ltd. Vs. Ge Power Conversion India, MANU/SC/0295/2021 a three Judge Bench of the Hon'ble Supreme Court has reiterated that "normally the definition given in the section should be applied and given effect to but this normal rule may, however, be departed from if there be something in the context to show that the definition should not be applied... "*
>
> *25. It is pertinent to note that Section 29-A authorizes the 'Court' not only to extend the mandate of the Arbitrator but also to substitute the Arbitrator. The meaning of the word 'Court' as defined in Section 2(1)(e) of the Arbitration and Conciliation Act is subject to the requirement of the context. Hence, when the High Court or the Supreme Court, as the case may be, appoints the Arbitrator in exercise of jurisdiction under Section 11, the term 'Court' would require contextual interpretation, which is permissible in view of the rider contained in Sub Section 1 of Section 2 of the Arbitration and Conciliation Act. Any other interpretation would create anomalous situation and irreconcilable conflict between the power of the superior court to appoint an Arbitrator and the power of the District Court to substitute such Arbitrator in exercise of powers under Section 29-A. Such conflict can be avoided only by purposive interpretation.*
>
> *26. In the instant case, the District Court has substituted the arbitrator in exercise of powers under Section 29-A of the*

> *Arbitration and Conciliation Act. It is not in dispute that the arbitration proceedings had commenced under section 18 of the MSMED Act. The Council had not concluded the Arbitration within a period of 90 days as stipulated under sub-section 5 of section 18 of MSMED Act or within the time limit under section 29-A of the Arbitration and Conciliation Act. In fact, there was absolutely no progress in the Arbitration for a period of over 03 years and inaction of the Arbitrator had rendered the Arbitral Scheme under section 18 nugatory. There being no provision under the MSMED Act to extend the mandate of the arbitrator or substitute the arbitrator, the only remedy available to the Respondent was to approach the Court under section 29-A of the Arbitration Act and accordingly, the Respondent filed an application under section 29-A before the District Court, Nashik.*
>
> *27. It is not in dispute that the District Court, Nashik is the principle Civil Court of original jurisdiction in the district having jurisdiction to decide the questions forming the subject matter of the arbitration, if the same had been the subject matter of the suit. As noted above, in the instant case, the Arbitration proceedings had commenced under section 18 of the MSMED Act. The Arbitrator was neither appointed under section 11 of the Arbitration and Conciliation Act nor substituted by this Court, by order dated 17/11/2017. By this order, this Court had only revived the arbitration proceedings which were closed by the Council. Hence, in the context of the present matter, interpreting the word 'Court' to mean principal civil court of original jurisdiction does not lead to an anomalous situation and does not give rise to conflict of powers. On factual aspects the decisions in Cabra Instalaciones, Nilesh Patel and Tara Chand (supra) are distinguishable. Hence, there is no scope to depart from the normal rule of giving effect to the meaning of the term 'Court' as defined in the Act."*

37. A Division Bench of the Patna High Court in **South Bihar Power Distribution Company Limited and Others v. Bhagalpur Electricity Distribution Company Private Limited and Others** reported in **MANU/BH/0467/2023** held that Section 2(e), Sections 11(4),11(5), and 11(6), and Sections 29A (4),(5),and (6) of the Act need to be read together and it is the Court which has the power to appoint the arbitrator before which an application for extension of time will lie. Relevant paragraphs have been extracted below:

> *"82. This definition of the word 'Court' is preceded by the term, 'in this Part, unless the context otherwise requires' which bears in ordinary sense in case of an arbitration other than international*

commercial arbitration, the principal Civil Court of original jurisdiction is a district, and includes the High Court in exercise of its ordinary original civil jurisdiction. But we are more concerned with the process of appointment of arbitrators and their substitution as it would be seen that the definition of Court under Section 2 (e) has no relevance with regard to appointment and substitution of arbitrator.

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85. Thus, Sub-section (4) of Section 11 provides that if a party fails to appoint an arbitrator within thirty days from the date of receipt of a request to do so from the other party or the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment, the appointment shall be made, upon request of a party, by the Supreme Court or as the case may be, the High Court or any person or institution designated by such court. In the case at hand, the Arbitral Tribunal was constituted on appointment of Arbitrators being made by the parties and thereafter the appointed Arbitrators nominated the Presiding Arbitrator. But the question arises whether the learned District Judge was correct in his approach in extending the time of learned Arbitral Tribunal? No doubt Section 29A (4) provides that extension of mandate of appointment of Arbitrator (s) by the court either prior or after the expiry of the period so specified.

86. Now, a piquant situation arises. If the power to appoint Arbitrator has been vested with High Court and Supreme Court under Section 11 (4) of the Act, legislature would never intended its substitution under Section 29 A (6) by the court of principal civil judge as it appears from the plain reading of Section 2(e)(i). But the meaning of Court for the purpose of Section 29A would be different from what it is under Section 34 and Section 37 of the Act.

87. In the present case, though the Arbitrator was appointed by the parties themselves, but in case of any dispute they would otherwise have been appointed by the High Court or the Supreme Court as the case may be and taking cue from this provision under Section 11 (4), 11 (5) and 11 (6) of the Act, we can say that if the Principal Civil Court cannot substitute the Arbitrators, by corollary, it cannot extend the period of Arbitrator(s) under Section 29A (4). Otherwise it would give rise to conflict between the power of the High Court as well as the Supreme Court to appoint Arbitrators under Section 11 of the Act and those of the principal civil courts to substitute them under Section 29 (A) (6). Moreover initially when SBPDCL failed to appoint Arbitrator, BEDCPL approached this Court by filing Request Case No.06 of 2016 and during pendency of the aforementioned case, SBPDCL appointed its Arbitrator.

