

INDIA ADR WEEK DAY 5: DELHI

19th SEPTEMBER 2025

Section 29A Time Limits: Strategic Considerations and Judicial Interpretations

12:00 PM To 1:30 PM IST

MODERATOR

Mr. Kunal J Vyas, Partner, Gandhi Law Associates

SPEAKERS

Mr. Mihir Thakore, Senior Advocate, Gujarat High Court

Mr. Ritin Rai, Senior Advocate, Supreme Court

Ms. Rashna Mistry, General Counsel, Tata Projects

Mr. Jatin Jalundhwala, General Counsel, Adani Group

Hon'ble Mr. Justice (Retd.) S. Ravindra Bhat, Former Judge, Supreme Court of India

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1 **HOST:** The next session is hosted by Gandhi Law Associates. The topic of the session is -
 2 Section 29A Time Limits: Strategic Considerations and Judicial Interpretations. The session
 3 will be moderated by Kunal Vyas. The panellists include Mihir Thakore, Ritin Rai, Rashna
 4 Mistry, Jatin Jalundhwala, and Honourable Justice Ravindra Bhat. I request the speakers to
 5 kindly come on stage. Thank you.

6 **KUNAL J. VYAS:** Very good morning to one and all present here. I am Kunal Vyas, Partner
 7 and Gandhi Law Associates. We are privileged to be hosting this session today at MCIA. I want
 8 to thank Madhukeshwar, Neeti, everyone at MCIA for giving us this opportunity.

9 The topic for today's discussion is Section 29A Time Limits: Strategic Considerations and
 10 Judicial Interpretation. For an effective dialogue on such a critical issue, we have a
 11 distinguished panel comprising Justice S. Ravindra Bhat, former judge, Supreme Court of
 12 India; Mr. Mihir Thakore, Senior Advocate; Mr. Ritin Rai, Senior Advocate; Mr. Jatin
 13 Jalundhwala, Joint President - Legal and Company Secretary at Adani Group and Ms. Rashna
 14 Mistry, General Counsel at Tata projects. The panel is diverse and will throw light on several
 15 issues concerning 29A from different perspectives.

16 As we all know, Section 29A was inserted in the year 2015, which is about 20 years of the
 17 operation of the 1996 act, and this was required because the arbitrations under the '96 regime
 18 were unending. The Legislature thought it fit to amend the law and introduce a provision
 19 which mandates the Tribunal to act in a time-bound manner. Despite these amendments, the
 20 2015 and 2019 amendments, there are several issues concerning 29A which are still boiling.
 21 Before I go to the panel with several questions, I want to invite on stage Mr. Prashant Narang
 22 from TrustBridge Rule of Law Foundation to share with us his findings on the effect of 29A.
 23 Mr. Narang, please.

24 **PRASHANT NARANG:** Thank you, Kunal. I'll be very brief and take you through the
 25 findings. So, as we know that Section 29A was a bold experiment. It's very unique in nature
 26 because it's a statutory clock to end the culture of delay and nowhere else in the world we have
 27 such a provision. Many scholars warn that this is a uniform, one size fits all deadline. It could
 28 undermine Party autonomy, debt a good Arbitrators or even push complex disputes back to
 29 already clock outs. The question is, were they right? And we look at Delhi High Court's data
 30 and look for answers. So, we look at 10 years data from 2015 to 2024, we find 202 reported
 31 cases under Section 29A. What do we find? We find that 98% of extensions were granted.
 32 Refusals only four, and that too on technical grounds. Sanctions because 29A proposes to offer
 33 certain sanctions. For example, fee cuts, cost imposition, etc. So sanctions almost disappeared.
 34 Fee reduction in zero cases, substitution of Arbitrators in just 2% cases and adverse cost on

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1 Parties in less than 3% cases. And yes, the process was fast. Median time was taken. Median
2 time taken was just three days with 60% of cases finished in a single hearing. And when we
3 look at the orders, these were consent orders passed, so even repeat extension. So there were
4 cases that came to the Court for second time, third time, fifth time, and seventh time as well,
5 and they were 15% of cases, which were multiple extension requests. They were also granted
6 almost automatically often in a single day, in a single hearing.

7 So at first glance, this speed looks like success, but in truth, it's failure. And why do I say that?
8 Because Parliament's intent was not simply to process papers quickly. It was to find fault, fix
9 responsibility and impose consequences. To ask, what's the delay caused by the Arbitrator, by
10 a recalcitrant party, and then to deter, repeat behaviour with fee cuts, cost or substitution, but
11 that hard work never happens. Instead, the Court simply reset the clock. So Section 29A has
12 become a rubber stamp, a deadline without teeth. Now, irony is that while anecdotes may
13 suggest that arbitrations finish on time, litigants still pay the price, extra filing Court costs and
14 wasted trips, while lawyers and Arbitrators carry on without consequence. So the lesson is
15 sharp, clocks don't change behaviour, consequences do. And without automatic low discretion
16 sanctions, Section 29A remains for signal and not a constraint. Thank you.

17 **KUNAL J. VYAS:** Thank you, Prashant. This was an interesting take on Section 29A, and
18 data throws light on how Section 29A has been interpreted and what impact it has had and
19 since this data, as I understand is from the Delhi Courts, Courts across India must be scoring
20 much lower than this. I would now like to go to my panel, Justice Bhat. Over to you, sir.

21 **JUSTICE S. RAVINDRA BHAT:** Good morning. Well, it's very awkward, so good noon to
22 all of you. This topic which we are now debating, and my Co-panellists are very distinguished
23 Co-panellists, who have experience not only in litigation, arbitration, as well as in the industry.
24 I think it brings a lot of diversity and experience to the table. The topic seems very simple,
25 which is Section 29A, the causes that led to its introduction and how has it played out in the
26 last now... We have this avatar for the last six years, the 2019.

27 At the beginning, I must make a confession, which is that I was part of the committee, the Shri
28 Krishna Committee, which actually recommended the introduction of these time limits by the
29 amendment, which ultimately came in 2019. But then the data that today we are seeing and
30 the way Courts have interpreted this has actually not been... was not actually visualized by the
31 Committee. The Committee's concern was that the one year time limit imposed by the 2015
32 amendment was too limited. And therefore, in the recommendations of the Committee, we
33 took note of a lot of representations, we had broad consultations from stakeholders, lawyers,
34 institutions, as well as academics and practitioners in the arbitration field; and based on those

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1 inputs, we said that it should be one year plus six months, and that one year to be reckoned
2 from the date of the last pleading in the arbitration proceeding, with one extension. But
3 astonishingly, it is played out in such a manner that we have five and then some of my
4 panellists say, it is seven extensions, two have been given almost without a protest.

5 Now, one need not emphasize or overemphasize on the need to have a speedy arbitration. In
6 fact, one of the main objectives of arbitration is not to replicate Court proceedings, but access
7 to justice in a class of cases where both Parties agree to a neutral adjudicator in a timely and
8 effective manner, and in an atmosphere where the procedures are actually agreed or consented
9 to, and where you can expect an award or a decision at a fairly reasonable time.

