

**The mandate of the arbitrator terminates if: parties have fixed time-limit for rendering the award; the time-limit is extendable only by mutual consent; consent for extension is denied by one party; and, the award is not rendered within the time fixed. (Supreme Court)**

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**Jayesh H. Pandya v. Subhtex India Ltd.**

**Court:** Supreme Court | **Citation:** 2019 SCC OnLine SC 1101 | **Bench:** N. V. Ramana, Mohan M. Shantanagoudar and Ajay Rastogi, JJ | **Date:** 27 August 2019

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The arbitration agreement set four months' time for the arbitrator to make the award. This time-limit was extendable, but with consent of the parties. When Subhtex and others (“**Subhtex**”) commenced arbitration, Jayesh and his partner (“**Jayesh**”) participated in a preliminary hearing in which the arbitrator drew a schedule for filing pleadings and documents, completing discovery and inspection, and making statements of admission/denial. Jayesh did not raise any point on the time-limit in this meeting. The next hearing was set for 13 August 2007.

Both parties lagged behind the schedule for one reason or the other, and some dates had to be extended by two weeks. The next meeting was held on 27 August 2007 in which Jayesh now for the first time objected to continuation of the proceedings since the four-months period was going to expire on 04 September 2007 and it was quite impossible to make the award by that date. The matter was adjourned for obtaining extension of time or a clarification from the Supreme Court (which had in an earlier round of litigation appointed the arbitrator). Neither step was taken.<sup>1</sup>

Later, Jayesh moved an application before the arbitrator and argued that the tribunal's mandate had terminated and it was *de jure* unable to perform its functions. The arbitrator rejected the application. Jayesh challenged that rejection in the High Court of Bombay in an application based on Section 14 of the Arbitration and Conciliation Act, 1996 (“**ACA**”) raising the same grounds. The High Court rejected the application. A review of its judgment indicates the High Court focused on the conduct of Jayesh. If Jayesh intended to assert a rigid adherence to the stipulated time, the High Court decided, it should have been done at the earliest opportunity and it added that to hold otherwise would encourage lack of candour, honesty, fairness and transparency.<sup>2</sup>

Jayesh filed a special leave petition in the Supreme Court.

Reversing the High Court's decision<sup>3</sup> the Supreme Court held that the arbitrator was *de jure* unable to perform his functions and the mandate stood terminated under Section 14 read with Section 15 of the ACA:-

**Object of speedy resolution v. Binding terms of the contract**

1. Under Section 14 of the ACA, mandate of the arbitrator terminates if he fails to act without undue delay. Since Jayesh objected to extension and the four months period expired, the mandate stood terminated.

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<sup>1</sup> The facts and the dates are elaborately set out in the (impugned) judgment of the High Court. It is available at the website of High Court of Bombay [ARBPL/59/2008: ARBP/242/2008 decided on 4 March 2008 by Justice (Dr.) D. Y. Chandrachud].

<sup>2</sup> Any analysis of the decision of the High Court or the Supreme Court is not within the scope of this update. It will be covered in a blog-post.

<sup>3</sup> An interim order was passed by the Supreme Court on 01 September 2008. The arbitrator “was unable to conduct arbitral proceedings and the same is lying in the storage for the last eleven years”.

2. It is true that the object of the ACA is “to secure expeditious resolution of disputes” but the arbitration proceedings are supposed to be governed and run by the terms agreed by the parties. The arbitrator cannot go beyond the arbitration agreement, and doing so will frustrate the object of the ACA.
3. That apart, there is no provision under the arbitration agreement to condone delay (if proceedings are not concluded in stipulated time). The time restriction is within the scope of the ACA.

**Law already declared in NBCC case**

4. *NBCC Limited J.G. Engineering Private Limited*, (2010) 2 SCC 385 has already considered the law. The agreement in *NBCC case* empowered the arbitrator to extend by consent of parties the time-limit fixed in the agreement for rendering the award. It was held that where consent was not given for extension, the arbitrator’s mandate automatically terminated on expiry of the time-limit. The decision applies.

**Waiver—why it does not apply?**

5. The Bombay High Court’s decision was premised on Subhtex’s participation in the proceedings, waiver and object of the ACA to facilitate an efficacious recourse to arbitration. But the essential element of waiver is voluntary and intentional relinquishment of a right. There should exist an opportunity or choice between the relinquishment and an enforcement of the right in question. There can be no waiver if circumstances show that what was done was involuntary.
6. That apart, the doctrine of “waiver” or “deemed waiver” or “estoppel” is always based on facts and circumstances of each case. The parties have to stand by the terms of contract. There was no occasion for either party to raise an objection as long as the time was available at the command of the arbitrator to pass an award within the time schedule fixed under the terms of contract as agreed by the parties.

**The available recourse**

7. The respondents (Subhtex) are at liberty to ventilate their grievance as admissible under the law.