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> *91. Thus, the cumulative reading of Section 2 (e), Section 11 (4) (5) (6) and Section 29 A (4) and (6) of the Act makes it crystal clear that the court which could grant extension of time could only be the court which has the power to appoint the Arbitrators and not the Principal Civil Court which is the court for other purpose under the Act. Otherwise, the conflict between the power of the superior courts to appoint Arbitrators under Section 11 of the Act and powers of the Principal Civil Court to substitute such Arbitrators under Section 29 A (6) of the Act could not be reconciled. So, we find and hold that the learned District Judge erred while granting the extension of time to the learned Arbitral Tribunal."*

38. In **Amit Kumar Gupta (supra)**, the Calcutta High Court held that the meaning of word "Court" as defined in Section 2(1)(e) of the Act is subject to the requirement of context and it is in that context, the word "Court" used in Section 29A of the Act must be interpreted. Relevant paragraphs have been extracted below:

> *"16. Section 29A of the Act of 1996 has dealt with the time limit for arbitral award. Sub-section (1) of Section 29A has prescribed the time limit for arbitration other than international commercial arbitration. It has prescribed that endeavour should be made to dispose an international commercial arbitration within the time limit prescribed. Sub-section (2) of Section 29A has allowed the arbitral tribunal to receive additional fees if the award is made within the time limit prescribed. Sub-section (3) of Section 29A of the Act of 1996 has allowed the parties to agree to extension for making the award. However, the period of extension has been prescribed not to exceed six months. Sub-section (4) of Section 29A has empowered the Court to extend the period to complete the arbitration reference. The first proviso to such sub-section has allowed the Court to reduce the fees of the arbitral tribunal, if the Court finds that the delay is attributable to the arbitral tribunal. Second proviso has provided that, the arbitral reference of the arbitrator shall continue till the disposal of an application under sub-section (5). The third proviso has required the Court to afford an opportunity of hearing to the arbitrator before the fees is reduced. Sub-section (5) of Section 29A has allowed the parties to make an application for extension of time to complete the reference. It has noted that, an extension to complete the reference can be granted when sufficient cause has been shown and on such terms and conditions as may be imposed by the Court. Sub-section (6) of Section 29A has allowed the Court to substitute one or all of the arbitrators. Sub-section (7) of Section 29A has stipulated that, in the*

event, the arbitrator or arbitrators are appointed under Section 29A then, the reconstituted arbitral tribunal shall be deemed to be in continuation of the previously appointed arbitral tribunal. Sub-section (8) of Section 29A has recognised the power of the Court to impose only actual or exemplary costs upon any of the parties. Sub-section (9) of Section 29A of the Act of 1996 has stipulated that an application under sub-section (5) of Section 29A should be disposed of by the Court as expeditiously as possible and endeavour should be made to dispose of the same within the period of 60 days from the date of service of notice on the opposite party.

17. The meaning of the word "court" as ascribed in Section 2(1)(e) of the Act of 1996 is subject to the requirement of the context. In the context of Section 29A of the Act of 1996 which has prescribed a substantive provision for completion of the arbitral award and the time limit to do so, the meaning of the word "court" as used therein has to be understood. Under sub-section (6) of Section 29A of the Act of 1996, the Court has been empowered to substitute the arbitrator or the arbitrators in reconstituting the arbitral tribunal if so required. The power of appointment of an arbitral tribunal has been prescribed in Section 11 of the Act of 1996. Section 11 of the Act of 1996 has prescribed two appointing authorities given the nature of the arbitration. In the case of an international commercial arbitration, the authority to appoint an arbitrator, has been prescribed under Section 11 of the Act of 1996 to be the Supreme Court. In the case of a domestic arbitration, Section 11 of the Act of 1996 has prescribed that the appointing authority shall be the High Court.

18. In my view, the word "court" used in Section 29A of the Act of 1996 partakes the character of the appointing authority as has been prescribed in Section 11 of the Act of 1996 as, the Court exercising jurisdiction under Section 29A of the Act of 1996 may be required to substitute the arbitrator in a given case. Such right of substituting can be exercised by a Court which has the power to appoint. The power to appoint has been prescribed in Section 11. Therefore, the power to substitute should be read in the context of the power of appointment under Section 11."

39. What emerges from the judgments of the Supreme Court as cited above is that the Supreme Court has consistently emphasized the importance of interpreting statutory definitions in the context in which they are used, rather than adhering strictly to their literal meaning. These judgments underscore the dynamic nature of statutory interpretation and highlight the significance of considering the broader context, purpose, and objectives of the statute. In **Whirlpool Corporation (supra)**, the Supreme Court

elucidated on the significance of the phrase "unless the context otherwise requires" in a definition clause. The Supreme Court emphasized that all statutory definitions should be read subject to the qualification expressed in the definition clause, acknowledging that a defined term may have a different meaning in different sections of an Act depending upon the subject or context. This approach ensures that statutory interpretations remain responsive to the diverse contexts in which they operate, thereby facilitating a nuanced and contextual understanding of statutory provisions. Furthermore, in the Supreme Court's decision in **Angamuthu Ammal (supra)**, the Court further reinforced the principle that definitions in statutes, even if indicated to be conclusive, must be interpreted in light of the context and scheme of the statute. The Court emphasized that interpretations of definitions should not only be consistent with the context but should also aid in achieving the purpose intended by the legislature. Additionally, where a definition is preceded by the phrase "unless the context otherwise requires", the Court held that the definition should be applied and given effect to, but this rule may be departed from if there is something in the context to show that the definition could not be applied. The aforesaid judgments highlight the dynamic and purposive approach adopted by the Supreme Court in interpreting statutory definitions. They emphasize that statutory interpretation is not a mechanical exercise but requires a careful analysis of the context, purpose, and objectives of the statute. By considering the broader context in which statutory definitions are used, Courts can ensure that statutory interpretations align with legislative intent and serve the overarching goals of the statute. The Supreme Court has time and again reaffirmed the principle that statutory definitions should not be interpreted in isolation but should be analysed in conjunction with the surrounding provisions and the statute's overarching objectives. This approach ensures that statutory interpretations remain dynamic, responsive, and consistent with legislative intent, thereby promoting clarity, effectiveness, and fairness in the application of the law.