10 Now, if one looks at the history of time limits, it's a mixed thing in the sense that there have
11 been views on either side. But before that, let's just go through the bare text of the enactment.
12 This section was introduced in 2015 and came into force on 23rd October. According to that
13 Section, the Tribunal was to conclude the proceedings and pass its awards within a period of
14 12 months. This duration could be further extended by a period of six months upon consent
15 by both Parties. Upon cessation of 18 months i.e., six months in addition to the 12 months, the
16 mandate stood terminated unless extended by a Civil Court and the original section,
17 introduced in 2015, also provisioned for the reduction in the fees of the Tribunal. In 2019
18 pursuant to the recommendations of the Committee, Section 29A was amended considerably.
19 The amended Section 29A provides for completion of proceedings within 12 months from
20 completion of pleadings, so naturally it gets extended by six months, the initial period. And
21 thereafter, it is extendable for a further period of six months upon consent of Parties. So, which
22 means that you have 24 months within your control. 16 months granted by law, and six months
23 with consent of Parties. Now, this is what was visualized. But then if you wanted a further
24 extension, you went to the Court. Now, whether you could go to the Court within the time or
25 even after the lapse of time, itself became a controversy. Ultimately, the Supreme Court settled
26 it in the **Berger Paints vs Rohan Builders** dispute and said that you can go back to the
27 Court even after the lapse of the 18 months after the lapse of the period agreed. Some of the
28 challenges which one comes across is that the date of completion of 12 months after the
29 completion of pleadings in cases where time was extended beyond the stipulated period of six
30 months. Now, we have six months. Now, how do we deal with this timeline in very complex
31 and voluminous matters?

32 Here, the period for completion of pleadings exceed the duration of six months. Section 29
33 states that commencement date for the purpose of calculating 12 months as on the... is the date
34 on which pleadings are completed. Therefore, it remains unclear if 12 months are to be
35 calculated from the completion of pleadings or after six months of completion of the pleadings.

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1 Now, this, I don't know. I have not yet come across any judgement, but I am sure this will be
2 one of the points which will be raised. I don't think this has been a major controversy, but
3 going forward, it could be.

4 Then, the biggest criticism to these time limits have been the erosion of party autonomy. Party
5 autonomy is arguably the soul of arbitration. In the light of the principle of party autonomy, it
6 is argued that Parties should be free to decide on the timeline of the process they are wilfully
7 subscribing to, possibly stringent timelines, too, especially when all else is governed by the will
8 of the Parties, including the governing law, composition of the adjudicating body and other
9 procedures. Another concern is, arbitration, being an alternative dispute resolution
10 mechanism, aims to achieve minimal court intervention with the provision in the Act that
11 requires Parties to seek extension from a Court, even in the absence of any dissenting Party.
12 So this process of going to Court itself adds one layer of delay. Of course, the study presented
13 to us has given a very encouraging picture, but I suspect that's not the entire picture
14 throughout the country. I am sure that Section 29A applications themselves may take about
15 six months, three to six months, maybe even a year to be disposed of. Then what happens to
16 that layer of delay?

17 No doubt, Section 29A introduction is a laudatory step, and it has contributed in the
18 expeditious disposal of arbitration proceedings. I think, a similar study would be called for
19 where we'll actually look at awards that reach the Court where there has been no extension.
20 I'm sure we can extract that from the reported judgements under Section 34. So if there is a
21 fair bit of it in that catchment of samples, you have 100 or 200 cases of which you find out
22 maybe 60% are cases where there is no extension, or at the most, the extension is with the
23 consent of Parties in the first six months. That is an overall limit of 24 months. I would say
24 even a 50% to 60% strike rate is a very encouraging move. But the real problem, I suspect, is
25 more. I think at the outset, what was outlined appears to be the reality that the Courts take a
26 long time, and the Courts are more than willing to give extension after extensions.

27 But then, if we go to the other side of the story, where does it lead us? Now, in a given case, the
28 Court gets fed up and says that "We are not going to extend, we have already granted you two
29 extensions. So, I will not grant you." Then where do the Parties go? They are left to their
30 devices. They are back to square one. Thus, a new arbitration commenced, obviously, either a
31 new arbitration is commenced, or if both Parties do not consent and one Party goes to the
32 Court, where does it lead you to? So I think the solutions are not easy. We don't know. If you
33 say that there is no extension, or even if there is an extension, I have, at least, in my limited
34 experience as an Arbitrator, I've come across cases, where not extensions, where some Parties
35 do not agree to the continuation of the same Arbitrator, they say we don't want you or the

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1 Arbitrator ceases to act. I've got some of those cases, three or four of those cases. Then you're
 2 at a loss whether it is the mandate of the Arbitrator which ended or the Parties, one or the
 3 other Party says that, "No, I'm not willing to continue with the same proceedings, so let us
 4 start afresh." This, too, happens. Now, there is no easy solution. There is no legal... I mean, we
 5 have not yet... one has not come across any solution to this or any way forward. In fact, I've
 6 been appointed by the Supreme Court in some of these cases where I'm a substitute Arbitrator.
 7 Instead of a previous panel of three, I am now taking over a couple of cases where I'm the sole
 8 Arbitrator, and it becomes hotly contested by the Parties that this is a new arbitration. Why
 9 should we proceed with that?

10 Now my point is, the whole idea of arbitration is that we should speed it up, so let's go ahead.
 11 Why should you file fresh pleadings and go into fresh evidence? I am willing to take it over.
 12 But if the sense that I get is much depends on the personality of the Tribunal, if the Arbitrator
 13 is able to persuade and convince the Parties that whatever has occurred can be a part of the
 14 Tribunal and they consent, you can continue with it. So that is where this Party autonomy issue
 15 comes in to centre stage.

16 I will not go on further because we have a panel and I think we don't have too much time except
 17 to conclude this with reference to the Arbitration Rules of various institutions. Now, we have
 18 time limits given in the ICC and some of the other institutions. Six months' time is given to
 19 Arbitrators to complete the proceedings after the pleadings are completed. And the recent
 20 amendments in the SIAC have differential proceedings where the entire proceedings can be
 21 ended in three months or in six months, depending on the monetary limit of the claims. Now,
 22 I think a push forward, in my view, towards institutional arbitration, where Parties are
 23 compelled to adhere to timelines and where Tribunals also are strict about it, and most
 24 importantly, even the institutions maintain tabs on this and ensure that these timelines are
 25 adhered to, failing which, the Tribunals kind of, let's say, maintain different lists about
 26 Arbitrators who are unable to conduct and conclude proceedings, would be a way forward.
 27 And I would commend that even in the absence of amendments, our institutions should be
 28 strengthened and we should be more involved meaningfully to ensure that timely awards are
 29 given. Otherwise, the horrific spectre of arbitrations going on for more than a decade will
 30 continue and that we will have no easy solution. Thank you.

