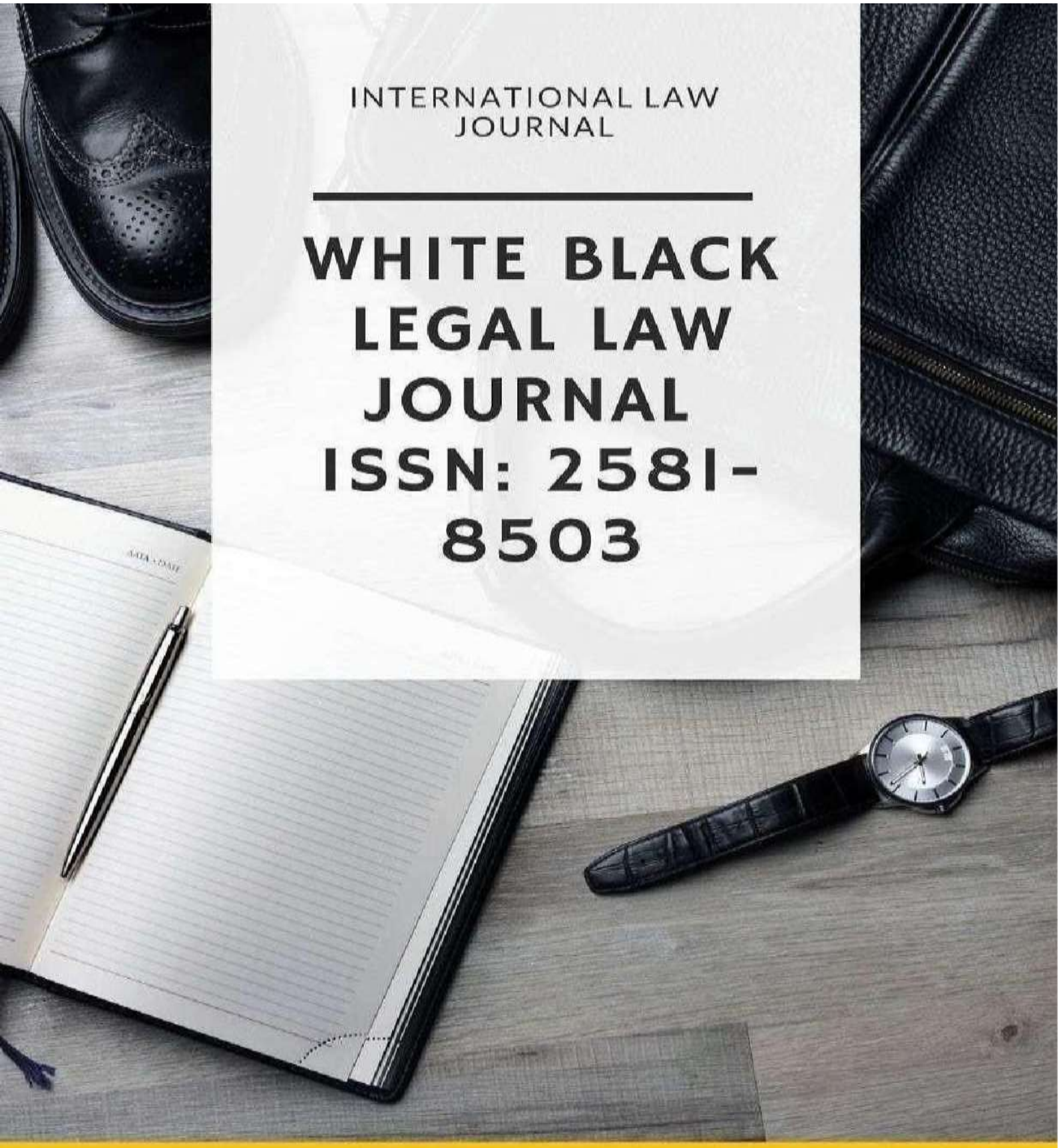

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DELAY, DEADLINES, AND DISSONANCE: A CRITICAL ANALYSIS OF SECTION 29A OF THE ARBITRATION AND CONCILIATION ACT