40. What can be inferred from the various High Court judgments as relied upon by the parties and cited above my me, is that while the definition of the

term ‘Court” under Section 2(1)(e) of the Act may initially suggest that the power to extend the mandate lies with the Principal Civil Court, the context of Section 29A of the Act necessitates a broader interpretation of this term. As can be seen, High Courts have held that the term ‘Court” in the context of Section 29A of the Act should be understood to include the court that has the power to appoint the arbitrator under Section 11 of the Act. This interpretation avoids potential conflicts between the powers of different courts and ensures coherence within the statutory framework. The power of the Court to substitute one or all of the arbitrators while extending the mandate under Section 29A(6) of the Act is a significant aspect of the provision. This power enables the Court to address situations where the existing arbitrator may not be able to effectively conclude the proceedings within the specified timeline. In cases where the original appointment of the arbitrator was made the Supreme Court or the High Court, the power to substitute arbitrators rests exclusively with the High Court or the Supreme Court, depending on the Court whichmade the appointment. This interpretation as arrived at by multiple High Courts and this Court, preserves the hierarchy of judicial authority and avoids a protentional conflict between the provisions contained under Section 29A of the Act and Section 11 of the Act.

41. This Court in **Lucknow Agencies Lko. v. U.P. Avas Vikas Parishad and Others** reported in **MANU/UP/0885/2019**, in a case where the appointment of the arbitrator was made by Housing Commissioner, concluded that since this Court does not exercise ordinary original civil jurisdiction, an application under Section 29A of the Act would lie before the Court within the meaning of Section 2(1)(e) of the Act:

> *“7. As this matter relates to an Arbitration other than International Commercial Arbitration it is Section 2(1) Clause (e)(i) as substituted by the Act No. 3 of 2016 which shall apply in this case.*
>
> *8. On a bare perusal of the aforesaid definition of the term 'Court' it means that the Principal Civil Court of original jurisdiction in a District and includes the High Court in exercise of its ordinary original civil jurisdiction having jurisdiction to decide the questions forming the subject matter of the arbitration if the same had been*

the subject matter of a suit but does not include any Civil Court of a great interfere to such principal Civil Court or any Court of small causes. On a bare reading of the said definition it is evident that the principal Civil Court of original jurisdiction in the District is the court of the District Judge.

9. As regards the Allahabad High Court is concerned, it does not have ordinary original civil jurisdiction to decide the questions forming the subject matter of the arbitration at hand as a subject matter of a suit. Even if the unamended definition of Court is taken into consideration it does not make much of a difference to the case at hand, as, even there the jurisdiction for extending the period under Sub-section 4 and 5 of Section 29-A would lie before the Principal Civil Court of original jurisdiction in a District or the High Court having ordinary original civil jurisdiction to try the subject matter of Arbitration in a Suit. The application under Section 11 of the Act, 1996 is maintained before the High Court in view of the specific term 'High Court' used therein, whereas, the term used in Sub-section 4 and 5 of Section 29-A is 'Court' and not the High Court.

10. As regards the reference to provisions of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 is concerned, Section 4 of the said Act deals with constitution of Commercial Division of High Court and the very opening line of Subsection 1 says- 'in all High Courts, having ordinary civil jurisdiction'. Ordinary civil jurisdiction refers to ordinary original civil jurisdiction as is evident from Rule 7 and 10 of the Act, 2015. As already stated hereinabove, the Allahabad High Court does not have ordinary civil jurisdiction to try commercial disputes, therefore, there is no question of any commercial dispute being initiated before the Commercial Division of the High Court by way of a suit based on valuation, as, the prerequisite implied by the use of the words- 'having ordinary civil jurisdiction' appearing in Sub-section 1 of Section 4 is not satisfied. This is also clear from a bare reading of Section 7 of the Act, 2015 which relates to jurisdiction of Commercial Divisions of High Court and the opening sentence of the said provision is-'all suits and applications relating to commercial disputes of a specified value filed in a High Court having ordinary original civil jurisdiction shall be heard and disposed of by the Commercial Division of that High Court. Furthermore, Section 10 of the Act, 2015 specifically deals with the topic of jurisdiction in respect of arbitration matters, which reads as under:-

> *"10. Jurisdiction in respect of arbitration matters.-Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and--*

> *(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*
>
> *(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.*
>
> *(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted."*

11. On a bare reading of the aforesaid provision it is evident that if an Arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court. Now, this provision applies where the High Court exercises original civil jurisdiction to try suits involving commercial dispute as deferred in Section 2(1)(c) of the Act, 2015 as is evident from the use of the words 'filed on the original side of the High Court'. The Allahabad High court does not exercise original civil jurisdiction involving commercial disputes as defined in Section 2(1)(c) of the Act, 2015 as is evident from Rule 1 to 9 of Chapter VIII of the Allahabad High Court Rules, 1952. Moreover, Sub-section 3 of Section 10 of the Act, 2015 very categorically provides that if an arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the Act, 1996 that would ordinarily lie before any principal civil court

> *of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. Therefore, in the facts of the present case as the Allahabad High Court does not exercise original civil jurisdiction involving commercial disputes the application under Section 29-A of the Act, 1996 relating to a commercial dispute would lie before the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted and in an Arbitration relating to a non commercial dispute it would lie before the principal civil court of original jurisdiction i.e. the Court of District Judge as referred hereinabove. This is how the Act of 1996 and the Act, 2015 have to be read together to arrive at a harmonious understanding of the two Acts in matters of Arbitration."*

42. However, in **Indian Farmers Fertilizers (supra)**, this Court took a divergent view on factual grounds since Section 29A(6) of the Act was not considered by this Court in **Lucknow Agencies (supra)**, and the arbitrator in **Lucknow Agencies (supra)**, was appointed by the Housing Commissioner and not the High Court. This Court concluded that when the High Court has appointed an arbitrator under Section 11 of the Act, it is only the High Court which can hear an application under Section 29A(4) and Section 29A(5) of the Act:

> *"29. From the reading of Section 2(1)(e) it is clear that in case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction or the High Court, which exercises its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration, shall be the court.*
>
> *30. While, section 11 provides for power of appointment of arbitrators. Sub-section (2) provides that parties are free to agree on a procedure for appointing the arbitrator or arbitrators. It is where the parties failed to arrive in the appointment of arbitrators that the power has been vested with the High Court with the appointment of arbitrators for domestic arbitration and the Supreme Court in the matters of international commercial arbitration. Sub-sections (4), (5) and (6) read together provide the manner in which these two superior courts step in, in the appointment of arbitrator.*
>
> *31. Section 29-A is a substantive provision which was inserted w.e.f. 23.10.2015 for speedy disposal of cases relating to arbitration with the least Court intervention. The statement of objects and reasons to*

the amending Act No. 3 of 2016 provided that as India had been ranked as 178 out of 189 nations in the world in contract enforcement, it is high time that urgent steps are taken to facilitate quick enforcement of contracts, easy recovery of monetary claims and award of just compensation for damages suffered and reduce the pendency of cases in courts and hasten the process of dispute resolution through arbitration, so as to encourage investment and economic activity.

32. Sub-section (1) of Section 29A provides for the period within which the arbitration proceedings are to be completed i.e. 12 months. Further sub-section (3) of Section 29A takes care that in case the award is not made as per sub-section (1), by the consent of the parties, the period can be extended for further six months.

33. The Act puts a cap upon extension beyond period of eighteen months and sub-section (4) of Section 29A provides that in case the award is not made within the extended period, it is only the Court on the application of the parties may extend the period. Sub-section (6) of Section 29A is of great relevance as it provides the power to the Court to substitute one or all the arbitrators and the arbitral proceedings shall continue from the stage already reached and on the basis of evidence and material already on record.

34. Thus, the power to substitute the arbitrator as mandated in subsection (6) of Section 29A vest only with the Court. This provision cannot be read in isolation but with Section 11, which provides for appointment of arbitrator.

35. Once the appointment of arbitrator or arbitral Tribunal has been made by the High Court or the Supreme Court exercising power under sub-sections (4), (5) and (6) of Section 11 then the power to substitute the arbitrator or the Arbitral Tribunal only vest with the said appointing authority i.e. High Court or Supreme Court, as the case may be.

36. The argument raised from the side opposite that the word 'Court' occurring in Section 2(1)(e) means the principal Civil Court and not the High Court cannot be accepted, as once the appointment was made by the High Court exercising power under Section 11, the power to substitute an arbitrator cannot vest under sub-section (6) of Section 29A with the principal Civil Court.

37. The Calcutta High Court in Amit Kumar Gupta (supra) had in categorical terms held that the power to substitute the arbitrator given in sub-section (6) of Section 29A has to be read with the power of appointment under Section 11. The same view has been reiterated by the Gujarat High Court in case of Nilesh Ramanbhai Patel (supra).

38. The Division Bench of Kerala High Court in case of M/s. Lots Shipping Company Limited (supra) had clearly held that the power to grant extension by Court is introduced under an integrated scheme which also allows the Court to reduce the fees of the arbitrators or to impose cost on a party and/or to substitute the arbitrators. The power of extension is to be exercised on satisfying the "sufficient cause" being made out. According to the Court, the powers conferred under Section 29A for permitting extension with respect to proceedings of arbitration, is clearly akin to the powers conferred under Section 14 and 15 of the Act.

39. The Court further recorded that the absence of any provision for an appeal with regard to the exercise of powers under Section 29A, would be indicative of the fact that power under Section 29A is not to be exercised by principal Civil Court of original jurisdiction.

40. The anxiety of respondent's counsel as to the Section 42 of the Act read with Section 2(1)(e) has no relevance in the scheme of the Act while dealing with Sections 11 and 29A of the Act, as Section 42 will get attracted only when the Courts are dealing matters other than that of appointment and removal of arbitrators. The section clearly provides that where any application in respect of an arbitration agreement is made to the Court, that Court alone has jurisdiction over the arbitral proceedings and all the subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

41. In case of Garhwal Mandal Vikas Nigam Ltd. (supra), the Apex Court while clarifying the position as to the challenge of an award made by an arbitrator appointed by the High Court or Supreme Court under Section 11 shall be made under Section 34 of the Act of 1996 before the principal Civil Court of original jurisdiction as contemplated under Section 2(1)(e) of the Act.

42. Thus the argument from the side opposite as to the award cannot be challenged before the principal Civil Judge made by the arbitrator appointed by this Court has been dealt in extenso by Hon'ble Apex Court in the judgment referred above.

43. Here, we are concerned with the extension of time limit for the arbitral award under Section 29A, wherein an arbitrator has been appointed by the High Court exercising power under Section 11 of the Act. Section 42 will not be attracted and it is only the High Court which has the power to grant extension to the Arbitral Tribunal for making award.