31 **KUNAL J. VYAS:** Thank you, sir. Thank you so much for sharing your views. We'll now
 32 continue and go to the other panellists. I would first like to invite Mr. Rai to explain the
 33 interplay between Section 23 and 29A, specifically with regard to the timelines under Section
 34 23 being directory.

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1 **RITIN RAI:** Thanks, Kunal, and good afternoon, everybody. Just before I come directly to
 2 23, maybe just to take off from where Justice Bhat was saying, and from TrustBridge's research
 3 and its report, I found a very interesting opening sentence in one of the 29A judgements. And
 4 the Judge writes "Ordinarily petitions for extension of the mandate of Arbitral Tribunals are
 5 two minute affairs where the Court has only to examine when the mandate was terminated
 6 and extend it as sought by the Parties, contest is rare in such cases." And I think that kind of
 7 summarizes what TrustBridge's results empirically show and also perhaps shows that, I think
 8 we need to look a little bit more closely at the reason for the introduction of 29A itself. And my
 9 thesis is that the 29A was inserted not as a check on Parties necessarily, but as some level of
 10 minimal supervision of Arbitral Tribunals. And why do I say this? Because Arbitral Tribunals
 11 already have a whole host of provisions to ensure the speedy disposal of that arbitration. And
 12 Justice Bhat said it depends on the personality of the Arbitrator, that is, of course, the largest
 13 part. An Arbitrator can nudge the Parties to ensure that the arbitration moves forward
 14 relatively quickly, as is the intent of the arbitration. But in addition to that, the Arbitration Act
 15 itself shows us that the Arbitral Tribunal has powers in the Act to ensure that Parties are not
 16 able to delay proceedings.

17 And I want to reference Section 24(1) the proviso which requires the Arbitral Tribunal as far
 18 as possible to hold hearings on a day-to-day basis. I don't think we see that provision deployed
 19 or employed very often. And similarly, there is Section 25, which deals with default of a party.
 20 And again, if a Party is delayed in filing its Statement of Claim, the Arbitrator is empowered to
 21 dismiss the claim. If a party is delayed in filing a Statement of Defence, is entitled to dismiss
 22 that Defence. So if we understand it that way, that the Arbitral Tribunal has already got a lot
 23 of power and indeed the responsibility to decide every trial quickly. The real purpose of the
 24 29A insertion was that in cases where the Arbitral Tribunal is able to explain why it needs
 25 more time, then that extension of time is to be given. It was not intended for the Parties to
 26 delay proceedings and then be able to go to Court and say, now the Arbitral Tribunal needs
 27 more time.

28 I think the Justice Shri Krishna Committee report of which Justice Bhat was a member tried
 29 to address some of this. And the important changes made pursuant to that Justice Shri Krishna
 30 Committee report, although I'm not sure the legislation implemented faithfully what the
 31 report wanted, was that a period which was supposed to commence under 29A from the
 32 constitution of the Tribunal, became a period from the completion of pleadings. And
 33 completion of pleadings was ordinarily to be done under Section 23 within six months of the
 34 constitution of the Tribunal. So the Justice Shri Krishna Committee report as Justice Bhat said
 35 felt one year based on stakeholder comments was too little. One year became one year plus six
 36 months for the completion of the pleadings.

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1 But the Justice Shri Krishna Committee also made a comment about excluding international
 2 commercial arbitration from the mandate of Section 29A. And here I feel perhaps the
 3 exclusion should have been for institutional arbitration because international commercial
 4 arbitration could also be *ad hoc* arbitration. What really ought to have been done in my
 5 respectful submission was that 29A should have excluded institutional arbitration. But what
 6 has happened as a result of the legislative change in 2019? And this goes to Kunal's question
 7 about the interplay between 23 and 29A, is what was an inelastic period under 29A has now
 8 been preceded by an elastic period. That is to say where we had a fixed time when the time
 9 clock started. Now, the time when the clock under 29A starts is when pleadings are complete
 10 and pleadings itself has now been held not to be just the Statement of Claim, but also the
 11 Statement of Defence, of course, but also a Rejoinder. I don't know what will happen when
 12 there is an amendment to pleadings and whether the clock will restart for the purposes of 29A,
 13 and similarly, the word "pleadings" in terms of Statement of Claim and Defence perhaps
 14 doesn't do justice to the manner in which pleadings are sometimes done in arbitration. For
 15 example, a memorial style pleading. So, I think that we ought to have thought a little bit more
 16 about whether just SoC and Defence is the pleadings we are referring to. And certainly that
 17 clock should have been a fixed clock, not a clock that is discretionary, and the pleadings can
 18 therefore get extended. That's as far as the interplay between 23 and 29A goes. I mean, like, I
 19 said, I think an inelastic period has now become an elastic period plus thereafter the 29A
 20 period.

21 And the other interesting question is what is sufficient cause in 29A(5) for extending the period
 22 of the arbitration. And here I'll make three quick points. One is sufficient cause cannot be the
 23 same sufficient cause that we understand for extending periods of limitation under Section 5
 24 of the Limitation Act or while filing an appeal against a 34 order, etc. Why do I say that?
 25 Because sufficient cause there is a Party has been delayed in moving an appeal and seeks
 26 extension of that time. Here, we are dealing with a very different situation where perhaps a
 27 Party has been delaying in the arbitration, and it is the other Party that is asking for the
 28 extension of time. So, the explanations that we've had from Section 5, perhaps, are not of much
 29 help to us in the context of Section 29A(5). But obviously sufficient cause has to have some
 30 meaning, and the meaning given in various decisions is to have regard to the purpose of the
 31 provision, the purpose of 29A. But while saying so, I'm not sure we have really honed down on
 32 what that purpose is. For example, **Rohan Builders** says that "such extension is not granted
 33 mechanically on filing of the application. The judicial discretion of the Court in terms of the
 34 Enactment acts as a deterrent against a party abusing the process of law or espousing a
 35 frivolous or vexatious application. Delay, even in the part of the Arbitral Tribunal, is not
 36 countenanced." **Rohan Builders** is actually speaking in two different voices in that sense.

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1 They are, on the one hand saying that recalcitrant Parties cannot be allowed to get away, but
 2 they are also in talking about delay on the part of the Arbitral Tribunal cannot be
 3 countenanced, and I think it's that latter that we really need to focus on when we're talking
 4 about sufficient cause because are we then saying that where Arbitral Tribunals are delaying,
 5 then there can be no automatic extension, or there can be no extension?