AUTHORED BY - ARNAV SHARMA

Section 29A: An Introduction

Section 29A[1] of the Arbitration and Conciliation Act, 1996[2] ("the Act"), was introduced by way of the Arbitration and Conciliation (Amendment) Act of 2015[3], with the primary objective of addressing the issue of delay in arbitral proceedings, one of the major concerns underscored in the 246th Law Commission Report[4]. The intent underlying the provision was fairly straightforward – ensuring that arbitration, as an alternative dispute resolution mechanism, remains efficient, time-bound, and effective by imposing specific time limits for the completion of arbitral proceedings and rendering of arbitral awards in matters other than those concerning international commercial arbitrations. The importance of time in arbitral procedures was concisely laid down in Chartered Institute of Arbitrators v. John D. Campbell QC[5] in reference to the observation that delay undermines the raison d'être of arbitration, weakens public confidence in the arbitral process, and denies justice to the winning party during the period of delay. In light of the aforementioned, this provision was an attempt to address the long-standing criticism surrounding prolonged arbitration proceedings in India in line with the broader objectives of the 2015 Amendment Act i.e., working towards making India a global arbitration hub. Prior to the enactment of this provision, the Act did not have any specific timeline governing the arbitration process; this was a departure from the preceding Arbitration Act of 1940 ("the 1940 Act")[6] wherein Section 28 provided the general expectation of an arbitral award being passed within four months, and thereafter as extended by the Court[7]. The provision mandates that an arbitral tribunal must conclude the proceedings and make an award within

[1] Arbitration and Conciliation Act 1996 (India), s 29A.
[2] Arbitration and Conciliation Act 1996 (India).
[3] Arbitration and Conciliation (Amendment) Act 2015 (India).
[4] Law Commission of India, *Report No 246: Amendments to the Arbitration and Conciliation Act 1996* (Law Com No 246, 2014).
[5] *Chartered Institute of Arbitrators v John D Campbell QC*, Decision of the Tribunal, 8 (5 May 2011).
[6] Arbitration Act 1940 (India).
[7] Anubhav Pandey, 'Section 29-A: The Elusive Quest for Expeditious Dispute Resolution' *Bar and Bench* (13 February 2023) https://www.barandbench.com/columns/section-29-a-the-elusive-quest-for-expeditious-dispute-resolution accessed 15th May 2025.

twelve months from the date of completion of the pleadings[8]. Originally, this period commenced from the date the arbitral tribunal entered upon reference; however, the Arbitration and Conciliation (Amendment) Act of 2019[9] changed the commencement date for non-international commercial arbitration, to the date of completion of pleadings under Section 23(4)[10] of the Act[11]. This timeframe can be extended by an additional period of six months with the mutual consent of the parties. As such, with party consent, the mandate of the arbitral tribunal can be extended up to eighteen months.[12]. Any subsequent extension beyond this eighteen month period, requires judicial intervention. The Court may grant such additional time only if it is satisfied that there is sufficient cause for the delay, and such additional time is contingent on such terms and conditions, as may be imposed by the Court. While an application of this effect is pending, the provision provides that the mandate of the arbitral tribunal shall continue till the disposal of such application[13]. It is important to note that this power can be exercised by the Court either prior to, or after the expiry of the period so specified[14]. The ambit of Section 29A is a significant modification in comparison of the analogous provision under the 1940 Act insofar as under the former, the Court's authority to extend the period specified is subject to the demonstration of sufficient cause, and is subject to terms deemed just and appropriate by the Court. An interesting facet of the provision is that if the tribunal fails to render an award within the stipulated time, the mandate of the arbitrator(s) shall be terminated, and their fee may be reduced as a penalty (within the upper cap of five percent of each month of delay) if the reasons for delay are attributable to the arbitral tribunal. The provision, in its entirety i.e., encompassing - (i) the strict timeline, (ii) the extension provision, and (iii) the implications of deviation from the timeline upon the tribunal's mandate and their fee, reflects the legislature's determination to curb unnecessary delays and ensure that arbitration remains a viable and attractive option for dispute resolution in India. The introduction of this provision is seemingly also driven by the need to tweak India's arbitration framework to increase efficiency under the framework, thereby making India a more desired location for arbitration, a small step in India's quest to establish itself as a global arbitration hub. The legislative intent was not limited to merely expediting the arbitral process; it also aimed to discourage dilatory tactics which had previously led to prolonged disputes by way of introducing a fixed timeline