44. Reliance placed on the various decisions by the respondent's counsel relate to the definition of the word "court" under Section 2(1) (e) prior to the amendment of year 2015. In none of the

> *judgment placed before the Court Sections 11 and 29A of the Act has been taken into consideration.*
>
> *45. As far as decision of coordinate Bench of this Court in case of M/s. Lucknow Agencies and Another (supra) is concerned, the arbitrator was appointed by the Housing Commissioner and not by the High Court exercising power under Section 11 of the Act. The Court while considering the provisions of Section 29A(4) and (5) held that it was the principal Civil Court where the application for extension of time for arbitral award was maintainable and not before the High Court. In the said judgment there was no consideration as to subsection (6) and (7) of Section 29A of the Act. The said decision is distinguishable on the facts of the present case.*
>
> *46. In the present case this Court exercising power under Section 11 of the Act has appointed the arbitrator way back in the year 2014.*
>
> *47. Thus, the question framed above stand answered holding that the application for extension of time for arbitral award moved under Section 29A is maintainable before this Court."*

43. The counsel appearing on behalf of the opposite parties strongly emphasized that the term "Court" used in Section 29A of the Act must be interpreted in its literal sense, and the phrase "if the context otherwise requires" will not come into play here. However, literally interpreting the term "Court" in Section 29A as used in Section 2(1)(e) of the Act would lead to certain anomalous situations. Section 29A of the Act also gives the power to the Court hearing an application under the said section to substitute an arbitrator. The element of substitution involved in Section 29A, to my mind, qualifies the term "Court" used in the said section to be interpreted in a different manner than the one provided under Section 2(1)(e) of the Act if the original appointment of the arbitrator(s) was made under Section 11 of the Act for two reasons. Firstly, the power to substitute is akin to the power of appointment, which under Section 11 of the Act has been conferred upon the Supreme Court or the High Courts. Counsel for opposite parties impressed upon this Court that there is nothing holy about the appointment process under Section 11 of the Act, since by the Amendment of 2019 to the Act, power to appointment has now been conferred upon arbitral institutions designated by the Supreme Court or the High Courts. To me, this argument does not hold much water since despite the said change, overall supervision and power to designate arbitral institutions remains with the Supreme Court

or the High Courts. Furthermore, this Court cannot be influenced by the said amendment to Section 11 of the Act, since the same is yet to be notified. Coming to the second reason, it is inconceivable that power to appoint an arbitrator would lie with the Supreme Court or the High Courts under Section 11 of the Act but will also lie with the Civil Courts or Commercial Courts under Section 29A(6) of the Act. And given that the initial appointment of the arbitrator may have occurred under Section 11 of the Act, and under Section 29A(6), the Court is empowered to substitute an arbitrator, interpreting the term "Court" in the manner as prescribed under Section 2(1)(e) of the Act would lead to a conflict between Section 11 and Section 29A(6) of the Act. Provisions of a statute are to be read together, and not in isolation, to avoid such conflict. The contention put forth by the counsel for the opposite parties regarding the literal interpretation of the term "Court" suggests a strict adherence to the language of the statute without considering contextual factors. However, statutory interpretation is not merely a matter of linguistic analysis but also involves consideration of legislative intent, statutory purpose, and the broader legal framework within which the statute operates.

44. The term "Court" in Section 29A of the Act must be interpreted in a manner that does not conflict with Section 11 of the Act. This interpretation aligns with the principle that provisions of a statute should be read together and not in isolation to avoid conflicts. Section 29A of the Act provides for a comprehensive framework for the completion of arbitration proceedings within specific time limits, including provisions for extension of the mandate and substitution of arbitrators. Power to extend the mandate of an arbitrator under Section 29A of the Act includes the power to substitute arbitrator(s). A contextual interpretation is required while interpreting the term "Court" in Section 29A of the Act because the powers conferred on the Court under Section 29A of the Act, especially regarding the substitution of arbitrators, are akin to the powers conferred upon the Supreme Court and the High Courts under Section 11 of the Act. If literal interpretation is accorded to the term "Court" in Section 29A of the Act, it would lead to a situation where both the Courts under Section 2(1)(e) of the Act, and the Supreme

Court and the High Courts, are exercising similar powers of appointment. This is contrary to the legislative intent and also goes against hierarchy of the courts. Literal Interpretation is to be followed unless it leads to absurdity and anomalies. Therefore, the principle of literal interpretation would not apply while interpreting the term “Court” under Section 29A of the Act. The judgments of the various High Courts discussed above highlight the importance of harmonizing the provisions of Section 29A of the Act with other sections of the Act and ensuring that the interpretation of the term “Court” aligns with the purpose and objectives of the Act.

45. The difficult situation which would arise in literally interpreting the term “Court” used in Section 29A of the Act, was recently highlighted by the High Court of Bombay in the case of **K.I.P.L. Vistacore Infra Projects J.V. v. Municipal Corporation of the city of Ichalkarnji** reported in **MANU/MH/0513/2024**. Relevant paragraphs have been extracted below:

> *“13. The legislature, therefore, has consciously used the word 'Court' which is empowered to extend the mandate of the Arbitrator, if it has expired as it is that 'Court' which has appointed the Arbitrator and while extending the period, if the Court finds that the proceedings have been delayed for the reasons attributable to the Arbitral Tribunal, then it is even empowered to reduce fees of the Arbitrator(s), in the manner set out in the proviso.*
>
> *The term 'Court' used in Sub-Section (4) as well as in the Scheme of Section 29A, would therefore, have to be construed as a 'Court' in reference to the context. It is highly inconceivable that an Arbitrator is appointed by the High Court or Supreme Court in case of International Commercial Arbitration and the Principal Civil Court of Original Jurisdiction in a district which is sub ordinate to the High Court, shall exercise the power under Sub-Section (4) or or that matter power under Sub-Section (6) of substituting Arbitrator while extending the period referred in Sub-Section 4.*
>
> *Apart from this, Sub-Section (7) and (8) are also illustrative of the intention of the legislature that it never intended to strictly construe the term 'Court' as defined in Section 2(1) of the Act.*
>
> *14. The provision contained in Form of Section 29A inserted by the Amendment Act No. 3 of 2016, which contemplated the timeline for conclusion of the arbitral proceedings with an intention to encourage arbitration as a speedy mode of resolution of disputes. Section 29-A is a scheme in itself which, in order to conclude the*

arbitration in an expedient manner provided for entitlement of the Tribunal to receive such amount of additional fees as the parties agree if the Award is within a period of six months after the Tribunal enters the reference. It provides a mechanism if the Award is not made within the period specified or the extended period of six months as upon the expiry of this period, the mandate of the Arbitrator shall terminate unless the Court extend the period.