6 The challenge, though, comes and again, Justice Bhat alluded to this. What happens if you do
 7 not extend time? Because if you do not extend time, then the Parties may have to go before a
 8 new Tribunal or a new set of members. And there's another decision of the Supreme Court
 9 called **Ajay Protech** that says "Sufficient cause should be interpreted in the context of
 10 facilitating effective dispute resolution." And the question there is, is it effective dispute
 11 resolution in that case or more generally, to send a signal to the Arbitrators that delay cannot
 12 be countenanced? I think the best way to address this, actually, is maybe two things, I would
 13 suggest for the Legislature is one is, or even for the Court to pass as a general order, that
 14 Arbitrators should, at the very outset of the arbitration, set out a procedural timeline. If it's a
 15 complex matter that does indeed require more than a year or even a year and a half, that
 16 procedural timeline at the very inception of the arbitration, can state what that timeline is,
 17 because against that you can measure whether the Tribunal is acting promptly or not. And the
 18 second thing is that when 29A applications are moved, there should be a little greater onus on
 19 the Arbitral Tribunal to explain why that application is meritorious. That is to say, perhaps a
 20 Procedural Order by the Tribunal indicating how it has acted and why still, some extension is
 21 to be granted. Because otherwise, my view is, 29A has certainly acted as a soft push towards
 22 the arbitration ecosystem, because no Arbitral Tribunal also likes to be subject matter of a 29A
 23 application, but if it is to be something more than a soft push, we perhaps need some more
 24 legislative teeth to this provision. That's what I would say. Thanks.

25 **KUNAL J. VYAS:** Thank you. Thank you so much, Mr. Rai. I would now request Mr.
 26 Jalundhwala to also share his views and supplement what Ritin has just said.

27 **JATIN JALUNDHWALA:** Thank you. Good afternoon to all. This interplay between Section
 28 23 and 29 is very important. If you see, there is a vast difference between these two as far as
 29 the limit is concerned. In the first, it is said, within six months of the appointment of the
 30 Arbitrator or the panel of Arbitrators, you must complete the pleading, and that particular
 31 sections is not mandatory, it is directory. If you would go to 29A, which clearly says that the
 32 arbitration has to be completed within 12 months, and that is from the completion of the
 33 pleading. So there is a difference between these two. One, six months from the date of
 34 appointment of Arbitrator, and here, twelve months from the date of the completion of the

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1 pleading. So, no blame game can be assigned to the Arbitrators because pleadings are
2 completed, then their work starts to complete this arbitration within 12 months.

3 Now, there is a question mark. When to be considered pleadings are completed? Ritin ji has
4 rightly said *ki* pleadings to be completed, not only claim and counterclaim or defence
5 statement, but when the Parties are allowed for filing Rejoinders, Surrejoinder, all this has to
6 be considered as the pleadings. And therefore, the pleading will be considered as completed
7 when all this Surrejoinder, Rejoinder have been filed as allowed by the Arbitrator, and from
8 that day, the 12 months starts for the particular arbitration to be completed.

9 There are various judgements on this. Some of the judgements once is as far as ***Buoyant***
10 ***Technology***. Karnataka High Court decided that the pleadings shall be considered as
11 Rejoinder, Surrejoinder, everything when it is completed, then it is called as pleading
12 completed and the actual period should start accordingly. The same matter went to the
13 Supreme Court and the Supreme Court also affirmed the views of Karnataka High Court and
14 which is a correct stand because anybody is allowed to file the Rejoinders, Surrejoinder. Then
15 for the clock starts from that day. So, this is, what, about 29? And it is a very... Bhat *sahab* was
16 the part of the Committee members, 29A that has come in 2019, which is a valid, I think
17 appreciable amendment as far as the Indian arbitration is concerned, because there is some
18 limit which has been put into to complete the arbitration.

19 Now, I'm just going to a sufficient cause. There is still a *lacunae* angle in this legislation. There
20 is no nothing mentioned about what should be considered as the sufficient cause. I think, it
21 leaves to the Court that they should decide that which can be considered as a sufficient clause.
22 Like in *force majeure*, we can seek a *force majeure* includes so and so, but it is nothing that
23 but for the sufficient cause as a corporate what we are doing, as an expert, what we are doing
24 when the arbitration starts, we should record everything when pleading started, when the
25 other side asked for the time, when I asked for the time. How much time has been taken for
26 the cross-examination of the people? Sometimes I feel I will take the Witness examination in
27 three days, but it went for six days or so. In such situation all these dates and other things have
28 to be recorded by us and when at a particular time, where I have to make an application for
29 the extension, then at that time I can demonstrate this is the sufficient cause and which is
30 beyond my control. Beyond my control covers two things. One, natural. And second is non-
31 natural. And if you say natural, means when COVID situation was there. Even though at that
32 time some cases has happened and where the Court has said there is a sufficient cause for the
33 extension of this particular arbitration. So the sufficient cause means no frivolous ground, no
34 baseless ground. And that should be completely on a concrete our justification that this needs
35 to be extended.

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1 Now in this sufficient cause. What is this? I feel that whenever we are making an application
2 for extension, it is desirable to make the application before the arbitration period is over. So
3 the Court will definitely take up in a *bona fide* way that they have come before the arbitration
4 12 months period is over. That should be there, and how to put in record the various
5 parameters, why I'm coming for the extension of the time limit. In one of our cases, we have
6 to go for four such extensions. And it was fortunate *ki* both the parties put together go for
7 extension. But at the fourth extension, the High Court said, "Now I'm giving, this is the last
8 extension and you have to finish the arbitration by that time." So these are my thoughts on
9 sufficient clause and interpretation. Thank you.

10 **KUNAL J. VYAS:** Thank you, sir. Thank you so much for your views. It's always interesting
11 to hear the In-House Counsel views because they explain the difficulties in the best possible
12 manner. I would now like to go to Mr. Thakore. Sir, the question is, what are the practical
13 implications of the Legislature not prescribing a maximum duration on extensions granted or
14 the number of extensions permissible under the provision? This is being highlighted as a
15 serious *lacunae*. We would want to hear your view, sir.

16 **MIHIR THAKORE:** Before I go to... Am I audible? Yes. Before I go to this, my personal view
17 is that 23(4) is sacrosanct and there is no discretion. In fact, the suggestion of the Committee
18 was to use the word 'may'. The Legislature instead has used the word 'shall'. And if you see
19 23(4), the language, it is not completion of pleadings. It is Statement of Claim and Defence
20 under this section shall be completed within a period of six months. So it's only the Statement
21 of Claim and Defence. At the highest, it can be... If the defence has a counterclaim, it can be a
22 Statement of Defence of the counterclaim. So all those pleadings have to be over within six
23 months and this cannot be extended. I am aware that the Kolkata High Court has taken the
24 view that it is discretionary, but recently, I've come to know the Delhi High Court has taken
25 the view that this is mandatory. My personal view is that it is mandatory. If it is mandatory,
26 the period given is one and a half year, plus extension, with consent, of six months. So that will
27 be a period of two years. And pleadings have to be completed, even if it's a detailed matter.
28 When you approach arbitral... when you apply for arbitration or issue a notice of arbitration,
29 you are aware what you are going to plead. So the question of not being able to prepare the
30 complete pleadings within six months is unpardonable. That is my first issue.