[8] Arbitration and Conciliation Act 1996 (India), s 29A(1).
[9] Arbitration and Conciliation (Amendment) Act 2019 (India).
[10] Arbitration and Conciliation Act 1996 (India), s 23(4).
[11] *Rohan Builders (India) Pvt Ltd v Berger Paints* 2024 INSC 686.
[12] Arbitration and Conciliation Act 1996 (India), s 29A(3).
[13]Arbitration and Conciliation Act 1996 (India), s 29A(5).
[14] Arbitration and Conciliation Act 1996 (India), s 29A(4).

that brought discipline to the arbitral process, while also offering flexibility in the event of genuine and unavoidable delays. Additionally, the provision was also aimed at impacting the cost-effectiveness of arbitration; prolonged proceedings often lead to increased expenditure thereby reducing arbitration's desirability in comparison to litigation. However, by the introduction of Section 29A, and consequently by ensuring that arbitral awards are made within a definite period, the amendment aims to establish arbitration as an economical choice. By way of these multifaceted aims, the underlying intent clearly demonstrates an attempt to establish arbitration as an effective alternative to litigation by addressing the two primary drawbacks of litigation i.e., long drawn cases, and high financial expenditure. This paper seeks to critically analyse Section 29A in terms of its nuances, and judicial interpretations to comprehensively examine, and comment upon the provision's effectiveness insofar as the underlying intent behind the provision's introduction is concerned.

Nuanced Challenges underlying the Provision's Language

At the outset, it ought to be highlighted that the language of Section 29A poses certain nuanced challenges which lead to a plethora of practical difficulties. The first issue pertains to the definition of Court under the ambit of the provision; it is important to identify the appropriate Court before which an application for the extension of the mandate of the arbitral tribunal is to be moved. In the case of non-international commercial arbitrations, such as those governed under the ambit of Section 29A, Section 2(1)(e)[15] of the Act provides that the definition of "Court", under the first part of the Act, is the Principal Civil Court of Original Jurisdiction in a district. Consequently, in terms of moving an application under Section 29A(5), many parties raised a fairly tenable argument that in light of the aforementioned definition, such an application ought to be moved before the Principal Civil Court of Original Jurisdiction in a district. However, on the other hand, an important consideration remains that if such an argument is accepted, it would fall in the teeth of the powers of the Courts under Section 11[16] of the Act[17]. This is especially relevant in light of the fact if the power to grant an extension under the provision is exercised by the Principal Civil Court, despite its *prima facie* competence to do so, an anomalous situation would arise especially if there is a question of substitution of

[15] Arbitration and Conciliation Act 1996 (India), s 2(1)(e).
[16] Arbitration and Conciliation Act 1996 (India), s 11.
[17] Rajshekhar Rao, 'Judicial Jigsaw: Never-Ending Conflicts & Interpretative Challenges of Section 29-A, Arbitration Act' *SCC Online Blog* (12 August 2024) https://www.scconline.com/blog/post/2024/08/12/judicial-jigsaw-never-ending-conflicts-interpretative-challenges-of-section-29-a-arbitration-act/ accessed 15th May 2024..