The power to be exercised in extending the mandate of Tribunal is of great significance since neither the parties themselves by consent are empowered to extend the mandate but for the period of six months when it can by consent extend the period by six months, but for further extension, it is only the Court which can be approached and upon being satisfied that the mandate of the Tribunal deserve an extension on sufficient cause being shown upon such terms and conditions as the Court may impose, the mandate can be extended.

If the power under Section 29A is to be exercised by Principal Civil Court of the District, though it may be competent to extend the mandate, but when the question of substitution arises, an anomalous situation would result as an Arbitrator appointed by the High Court or Supreme Court shall stand substituted by the Principal Civil Court, as an appointment of the Arbitrator in any case under Section 11 is the prerogative of the High Court in case of Domestic Arbitration and the Supreme Court, in case of International Arbitration.

15. This situation would pose a difficulty as it would permit the Civil Courts to substitute and appoint Arbitrators, which were appointed by the High Court under the guise of the power to be exercised under Section 29A of the Act by construing that the term' Court' would be assigned the strict meaning as per Section 2 of the Act.

A Consistent view to the effect that the above exercise would permit the Court subordinate to High Court or the Supreme Court, to substitute an Arbitrator, is reflected though various judicial pronouncements including the decision from Bombay High Court in case of Cabra Instalaciones Y. Servicios (supra) as well as Delhi High Court in case of Tara Chand Sumit Construction Co. (supra).

The Delhi High Court has gainfully referred to the decision in case of Cabra Instalaciones Y. Servicios and a decision of Gujarat High Court in case of Nilesh Ramanbhai Patel (supra) which again proceed on the same logic that the powers for extending the mandate of an Arbitrator under Section 29A are coupled with the power to substitute an Arbitrator and they are concomitant and, therefore, if for valid reasons the Court find that it is a fit case for extending the mandate of the Arbitrator that by itself may not be sufficient to bring about an early end to the Arbitration Proceedings

> *and the Court may also consider substituting the Arbitrator in the existing arbitral proceedings, but if interpretation which was sought to be canvassed that under Sub-Section (6) of Section 29A, the powers are vested in Civil Court i.e. to substitute an Arbitrator or a full panel of Arbitrators appointed by the High Court under Section 11, it would lead to irreconcilable conflict between the powers of the superior Courts to appoint an Arbitrator under Section 11 and those of the Civil Courts to substitute such Arbitrators under Section 29-A(6).*
>
> *Nilesh Ramanbhai Patel (supra), therefore clearly held that this conflict can be avoided only by interpreting the term 'Court' for the purpose of Section 29A as the Court which appointed the Arbitrator in case of the Court which constituted arbitral tribunal."*

46. The counsel for the opposite parties harped on the fact that the usage of the words "Court" and omission of the word "High Court" or "Supreme Court" in Section 29A of the Act is a conscious choice and reflects the will of the legislature. I find myself unable to agree with the same. If the legislature intended every occurrence of the term "Court" in all the sections of the Act to mean the same, the phrase "unless the context otherwise requires" used in Section 2(1)(e) of the Act would be rendered meaningless, ineffective and otiose. The very usage of the said phrase in Section 2(1)(e) is reflective of the legislative intent that the interpretation of term "Court" is subject to the context in which it has been used. The inclusion of the phrase "unless the context otherwise requires" underscores the legislature's intent to allow for a flexible and context-sensitive interpretation of the terms within the Act. The argument regarding the deliberate legislative choice to use the term "Court" uniformly across all sections of the Act lacks sufficient consideration of the principle of contextual interpretation and the broader framework of statutory construction.

47. The counsel for the Respondent contended that by the Amendment Act of 2015 by which Section 29A of the Act was inserted, explanation to Section 47 of the Act was also amended, and the word 'High Court' was specifically added to the explanation. Therefore, counsel contended that the usage of the word "Court" in Section 29A and not 'High Court" or "Supreme Court" is a conscious choice by the legislature. To me, this argument does not bear much weight for the simple reason that while the

explanation to Section 47 of the Act was amended by the virtue of the recommendation made the 246th Report by the LIC, the insertion of Section 29A of the Act was not recommended by 246th LIC Report but instead the insertion of Section 29A in the Act can be traced back to the 176th Report by LIC, as has been discussed earlier. Furthermore, the recommendations in the 176th Report by LIC did not contain any provision for substitution. Accordingly, when the amendment actually took place with the inclusion of substitution in Section 29(6), the legislative obviously did not contemplate or deliberate upon the anamoly that may arise.

CONFLICTING DECISION OF THIS COURT AND REFERENCE TO A LARGER BENCH

48. In a departure from the view taken by this Court in **Indian Farmer Fertilizers (supra)**, this Court in **A'Xykno Capital Services (supra)**, held the decision rendered in **Indian Farmer Fertilizers (supra)** to be per incuriam. In **A'Xykno Capital Services (supra)**, this Court had concluded that the term "Court" as envisaged under Section 29A of the Act read with Section 2(1)(e) of the Act does not include a High Court not having original civil jurisdiction as in the case of this Court and an application as such under Section 29A of the Act would be maintainable only in the Principal Civil Court of original jurisdiction in a district. This Court in the **A'Xykno Capital Services (supra)** further held that the power to substitute an arbitrator under Section 14 of the Act is not akin to the power to substitute under Section 29A of the Act. The Court in **A'Xykno Capital Services (supra)** made a reference to the judgment of the Supreme Court in **Nimet Resources (supra)**, wherein the Supreme Court held that it is only a High Court exercising original civil jurisdiction where an application under Section 14 of the Act would be maintainable.