31 Going there, the role of Arbitrator to see that the proceedings are completed within a stipulated
32 time is very vital. And, I'm sorry, being on the lawyer side of arbitration, I find that lot of
33 Arbitrators are not laying down the procedural requirements from day-1. If all the procedural
34 requirements... I have seen some Arbitrators doing it. Late Justice Lahoti used to do it on the
35 very first day of the hearing, where he would lay down the date of Witness Statements to be

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1 filed and cross-examination to commence on certain dates, everything was laid down. Now, if
2 that is laid down, the comparative table can be created, how the arbitration has proceeded and
3 where is the fault, when you go for sufficient cause before the Court.

4 Now, as far as the question posed to me is concerned, I am of the view that there cannot be a
5 limitation on extensions; it has to be left to the Court. The very purpose of leaving it to the
6 Court is to see that Court will decide on the limits, number of extensions or the period of
7 extension. There is some third-party, some judicial forum which decides that. To impose a
8 condition that it should be only limited to one extension or two extension can be disastrous. It
9 will lead to further delay because the Arbitral Tribunal will collapse, and new Arbitral Tribunal
10 will come into existence. And I am facing one arbitration, which has started in 2017, I am at
11 the stage of final arguments in 2025. The reason was one Arbitrator died, another Arbitrator
12 resigned, third Arbitrator who was appointed, withdrew, and now the new Arbitrator is
13 appointed. The resultant effect is that seven years have elapsed. Originally, before the first
14 Arbitrator died, already the arguments were over. It was for award. And I am told that the
15 award was ready and he died. Now this resulted in four years delay. So, how do you not seek
16 extension? Extension has to be sufficient cause for extension. It depends on facts of each case.
17 Therefore, there can never be a limit. That it can only be three extensions or two extensions.
18 That's the only thing. I'm open to any question.

19 **KUNAL J. VYAS:** Can I go to now Rashna for her views on this question?

20 **RASHNA MISTRY:** Thanks. So, friends, my Co-panellists have already stolen the thunder.
21 They've explained to you all the orders, all the Sections, all the precedents. Section 29, 23.
22 Now, I'm left with giving you my thoughts or what the clients or the litigants in an arbitration
23 go through.

24 So, you heard why 29A was inserted. It was inserted so that timely completion of arbitration
25 happens, then India comes up to the international standards and the costs also come down of
26 litigation. So, there is not an endless period of litigation. Now, the creature of extension came
27 in, where Parties know we can extend the arbitration. It is not limited to twelve, six. After that
28 18 months' also, we can mutually go and seek an extension from the Court.

29 Now, let me come back to the conduct of the Parties. We, Parties, are equally or more to blame.
30 We know we're going to get extension. We know, I just don't want to put in my good points. If
31 I have ten points, good, bad, ugly, just throw everything, throw the whole lot. You never know
32 which one sticks, so I do that. Now, my person who has to respond says, "*Arey usne to 10 dala.*
33 Let us answer his 10 and put my 10." So imagine the poor Arbitral Tribunal. I am throwing

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1 evidence. I am throwing expert opinion. Quantum analysis, delay, EoT, everything under the
 2 sun. Plus other witness, my witness, his witness. It's voluminous. And I'm talking from the
 3 infrastructure companies where already the projects take 10-15 or not, or maybe more to
 4 complete. So imagine the volume of paper or the volume of evidence, the volume of data that
 5 I throw out to the poor Tribunal. I mean, I sometimes pity the Tribunal. It is easy to blame
 6 them for delay, but we are equally to blame, because we know that there is extension.

7 Now, in big infra, I'm just taking my example. If there are big infrastructure projects where
 8 millions, billions is involved, I don't want to circumvent any arguments, take every point and
 9 elaborate and make sure I've covered everything. So after the brilliant conduct of the Party,
 10 now the poor Tribunal has to sieve or shift, sieve through all the data. They have to say which
 11 is the good, bad, ugly and decide on the award. Now, I expect them to finish in six months. Is
 12 that fair? No. They also need time, depending on the amount of volume that I have thrown
 13 across to them. Then Parties go and seek extension. I have, in my experience, not come across
 14 a single matter in Court where the Court has asked, "Why you've come?" It simply extends,
 15 whatever we've asked for, one year or six months, or if the Tribunal has asked for a six months'
 16 extension, I've easily got it. I've got no problem.

17 Now, the creature of the Section which says that the Court will penalize the Arbitral Tribunal
 18 for delay. You think I'm going to blame the Arbitral Tribunal even if it is their delay? Absolutely
 19 not. I mean, which Party is going to go and say that that Tribunal of mine is a problem? *Arey*
 20 *mera* Award will go again. So we all have to be respectful. We all have to understand and not
 21 blame the Tribunal. So, the Section which has been inserted, was inserted with a proper
 22 thinking of the Legislature. But in reality, it doesn't work. No Party is going to blame the
 23 Arbitral Tribunal, leave alone the Court investigating *suo moto*, trying to find out whether my
 24 justice brother X has delayed. Oh, he delayed. Okay, I'm going to levy a penalty. Fine. Minus
 25 his fees by five percent per month of delay. Unheard of. And no judge will do that to his brother
 26 judge I'm sorry. So, this Section also falls. It's good on paper, but reality sucks. Also, I heard
 27 my friend Prashant giving all the statistics which is, I think is right. I have, in some matter,
 28 sought four or five extensions. Arbitration takes place for around four or five years, then
 29 another year, year and a half for the award, then the creature of 34, EPs, just forget about it.

30 But to end with, I would say the Delhi High Court has been very supportive to arbitration in
 31 every set, 34 and EPs they are getting the amounts deposited and the Party who has the award
 32 can withdraw the money. So in that way, I will say that the Delhi High Court has been very
 33 supportive. Now, I will stop there and thank you.

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1 **KUNAL J. VYAS:** Thank you. Thank you, Rashna, for your views. Going back to Mihir *bhai*.
 2 Mihir *bhai*, what are the challenges in imposing reduction in fees or substitution of an
 3 Arbitrator for inordinate delay attributable to the Tribunal?

4 **MIHIR THAKORE:** The first challenge would be to what extent you can blame the Tribunal?
 5 Sorry. The first challenge will be to what extent you can blame the Tribunal? If one Party is
 6 delaying and the Tribunal is allowing the Party to delay the proceedings, you can blame the
 7 Tribunal. Otherwise you can't blame the Tribunal. Secondly, assuming you can blame the
 8 Tribunal, which party is going to dare blame the Tribunal if they want to see that the same
 9 Tribunal functions? So, the reduction of fees is almost an impossibility to achieve. Third,
 10 assuming the Court passes the order of reduction, there is all possibility that the Tribunal will
 11 resign, in which case a new Tribunal will have to be constituted. There is no compulsion that
 12 the Tribunal will function at a lower fees. So, these are the limitations in respect of reduction
 13 of fees. In respect of substitution, it's a different thing. You can make allegations not only of
 14 delay, but some other delay, which clearly indicates the Tribunal is favouring a Party to see
 15 that proceedings do not proceed. Then certainly, the Court can substitute the Arbitral
 16 Tribunal, but then the burden will be very heavy to prove that the Arbitral Tribunal is itself
 17 delaying the proceedings, in that sense.