the arbitral tribunal, as it may result in an arbitrator appointed by the concerned High Court being substituted by the Principal Civil Court, which in turn militates against the stipulation of Section 11(6) of the Act. This consideration leads to an alternate line of argument that an application for extension of the tribunal's mandate under Section 29A(5) would only be maintainable before the same Court which dealt with the application under Section 11 to begin with. An interesting consideration that arises from this line of thinking is that which Court would a party approach in cases wherein the appointment of the arbitral tribunal is not made under Section 11 of the Act. Through a catena of judgments pronounced across various High Courts in India, a somewhat settled position of the law has been reached – in cases where powers under Section 11 of the Act were exercised to initially appoint the arbitral tribunal, an application for extension in context of Section 29A of the Act would lie before the same Court which dealt with the initial Section 11 application; whereas in cases where the appointment of the arbitral tribunal was not in exercise of Section 11 powers, an application for extension in context of Section 29A would lie before the Principal Civil Court of Original Jurisdiction. This position of law might *prima facie* seem untenable due to the varying interpretations of the term "Court". However, it is made feasible by the wording of Section 2(1) of the Act which begins with the words, "In this part, unless context otherwise requires…" thereby allowing for such a varying interpretation in light of the relevant factual matrix. This interpretation keeps the object of the Act intact without defeating the purpose, for which Section 29A was inserted. While the aforementioned delineates the current position of the law insofar as the interpretation of the term "Court" under the provision is considered, it is important to note that the debate over the frictions between Sections 11 and 29A remains unresolved given the lack of finality over the matter as the position of the law has not been settled in its entirety by the Supreme Court. The second issue arises in reference to Section 29A(3) which provides for the parties to the arbitration agreement to extend the period of twelve months under sub-section (1) by a period not exceeding six months. The issue, in specific, arises with respect to the nature of the consent required – as to if explicit consent is required, or whether tacit consent fulfills the criteria as well. In absence of any light being shed on this facet within the language of the provision, various High Courts through another catena of judgments have arrived to the settled position that consent of the parties, as envisaged under Section 29A(3), need not necessarily be express, or in writing; there can be a deemed consent, an implied consent of the parties which can be gathered from their acts and conduct. In the case of ***Balak Ram v. NHAI***[18], the Himachal

[18] *Balak Ram v National Highways Authority of India* 2023 SCC OnLine HP 94, Paragraph 24.

Pradesh High Court ruled that the acquiescence of parties in proceeding with the arbitral proceedings beyond the initial twelve month period without raising any objections to the continuation of the proceedings, amounts to consent. This position of law was also subsequently referred to, in concurrence, by the Madras High Court in ***Ayyasamy v. A. Shanmugavel***[19] wherein it was held that not raising any objection with respect to the non-passing of the award within the twelve month period, and waiting until the award was actually passed (within the eighteen month upper limit) amount not only to tacit consent fulfilling the requirement under Section 29A(3) but also to a waiver of the party's right to object on this ground; this derives from the fact that allowing for the raising of such an objection in an untimely manner and that too only after receiving an adverse award, would be contrary to the legislative intent underlying the provision which aimed for expeditious disposal. The third issue that arises is also primarily stemming from ambiguity in the drafting of the provision vis-a-vis what constitutes the "sufficient cause" required to move a successful application for extension of the arbitral tribunal's mandate in context of Section 29A(5). Upon a bare perusal of the provision, the aforementioned ambiguity is evident. In line with how the previous ambiguities were resolved by Courts by giving significant weightage to the object of the provision's introduction, here too the Courts have observed that the test of sufficient cause must align with the object of Section 29A of the Act. Thus far, in a catena of judgments, Courts have accepted voluminous pleadings, advanced stage of arguments, ongoing evidence/cross-examination, and impending pronouncement of the award, as sufficient causes to allow extension applications under the provision. Several parties have also approached the Courts in this regard arguing that the fact that the arbitral award has already been reserved, should constitute sufficient cause under the provision. In principle, Courts have treated this line of argument liberally and allowed for extension of the arbitral tribunal's mandate in a series of cases perhaps based on the reasoning that substituting an arbitrator or the entire tribunal at such a belated stage would only further prolong the resolution of the concerned dispute. However, at the same time, through a plethora of judgments[20], Courts have accepted – inordinate delay in making the arbitral award after reserving the same constitutes a violation of public policy and the same is, as such, a valid ground for setting aside of an award under Section 34[21] of the Act – as a well settled position of law. The dichotomous contradictions concerning the position of the law governing the