49. However, I find myself unable to agree with the view taken in **A'Xykno Capital Services (supra)**. Firstly, when the judgment of the Supreme Court was rendered in **Nimet Resources (supra)**, Section 14 of the Act, as it existed then, contained no provision for substitution, wherein it does contain the provision for substitution now. In **Swadesh Kumar**

Agarwal v. Dinesh Kumar Agarwal reported in **MANU/SC/0588/2022,** the Supreme Court, while taking the amended Section 14 into consideration concluded that, while the termination of an arbitrator would lie before the Court as defined under Section 2(1)(e) of the Act, the parties after such termination, will have to follow the rules that were applicable to the initial appointment of the arbitrator. Relevant paragraphs from **Swadesh Kumar Agarwal (supra)** have been extracted below:

> *"6.5. Sections 14 and 15 provide for termination of the mandate of the arbitrator. Section 14 of the Act, 1996 provides that the mandate of the arbitrator shall terminate and he shall be substituted by another arbitrator in case of any eventuality mentioned in Section 14(1)(a). As per Sub-section (2) of Section 14, if a controversy remains concerning any of the grounds referred to in Clause (a) of Sub-section (1), a party may, apply to the "court" to decide on the termination of the mandate. The expression "court" is defined Under Section 2(e) of the Act, 1996, which reads as under:*
>
> > *(e) "Court" means--*
> >
> > *(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*
> >
> > *(ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;]*
>
> *6.6. Section 15 provides other grounds for termination of the mandate of the arbitrator. It provides that in addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate (a) where he withdraws from office for any reason; or (b) by or pursuant to an agreement of the parties.*
>
> *Where the mandate of an arbitrator is terminated on the aforesaid grounds mentioned in Section 15(1)(a) and (b) in such a situation a substitute arbitrator shall have to be appointed and that too,*

according to the Rules that were applicable to the appointment of the arbitrator being replaced.

6.7. Therefore, on a conjoint reading of Section 13, 14 and 15 of the Act, if the challenge to the arbitrator is made on any of the grounds mentioned in Section 12 of the Act, the party aggrieved has to submit an appropriate application before the Arbitral Tribunal itself. However, in case of any of the eventualities mentioned in Section 14(1)(a) of the Act, 1996 and the mandate of the arbitrator is sought to be terminated on the ground that the sole arbitrator has become de jure and/or de facto unable to perform his functions or for other reasons fails to act without undue delay, the aggrieved party has to approach the concerned "court" as defined Under Section 2(e) of the Act, 1996. The concerned court has to adjudicate on whether, in fact, the sole arbitrator/arbitrators has/have become de jure and de facto unable to perform his/their functions or for other reasons he fails to act without undue delay. The reason why such a dispute is to be raised before the court is that eventualities mentioned in Section 14(1)(a) can be said to be a disqualification of the sole arbitrator and therefore, such a dispute/controversy will have to be adjudicated before the concerned court as provided Under Section 14(2) of the Act, 1996.

So far as the termination of the mandate of the arbitrator and/or termination of the proceedings mentioned in other provisions like in Section 15(1)(a) where he withdraws from office for any reason; or (b) by or pursuant to an agreement of the parties, the dispute need not be raised before the concerned court. For example, where the sole arbitrator himself withdraws from office for any reason or when both the parties agree to terminate the mandate of the arbitrator and for substitution of the arbitrator, thereafter, there is no further controversy as either the sole arbitrator himself has withdrawn from office and/or the parties themselves have agreed to terminate the mandate of the arbitrator and to substitute the arbitrator. Thus, there is no question of raising such a dispute before the court. Therefore, the legislation has deliberately provided that the dispute with respect to the termination of the mandate of the arbitrator Under Section 14(1)(a) alone will have to be raised before the "court". Hence, whenever there is a dispute and/or controversy that the mandate of the arbitrator is to be terminated on the grounds mentioned in Section 14(1)(a), such a controversy/dispute has to be raised before the concerned "court" only and after the decision by the concerned "court" as defined Under Section 2(e) of the Act, 1996 and ultimately it is held that the mandate of the arbitrator is terminated, thereafter, the arbitrator is to be substituted accordingly, that too, according to the Rules that were applicable to the initial appointment of the arbitrator.

> *Therefore, normally and generally, the same procedure is required to be followed which was followed at the time of appointment of the sole arbitrator whose mandate is terminated and/or who is replaced."*

50. The reasoning as adopted in **A'Xykno Capital Services (supra)**, will lead to a situation wherein although not intended by the legislature, power of substitution under Section 29A(6) would be bestowed upon the Court as defined under Section 2(1)(e) of the Act even when the initial appointment of the arbitrator(s) may have been made under Section 11 of the Act by the High Courts or the Supreme Court. Each provision in the Act, is required to be interpreted in the context under which it has been used. Literal rule of interpretation is not the only rule of interpretation. Section 29A of the Act, as interpreted in **A'Xykno Capital Services (supra)**, creates absurdity by putting two provisions of the Act, in direct conflict with each other. Section 29A of the Act, cannot be read in isolation with Sections 11 and 14 of the Act. The judgment in **A'Xykno Capital Services (supra)** further goes against the principle of judicial hierarchy.

51. In **A'Xykno Capital Services (supra)**, this Court also held that the power to substitute an arbitrator under Section 29A of the Act is not akin to the power to appoint an arbitrator under Section 11(6) of the Act. This, in my view, is an erroneous reasoning. The usage of the term "appointed" in Section 29(7) of the Act indicates that substitution under Section 29(6) of the Act amounts to appointment:

> *"(7) In the event of arbitrator(s) being **appointed** under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal."*

52. Furthermore, the distinguishing of the judgment of **Lucknow Agencies (supra)**, in **Indian Fertilizers (supra)**, was held as erroneous by this Court in **A'Xykno Capital Services (supra).** To my view, this could not have been done. The judgments in **Lucknow Agencies (supra)** and **Indian Fertilizers (supra)** were delivered on different factual scenarios and therefore, the varying interpretation of Section 29A of the Act in the said judgments was not in conflict with each other. Where a High Court or the

Supreme Court has not appointed the arbitrator, the Court within the meaning of Section 2(1)(e) of the Act can exercise the powers contained under Section 29A of the Act as the same would not lead to a conflict with the provisions contained under Section 11 of the Act and will also not go against the principal of judicial hierarchy. However, in case, where the appointment of the arbitrator(s) has been made under Section 11 of the Act, it is only the Court which appointed the arbitrator(s) that can hear an application under Section 29A of the Act.