18 **KUNAL J. VYAS:** Could it be a consideration for the Court that the Arbitrator is taking up
 19 more than a particular number of arbitrations? Could this be taken into consideration?

20 **MIHIR THAKORE:** The factual position is that whenever I am sitting in a three-member...
 21 whenever I am arguing in a three-member Arbitral Tribunal, the fixing of dates is an
 22 impossibility. Because each of the members of the Arbitral Tribunal has a fixed calendar where
 23 they are appearing before someone or heading some other Arbitral Tribunal. Therefore,
 24 effectively, the delay is caused because of overburden of sole Arbitrator the dates are much
 25 easier and the matter can proceed much faster. But with a three-member Arbitral Tribunal,
 26 it's impossible. And delay is because of multiple arbitrations being taken up by Arbitrators. I
 27 believe that an Arbitrator should not take more than two arbitrations in a year.

28 **RITIN RAI:** Kunal, if I can just add to that? I think, Rashna has very well expressed the
 29 human issues that are involved. I mean, there's a Client who wants an award from a Tribunal,
 30 it's almost impossible for the Client to take a particular position *qua* the Tribunal. But just to
 31 answer your question, there is also Section 12 in the Act, which says that the Arbitrator at the
 32 outset has to express his or her confidence that she can complete the arbitration within a
 33 period of 12 months. Now, again, that's the... sorry?

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1 **KUNAL J. VYAS:** That is mechanically given.

2 **RITIN RAI:** Yeah. And I think the answer, therefore, is when we try and think about what the
 3 statute says versus what a litigant faces, the answer is clear. There has to be someone else
 4 objectively who can look at what the Tribunal is doing. I think what this discussion is showing
 5 us is that it can't be the Court. And I think, therefore, the only other way forward, and it's not
 6 because this is an MCIA arbitration is for an institution. See 29A, has worked to some extent,
 7 at least at the back of our minds, or at least at the back of Arbitral Tribunal's minds is let's try
 8 and be expeditious. Because we don't want to be subject matter of an application. And as
 9 lawyers also, when we appear in Court, we're very careful not to say who the Tribunal is. The
 10 judge doesn't ask. There's, of course, confidentiality, but sometimes the Tribunal's members
 11 names come in an order. They don't like that, and for a good reason. But that reputational
 12 issue, I think, can best be addressed in institutional arbitration, where if an institution, A, it
 13 can nudge Arbitrators to be more expeditious. As Justice Bhat said the rules themselves have
 14 sometimes time limits. But the second issue is that even if in that particular matter, a Tribunal
 15 hasn't been expeditious, it affects them in future appointments, and that itself acts as a check
 16 on how to do it. So I think where this discussion is converging is that 29A can only be a soft
 17 nudge. But maybe institutional arbitration is actually the way forward for expeditious
 18 arbitrations.

19 **KUNAL J. VYAS:** Justice Bhat now. Please, sir.

20 **MIHIR THAKORE:** One issues before he continues. The issue of institutional arbitration is
 21 the problem is that most of the Arbitration Agreements do not contain a clause of institutional
 22 arbitration. For how do the Parties go to institutional arbitration? Second problem is that
 23 when there are disputes which relate to individuals or partnership firms, the question of going
 24 to institutional arbitration does not arise. It remains within a party nominated arbitration.

25 **JUSTICE S. RAVINDRA BHAT:** Yes. Now, I totally agree with Mihir *bhai* about the fixing
 26 of dates and calendars of Arbitrators, but then I don't think we can fix this issue by saying that
 27 only X or Y or Z is at fault, because even in three-member Tribunals, we see that most of the
 28 practices, if, I'm sorry to use the expression, one of the mandates of the 2019 amendment,
 29 which the committee of the Shri Krishna Committee was to improve the status and bring about
 30 a robust arbitration Bar. Unfortunately, that kind of bar has not developed where you have full
 31 time Arbitrators and full time practitioners, which results in various distortions. As an
 32 Arbitrator, I can say this, that, at least in my experience, more than half of the final hearings
 33 or even cross-examinations we have to resort to in the evenings. If I am given the choice, and
 34 I do. In some of the cases, I do insist, because we are able to schedule the hearing well in

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1 advance. We have a full day hearing from 10:30 to 04:00. And you can wrap up the cross-
2 examination in final hearing. So in three-member Tribunals when you have this kind of part
3 time phenomena, it's not just three, you have five, and perhaps seven actors. So, which means
4 you have a Senior Counsel, you have a firm behind him and vice versa and three Arbitrators.
5 So the puzzles get more complex to fit.

6 And as far as institutions is concerned, I tend to agree with Ritin that the accountability can
7 be through institutions. In fact, I would say that this was one of the main objectives of the
8 Committee's reports, to strengthen and push Parties towards institutional arbitration. I don't
9 agree with Mihir *bhai* that it can be or even in individual cases, it can't be. I mean, I'm seeing
10 the Delhi High Court, the Delhi international arbitration, which I was one of the founders and
11 I chaired for three years, all the elevens wherever there is a controversy. Invariably, even in
12 individual disputes, the arbitrations do go there. And I'm glad to say that a lot of young lawyers
13 are arbitrating now and acting as Arbitrators. And invariably in that centre as well as in some
14 of the international centres like ICC and SIAC, a declaration is sought as to the number of
15 arbitrations which the nominee actually has got in hand. So that's a way of controlling it and
16 ensuring that there is timeliness. And, I strongly believe that institutional arbitration is the
17 way forward. I'm not saying it should be compelled. But I think if we build robust institutions,
18 and I don't think we have to look at the government alone. We have a robust and very well,
19 prosperous law firms. We have industry. What prevents them to get together and create an
20 institution; a robust institution run by credible professionals.

21 Now, if you do that, then you don't have to depend on one or two institutions and government
22 run institutions have their own limitations. They are not able to market it, they have budget
23 constraints. Whereas in the case of these kind of private institutions, those constraints and
24 barriers are not there. But then that's all in the future, we are looking at 29A. Thank you.

25 **KUNAL J. VYAS:** Thank you, sir. Thank you so much. I am sure Neeti is smiling somewhere.
26 The last question to the two General Counsels - Jatin *bhai* and Rashna. Are Parties left with
27 any choice but to extend the mandate for six months under 29A(3) and is there any Party
28 autonomy there?

29 **RASHNA MISTRY:** Absolutely. Yeah. I mean, both Parties know that we are never going to
30 finish in 12. It has to be extended mutually by six. It's a taken thing for me, at least in my
31 arbitration. And generally, Parties do agree. So there is no dispute that I have come across.