[19] *Ayyasamy v A Shanmugavel* 2024 SCC OnLine Mad 4338.
[20] See: Department of Transport, GNCTD v. Star Bus Services, and Harji Engineering Works Pvt. Ltd. v. M/s Bharat Heavy Electricals.
[21] Arbitration and Conciliation Act 1996 (India), s 11.

sufficient cause test, are fairly evident. As such, an argument can be made that a stricter approach ought to be adopted when dealing with extension applications under the provision, if the provision is to come to fruition in terms of its underlying objective. The fourth and final issue within the scope of this paper insofar as the nuances of the drafting of the provision are concerned is in relation to the absence of an upper time limit as to the filing of an extension application under sub-section (4) of the provision. Sub-section (4) of the provision provides that if the award is not made within the eighteen month limit in context of sub-section (3), the arbitral tribunal's mandate shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period. The issue pertains to the lack of any clarity vis-a-vis within what time frame, after the expiry of the arbitral tribunal's mandate, can an application to this effect be moved under the provision. Clarity in reference to this facet is significant given that in absence of such clarity, an application for extension demonstrating sufficient cause can be moved even eight years after the expiry of the eighteen month period, which would egregiously contradict the legislative intent underlying the insertion of the provision into the Act. In effect this provision also defeats the broader objective of the 2015 Amendment Act by subjecting arbitral proceedings to litigation especially considering that arbitration is the preferred mode of dispute resolution for voluminous and composite cases such as those concerning the construction sector. While this issue was addressed in ***Rohan Builders (India) Private Limited v. Berger Paints India Limited*** ("**Rohan Builders**")[22], the issue still remains, in principal, unresolved; this is because the Supreme Court interpreted the word "terminate" under sub-section (4) in context of the subsequent phrase "unless the Court has…extended the period" thereby observing that the termination of arbitral tribunal under the sub-section is not absolutistic in character. In light of this, the Supreme Court was reluctant in prescribing a specific period of limitation for filing an application where the legislature has explicitly refrained from doing so because giving a narrow meaning to sub-section (4) by way of such a prescription would amount to judicial legislation by incorporating a limitation that the statute does not explicitly prescribe especially considering that the provision's expression and intent are, rather, to the contrary. Additionally, the Court also observed that the sufficient cause test acts as a safeguard, as well as a deterrent against any such abuse of process.

[22] *Rohan Builders (India) Pvt Ltd v Berger Paints* 2024 INSC 686.

Section 29A in Context of Section 34

At this juncture, we have explored and understood the impact of delay in passing an arbitral award on arbitral proceedings. The fundamental question is whether time is of such importance that it would serve as grounds to challenge the award and initiate setting aside proceedings, or even as a reason to refuse recognition and enforcement of the award[23]. ***Harji Engineering Works v. Bharat Heavy Electricals Limited*** ("**Harji Engineering**")[24] was the first among a series of judgments to comprehensively deal with this issue. In the factual matrix of this case, the award was challenged on account of the fact that there was a substantial gap of three years between the final hearing, and the making of the award. The Court did set aside the award holding that it was only natural that the arbitrator could forget the contentions and the pleas raised during the arguments if there is a huge gap between the hearing and the award; given that the Act only provides for limited grounds on which an award can be set aside, the arbitrator is additionally responsible for rendering a prompt award. The Court further observed that abnormal delays without any explanation from the arbitrator, as was the scenario in this case, cause prejudice and such an award would be unjust thereby, making it amenable to be set aside. This principle came with issues of its own in form of two seemingly contradictory Delhi High Court judgments in ***Peak Chemical Corporation Inc. v. National Aluminium Co. Ltd.*** ("**Peak Chemicals**")[25] and ***Union of India v. Niko Resources & Anr.*** ("**Niko Resources**")[26] with the latter taking a strict view that delays automatically vitiate awards (in context of the party actually being affected by the adverse award caused by a delay) whereas ***Peak Chemicals*** adopted a more flexible stance considering the circumstances of each case (in context of a just and comprehensive award despite delay). This dichotomy was ultimately resolved by the Delhi High Court in ***HR Builders v. Delhi Agricultural Marketing Board***[27] by reconciling these seemingly contradictory approaches by way of adopting a middle path that acknowledges delay as a factor but not an absolute determinant, examining whether the delay caused actual prejudice rather than applying a rigid formula; this rationale was also adopted in ***Department of Transport, GNCTD v. Star Bus Services Pvt. Ltd.***[28] where it was observed that the different conclusions arrived at by the Courts in ***Peak Chemicals*** and ***Niko Resources*** turned on whether the delay caused an illegality in the award. The position of the law surrounding the provision