53. In **State of Punjab v. Devans Modern Brewaries Ltd.** reported in **MANU/SC/0961/2003**, the Supreme Court propounded that given the principle of judicial discipline, a coordinate bench is bound to follow the decision of an earlier coordinate bench or refer the matter to a larger bench. Relevant paragraph has been extracted below:

> *"360. Judicial discipline envisages that a coordinate bench follow the decision of earlier coordinate bench. If a coordinate bench does not agree with the principles of law enunciated by another bench, the matter may be referred only to a larger bench. (See Pradip Chandra Parija v. Pramod Chandra Patnaik, MANU/SC/0304/2002 : [2002]254ITR99(SC) ; followed in State of Tripura v. Roop Chand Das and Ors., But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate bench. Kalyani Stores (supra) and K.K. Narula (supra) both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority."*

54. A Similar view was reiterated by the Supreme Court in **Central Board of Dawoodi Bohra Community and Others v. State of Maharashtra and Others** reported in **MANU/SC/1069/2004:**

> *"(2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration.* ***It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a***

> ***Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted."***
>
> *(Emphasis Added)*

55. In light of the same, I am of the view that the controversy involved in the interpretation of the term 'Court" in Section 29A of the Act is required to be placed before a Larger Bench in view of the conflicting decisions of this Court.

PRINCIPLES

56. Principles that emerge based on the foregoing discussion and a consideration of various judgments of the Supreme Court and the High Courts have been summarised below:

a. Definition clause is a central consideration while interpreting the meaning of a particular term in a Section and generally the Courts are expected to adhere to the meaning as provided in the definition clause. However, in cases, where adhering to the meaning as provided in the definition clause leads to some absurdity or contextual ambiguity, then the Courts while interpreting a particular word can depart from the rule of literal interpretation and look at extrinsic sources such as legislative history, statutory purpose, and the context of the provision.

b. When the phrase "unless the context otherwise requires" precedes a definition clause, it acknowledges the varying circumstances that may arise while interpreting a particular statute, which may necessitate according a different meaning to a given term, than the one that has been provided in the definition clause. If a particular term has to be accorded the same meaning throughout the statute, even if it leads to repugnancy and absurdity, the usage of phrase "unless the context otherwise requires" would become otiose.

c. Literal rule of interpretation is not the only rule of interpretation and the rule of purposive interpretation also needs to be kept in

mind, especially in cases, where literal interpretation may lead to absurd and unintended consequences, or where such interpretation would go against the very purpose of a particular statute.

d. Even though Section 29A uses the term "Court" the same must be read as "High Court" in the case of a domestic commercial arbitration, and as "Supreme Court" in the case of an international commercial arbitration, in cases where the initial appointment of the arbitrator(s) was made by the Supreme Court or the High Courts, as the case maybe. This is to avoid conflict within two different sections of the Act, namely, Section 11 of the Act, and Section 29A of the Act and preserve the principle of judicial hierarchy. Legislature never intended to bestow the power of appointment of the arbitrator(s) to the Civil Courts/Commercial Courts, and giving the Civil Courts/Commercial Courts, the power to substitute an arbitrator under Section 29A(6) of the Act when the original appointment was made by the Supreme Court or the High Court would amount to defeating the intent of the legislature.

e. The power to substitute an arbitrator(s) under Section 29A(6) of the Act is similar to the power to appoint an arbitrator(s) under Section 11 of the Act. Moreover, if a Civil Court/Commercial Court exercises the powers under Section 29A of the Act in a case where the High Court/Supreme Court appointed the arbitrator(s), the same would create an anomalous situation wherein a Supreme Court/High Court appointee is subject to the supervision of a lower court.

f. However, in cases, where the original appointment was not made by the Supreme Court/High Court, the Court within the meaning of Section 2(1)(e) of the Act, can exercise powers under Section 29A of the Act, including the power of substitution under Section 29A(6) of the Act. This would avoid

conflict between different provisions of the Act and also give effect to Section 29A of the Act, both in letter and in spirit.

CONCLUSION AND DIRECTIONS

57. Since conflicting decisions by different Single Benches of this Court exist on a similar question of law, I am of the opinion that a Larger Bench needs to be constituted to settle the conflicting views adopted by different Single Benches of this Court on the following questions of law :

1. Whether in a case where the appointment of the arbitrator(s) has been made by the Supreme Court or the High Court, it is only the Supreme Court or the High Court, respectively, that can hear an application under Section 29A of the Act ?

2. Whether in a case where the appointment of the arbitrator(s) was made under the agreement contained between the parties (including statutory appointments under MSMED Act, NHAI Act, etc.) and not by the High Court or Supreme Court, the Court as defined under Section 2(1)(e) of the Act can exercise the powers under Section 29A of the Act, including the power of substitution contained in Section 29A(6) of the Act ?

58. Accordingly, the Registry of this Court is directed to place this matter before the Hon'ble the Chief Justice for constitution of a larger bench as per the Allahabad High Court Rules.

59. This Court acknowledges the diligence and eloquence of counsel appearing for parties in ARBT 2 of 2022 and ARBT 5 of 2023 in rendering assistance to this Court on the Question of Law as was put forward by this Court during the course of arguments. I would also like to put on record my appreciation for the painstaking research and assistance in drafting by my legal intern Mr. Jaspreet Singh.

60. In light of the aforesaid discussion, ARBT 2 of 2022 and ARBT 5 of 2023 are adjourned sine die till the larger bench returns its decision on the questions of law.

61. Urgent photostat-certified copies of this order, if applied for, should be readily made available to the parties upon compliance with requisite formalities.

Date: 26.02.2024
Kuldeep

(Shekhar B. Saraf, J.)