32 **KUNAL J. VYAS:** If you want to deny someone an extension, would you dare a denial
33 question?

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1 **RASHNA MISTRY:** I have personally not come across any such denials. Because what
2 happens is, you go... the Party who's instituted the arbitration will restart another one. So
3 you're back in the same position but personally I haven't come across, so Parties do mutually
4 agree.

5 **KUNAL J. VYAS:** Jatin *bhai*?

6 **JATIN JALUNDHWALA:** Yeah. This Party autonomy verses 23A(4), (5), and thus. The
7 29A(3), which gives autonomy to both the Parties that put the Parties mutually can agree for
8 six months extension. But, sometimes it is very difficult to get the consent from the other side.
9 Let me tell you sometime what happened *ki* we have a PSU or some government organization
10 against us. So, they themselves may not like to give consent and they may say, you take it from
11 the Court, because they don't want to put on the record that they have given the consent for
12 the extension of the arbitration. Secondly, this autonomy is only in one Sub-section, and
13 thereafter it is essential for the Court to interfere and to give its judgement *ki* yes, this is being
14 extended for further six months or so. And there are number of cases. One of the cases
15 happened in **L&T** in Delhi High Court where the Liquidator was appointed and the arbitration
16 was between **L&T** and that Liquidator. The Liquidator did not give the consent and the **L&T**
17 has to approach to High Court and show the reasons why I need the extension. Finally, Delhi
18 High Court gave the extension.

19 So, there are number of cases which happened, even number of cases have been, I think,
20 recorded in various High Courts about this extension, and that clearly says both the Parties do
21 not agree with each other for the extension.

22 In recent judgement, it's little bit different. On 1st September in Delhi High Court, one
23 judgement has been given. What it says there were number of extension given in the
24 arbitration, and after that, because the award was not prepared. And once after, say, 12 months
25 or so, the award was announced. The other side challenged the same in Section 34, and the
26 Judge gave the judgement that this limitation or beyond a particular period, if the award is
27 given, it is against the public policy and therefore, the award was set aside. So, how ridiculous!
28 On one side, the same High Court may be different Judge, giving three-four extensions and
29 thereafter the award is set aside. So this is happening. And this 1st September, if you have seen
30 this announcement of the judgement. So, this consent of the Parties, even though autonomy
31 we are putting, but I don't think that it is independent and both the Parties can agree to the
32 mutually to go for the extension except one or so, otherwise there will be always a case in the
33 Court and get it decided.

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1 **RASHNA MISTRY:** You better have a good Contract.

2 **JATIN JALUNDHWALA:** Yeah, you're right. Yeah.

3 **RASHNA MISTRY:** Put it down in the Contract.

4 **KUNAL J. VYAS:** Thank you. Thank you so much for your view, sir. Are there any questions
5 from the audience now? Yes, please. On the first table, please.

6 **AUDIENCE:** I just wanted to share my view. I feel today 29A(1) has no meaning because
7 there's no hard stop. Under 23(4) Parties can take years to file their pleadings. There's no
8 remedy under law right now to stop that. So, of course, I echo it with Ritin, institutional
9 arbitration is the only way that we can see, because even institutes won't allow you to take
10 years and over six months to file your pleadings. So I don't know how this is acceptable. So
11 even the T. K. Vishwanathan Committee report of 2024 recommended an amendment to
12 23(4), making it mandatory the six months' time period to complete the pleading, but
13 unfortunately, there's no mention of it later in the subsequent bill that was passed. So, I think
14 this is a change that we really, really need to actually make 29A(1) effective.

15 **AUDIENCE:** Hi. So, my question is with respect to 23... Section 23. If I read the Section 23(1),
16 it actually starts with "within the period of time agreed upon by the Parties or determined by
17 the Arbitral Tribunal." Right? There, they say that the Claimant shall file everything that they
18 want to plead, with the consent of the Parties or how the Tribunal prescribes it. Now, I have
19 seen certain cases where the Tribunal, even if they directly put the Parties into the bracket of
20 six months to complete the pleadings, the Parties themselves comes up and says that, "Sir, two
21 months' time is not enough for filing of the Statement of Claim." Or, when the Statement of
22 Claim is not filed within that two months' period, even if it is granted, they seek another four
23 weeks to file the same, and this has happened a lot with the PSUs, where they take almost six
24 months to file their Statement of Claim. So how, Mihir sir, when you say that this is a
25 mandatory provision 23(4), how will that work as a mandatory provision here? When the
26 section starts with "unless agreed by the Parties or granted by the Tribunal"?

27 **MIHIR THAKORE:** Can we read both the sections together, (1) and (4)?

28 **AUDIENCE:** Yes, sir.

29 **MIHIR THAKORE:** "Within the period of time agreed upon by the parties or determined by
30 the Arbitral Tribunal, the Claimant shall state facts supporting the claim, the points that we
31 issue and the relief of remedies sought and the Respondent shall state his defence in respect

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1 of this particulars, unless the Parties have otherwise agreed as to the required elements of
2 those statements.” Now, this time agreed has to be controlled by Sub-section (4). “The
3 Statement of Claim and Defence under this section shall be completed within the period of six
4 months from the date the Arbitrator or all the Arbitrators, as the case may be received notice
5 in writing of appointment.”

6 **AUDIENCE:** But if the Parties themselves come up and say that we can't complete within six
7 months?

8 **MIHIR THAKORE:** Then the consequences of 25 will follow... should follow. And now I
9 believe Delhi High Court has taken the view that this is mandatory, contrary to the earlier view
10 of Kolkata High Court. That is in **2023 SCC OnLine Del 520**. It has taken the view that this
11 is a mandatory provision. And if the mandatory provision, the claim statement is not filed then
12 Section 25 should follow and the Arbitrator has to terminate the proceedings.

13 **AUDIENCE:** But there are cases where, sir, there are sufficient causes which are shown by
14 the Parties.

15 **MIHIR THAKORE:** The question of sufficient cause doesn't arise if it's a statutory limitation
16 period.

17 **AUDIENCE:** Thank you, sir.

18 **AUDIENCE:** Section 25 will be applicable only when the SoD is not filed. What if, no, the
19 pleading sorry.

20 **RITIN RAI:** 25B is dealing with the Statement of Defence, and then it says “the Tribunal will
21 have the discretion to treat the right of the Respondent. (A) Statement of Claim the mandate
22 is terminated, (B) A Statement of Defence.”

23 **AUDIENCE:** My question is to Justice Bhat. While enactment of the Section 29A, was there
24 any criteria to keep a limit on the filing of Section 29A(5) application? Because it so happens
25 that there was a matter in which an application was filed one and a half years later after the
26 mandate had expired. So should there be a time limit to filing an application under 29A(5)
27 after the mandate has expired?

28 **JUSTICE S. RAVINDRA BHAT:** I think the absence of limitation indicates that there is no
29 limit. But then I would not really go for that, because the general I think Section 29 of the
30 Limitation Act ought to apply, which means that the outer limit ought to be three years.