[23] Leah Elizabeth Thomas, Consequences of Undue Delay in Passing of Arbitral Awards, in NLIU Law Review.
[24] Harji Engineering Works v Bharat Heavy Electricals Ltd.
[25] Peak Chemical Corporation Inc v National Aluminium Co Ltd
[26] Union of India v. Niko Resources & Anr.
[27] HR Builders v. Delhi Agricultural Marketing Board.
[28] Department of Transport, GNCTD v. Star Bus Services Pvt. Ltd.

was, as such, finally settled – inordinate, substantial, and unexplained delay in rendering an award can be a ground for setting aside of the arbitral award on account of contravening public policy under Section 34 of the Act. Similar positions have been adopted across various Indian High Courts in reference to the ***Harji Engineering*** principle.

Section 29A: A Critical Assessment & Concluding Remarks

The provision was objectively a welcome introduction to the Act insofar as its aim of achieving expeditious dispute resolution was concerned. However, ambiguities in the drafting and nuanced interpretational challenges deriving from the same, seem to cloud its broader objectives because said ambiguities lead to multiple protracted rounds of litigation which involved a plethora of interpretative exercises conducted to ascertain the true effect of the provision, thereby *prima facie* defeating the very underlying purpose behind the provision. It is imperative to note that even from a broader perspective, the imposition of timelines is perhaps not the ideal way of achieving the provision's underlying aim; multiple arguments can be made to this effect - (i) arbitration is chosen as the preferred dispute resolution mechanism for a large variety of matter varying from contracts to labour issues; as such, a standard timeline isn't ideal because the time required to adequately adjudicate in respect of arbitral proceedings depends on the technicalities and legal complexities involved, or even just the sheer volume of evidence and documents at issue, (ii) minimal judicial interference is one of the most desirable characteristics of arbitration; if Court approval is required for an extension of the deadline set under the provision, it defeats the goal of minimising reliability on Courts and the hurdles faced in that regard namely vis-a-vis the efficiency and overload of cases in Indian Courts[29], (iii) upon the expiry of the arbitral tribunal's mandate under the provision, and a failure to demonstrate sufficient cause for moving an extension application, may lead to a reconstituted arbitral tribunal leading to the re-examination of the matter which would be neither cost-effective, or efficient insofar as time, as a factor, is concerned, (iv) it might be difficult to find arbitrators who are willing to take up arbitral proceedings due to the fact that they can be held personally liable for delay and may risk paying a penalty, or losing out on a part of their fee, and (v) in order to comply with such timelines, the arbitral tribunal may be ford to speed up the process which can cost the parties a proper opportunity to present their case, or it can lead to

[29] *As a result, the broader objective of expeditious dispute resolution is again defeated. However, the 2024 Amendment Bill to the Act proposed the introduction of an Appellate Arbitral Tribunal to further reduce the Court's role under the Act's framework. It will certainly be interesting to see how this plays out. It could be an incredibly effective, and unparalleled move if ambiguities such as those in Section 29A are avoided, and the deeper nuances are well considered and guided.*

an award which is improperly reasoned due to the paucity of time; such deviation from due process could make the award vulnerable to challenge [30]thereby leading to prolonged proceedings, which would, yet again, defeat the objective of the introduction of such a provision. To conclude, despite a well intentioned introduction of Section 29A to the Act, it failed to have the expected effect and was for the most part counter-productive. It is only now, after almost a decade of interpretative exercises, that the provision has somewhat started coming to fruition now that the cohesive framework has been determined under the provision; absolute clarity in reference to the framework under the provision, however, still continues to elude us.

[30] http://arbitrationblog.practicallaw.com/time-limits-for-awards-the-danger-of-deadlines/