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1 Because Section 29(3), Section 29 of the Limitation Act begins with the term, with the
2 expression... I think it's something to the effect that if there is any... unless a contrary intention
3 appears.

4 **AUDIENCE:** Sir, I understand. But if we were to apply three years, then the whole point of
5 an alternate dispute resolution..

6 **JUSTICE S. RAVINDRA BHAT:** Yeah. But then are we allowing the states to... I mean, the
7 Courts to draw the line? The problem with the Courts being allowed to draw the line means
8 that you have often arbitrary red lines. What is reasonable under these circumstances? Yes,
9 one could argue that the overall limit being where Parties can consent is being two years,
10 reasonable time would be one year. But on the contrary, there could be some people who say
11 that there is no time limit. So, one has to resolve. I mean, each area could be a thorny area for
12 conflict and litigation. So I think I would not hazard a guess on this.

13 **AUDIENCE:** Thank you, sir.

14 **KUNAL J. VYAS:** Thank you. Thank you so much, sir. Sir, just the last question. We are
15 anyway out of time.

16 **VIKAS GOEL:** I am Vikas Goel. I'm from Singhania & Partners. My observation is that this
17 time period may be mandatory six months. But we have to see, actually what is going to be the
18 consequence. Is it that the time to file the reply or Statement of Claim will be closed
19 mandatorily or the time which is consumed in that will be taken from the 12 months period
20 and six months periods thereafter? So, in my understanding, it is not that once you are not
21 able to complete the pleading within six months then everything goes. But six months will stop
22 there, and then the one year period would start.

23 **KUNAL J. VYAS:** Thank you, sir. Thank you for your views.

24 **MIHIR THAKORE:** We use the Statement of Claim and Defence under this section shall be
25 completed. And Section 25 says "the Claimant face to cover..."

26 **VIKAS GOEL:** So sir, I just want to understand, because if we say that after six months you
27 cannot even file even when the Tribunal is willing to give that time and other party has no
28 objection. So six months definitely should expire. But to say that everything will go may not
29 be correct. This is what my understanding is.

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1 **MIHIR THAKORE:** If the trial will never begin, then what time the trial should start?
 2 Timetable has to be there to see that even extensions of a sufficient clause, this timetable has
 3 to be maintained at some point of time.

4 **NUSRAT HASSAN:** Sorry. I'll just pass a comment. I think 23 Calcutta matter we were the
 5 attorneys. I'm Nusrat Hassan, Managing Partner of Dentons Link Legal, so, interestingly they
 6 had a strong argument that it is mandatory nature, so I kind of echo what you are saying, Mr.
 7 Thakore, because ultimately the 29A, even if you look at the historically, the idea is to close
 8 the arbitration. Six months came by a specific amendment. I think the intention of the
 9 legislature was never to make it directory in nature. That was our really strong... I'm really
 10 happy that Delhi High Court has made it mandatory and we argued that at great lengths at the
 11 Calcutta High Court, unfortunately. But, I think the basic point for all of us as arbitration
 12 practitioners, is ultimately the amendment of 15 has improved arbitration. If we change the
 13 timelines anymore, it is going to drastically affect the end user satisfaction of this process, I
 14 think we have the GCs. And that's really going to be the critical understanding of arbitration
 15 practitioners, we feel, I mean, for arbitration practitioners, we feel very deeply about this
 16 process. So, I think I echo what you are saying Mr. Thakore more than anything else. Thank
 17 you, sir.

18 **KUNAL J. VYAS:** Thank you. Thank you. We are seriously out of time.

19 **AUDIENCE:** So, going on 23's interpretation, it's only the Statement of Defence and
 20 Statement of Claim which are included. Recently, in 2024, there's a single Judge Bench
 21 judgement of Delhi High Court. And has also been done by Supreme Court in a matter that
 22 Rejoinders have also now been included and the *Emco Limited* judgement of Delhi High
 23 Court specifically says that the six months period will expire and the one-year period will only
 24 start. Sorry. I'm so sorry. The one-year period will only start once the Rejoinder is filed. So
 25 isn't now this against the statutory scheme and actually because it's supported by both
 26 Supreme Court and Delhi High Court, it becomes a practice everywhere, because there's a
 27 confusion.

28 **MIHIR THAKORE:** I have not seen the Supreme Court observation. The language of Section
 29 23(4) is confined only to Statement of Claim and Defence.

30 **AUDIENCE:** That's probably the correct interpretation and the High Court has taken...

31 **MIHIR THAKORE:** No, and I would only say that the counterclaim is not up, it's a pleading.
 32 So in the Statement of Defence of a counterclaim, which may be a Rejoinder in that sense may

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1 be covered, but nothing beyond that. And further, in a trial, why should there be any
2 Rejoinder? The Arbitral Tribunal itself should say that there should be no further pleading.

3 **AUDIENCE:** The trouble with Calcutta is that [INAUDIBLE] they say that 29A doesn't say
4 pleadings in terms of 23(4), so it's not linked to pleadings. So, it can be any pleadings even if
5 it's outside what is mentioned in 23(4).

6 **RITIN RAI:** 29A(1) says pleadings....

7 **AUDIENCE:** But the judgement says there is no reference to 23(4).

8 **JATIN JALUNDHWALA:** Yes, this Karnataka High Court, what you are saying it has
9 decided the same thing whether this Rejoinder, Surrejoinder includes or excludes, then they
10 have said it should be included. And the same view has been taken by the Supreme Court in
11 the same judgement. And therefore...

12 **AUDIENCE:** This has been approved by Supreme Court?

13 **JATIN JALUNDHWALA:** Yes. And what they have said, it is clarified that the Surrejoinder
14 to a counterclaim reply is allowed. It forms part of the pleadings which are then complete upon
15 its filing. If it is allowed. That's the only point.

16 **AUDIENCE:** In fact, the Calcutta High Court has a language. It's very interesting. It says in
17 a 29A, we don't want to be sitting with a whacking stick and a calculator. So we'll consider all
18 the pleadings and not just...

19 **JUSTICE S. RAVINDRA BHAT:** Just to add a little bit of more spice into this. What
20 happens when the Tribunal permits amendment to pleadings?

21 **MIHIR THAKORE:** My view is that amendment to pleadings is part of trial, and that will
22 not... the period will start after six months. That's all.

23 **KUNAL J. VYAS:** Timelines remain unaltered. Thank you. Thank you so much, MCIA, for
24 having us. Thank you, My Lord Justice Bhat, Mr. Rai, Rashna, Mihir *bhai*, Jatin *bhai*,
25 everyone, for being on our panel. It was a great session indeed. Thank you for having us again.
26 Thanks.

27 **HOST:** Thank you for this very interesting discussion. We shall be breaking for lunch now,
28 and we'll resume our next session at 02:30. Thank you.

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~~~END OF SESSION 3~~~

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