Dispute Resolution Hotline

March 01, 2018

DELHI HIGH COURT DEPRECATES HABIT OF FILING CHALLENGES TO AWARDS BY GOVERNMENT COMPANIES

The Delhi High Court has:

- deprecated the practice of appeals filed by Government companies against arbitral awards and imposed costs upon NHAI;
- acknowledged that arbitration has effectively been rendered akin to civil trials due to such conduct;
- held that such appeals contribute to the menace of "*docket explosion*" which plagues the courts in India.

INTRODUCTION:

In a dispute relating to construction arbitration in the case of National Highway Authority of India (**"NHAI"**) Vs. M/s. BSC-RBM-PATI Joint Venture (**"Contractor"**),[1] the Delhi High Court (**"Court"**) has, *inter alia*, noted that needless challenges to arbitral awards by public sector undertakings had contributed to menace of "*docket explosion*" and deprecated the practice, whilst going on to impose costs upon NHAI.

The Court also delineated the contours of the jurisdiction of courts under Section 37[2] of the Arbitration and Conciliation Act, 1996 **("A&C Act"),** and has held that the grounds for appeal against an order setting aside or refusing to set aside an arbitral award are extremely limited.

FACTS:

On July 24, 1997, NHAI and the Contractor entered into an agreement awarding the contract for the work of 4 laning, including strengthening of the existing two lane pavement between Raniganj and Pangarh of NH-2 in West Bengal, to the Contractor.

Disputes arose between the parties in relation to the rates at which certain items were charged and NHAI initiated arbitration proceedings wherein the Contractor filed their counterclaim. The Arbitral tribunal passed an award against NHAI on October 10, 2014.

NHAI challenged the award under Section 34 of the A&C Act, which challenge was dismissed on January 3, 2017. Aggrieved by the order, NHAI filed an appeal under Section 37 of the A&C Act.

CONTENTIONS OF THE PARTIES:

NHAI, *inter alia*, argued that the various rates charged by the Contractor for items quoted in a certain bill were not agreed. They further contended that the rate of payment would be required to be determined in accordance to Clause 52.1 of the agreement. The Appellant also stated that they did not agree to the rates for the Variation Orders issued by the Engineer's Representative. NHAI submitted that the arbitrator and the learned Single Judge erred whilst deciding these aspects of the dispute.

The Contractor argued that the rates at which NHAI claimed payment were expressly contained in the bill and were therefore known to NHAI. No objection was raised by NHAI at the relevant time. The Contractor therefore contended that the Arbitral Tribunal had rightly dismissed the claim and that the Single Judge had dismissed the challenge after extensively dealing with each issue.

JUDGMENT:

Dismissing the appeal with costs, the Delhi High Court held that the interpretation of the terms of agreement by the arbitral tribunal was neither perverse nor implausible. Hence, any interference by the Court would not be justified. Construction of clauses of an agreement was a matter for the arbitral tribunal to consider and it was not for the Court to re-appraise the evidence and reconsider factual findings on merits.

However, the Court did delve into the issues in dispute on a *prima facie* basis. The Court held that the Arbitral Tribunal had effectively bound NHAI to the rates mentioned in the contract. Further, the Court acknowledged that the Arbitral Tribunal had entered into an exhaustive and painstaking exercise of working out the amounts payable against each Variation Order and that the Court had no reason to take a contrary view.

The Court went on to deprecate the practice of needless challenges to arbitral award and also note the menace of docket explosion being caused due to increasing number of challenges to arbitral awards under Section 34 and thereafter under Section 37, which had effectively rendered arbitration akin to civil trials.

Research Papers

Fintech
May 05, 2025

Medical Device Industry in India
April 28, 2025

Clinical Trials and Biomedical Research in India
April 22, 2025

Research Articles

2025 Watchlist: Life Sciences Sector India
April 04, 2025

Re-Evaluating Press Note 3 Of 2020: Should India's Land Borders Still Define Foreign Investment Boundaries?
February 04, 2025

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals
January 15, 2025

Audio

CCI's Deal Value Test
February 22, 2025

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice
December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps
November 19, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Vyapak Desai speaking on the danger of deepfakes | Legally Speaking with Tarun Nangia | NewsX
April 01, 2025

ANALYSIS:

While a pro-arbitration approach is now the order of the day, the Court has utilized this opportunity and chosen to deprecate the practice of needless appeals filed by Government companies against arbitral awards, first under Section 34 and thereafter under Section 37, and impose costs on NHAI. The Court was of the view that these appeals, filed simply because a party had the financial wherewithal to do so, were resulting in wastage of the court's valuable time. While imposition of costs is certainly a welcome step, the quantum of costs is inadequate when one takes into account the costs incurred by parties in litigation. It is unfortunate that the Court did not take the opportunity to impose far higher costs or even actual costs as now provided for under Section 31-A of the A&C Act.

This judgment is also significant in the context of construction arbitrations, where projects involve high stakes - both in terms of time and costs. Under the construction & infrastructure sector, few points of dispute occur repeatedly such as (a) delay in the completion of the contact; (b) claims due to overhead expenses and damages; (c) payment issues; (d) lack of clarity on the rates of items to be billed due to erroneous tenders; (e) conditions and terms of calculation of price adjustments; etc. In this context, the attitude of the courts towards disposal of construction disputes by the chosen dispute resolution mechanism i.e. arbitration, in a timely and non-interventionist manner, is helpful to discourage misuse of challenge and appeal provisions under the A&C Act. It will effectively cut down the frequent attempts by aggrieved parties to re-argue the entire dispute and stall infrastructure projects and will work to bring about a semblance of finality and certainty to arbitration as the preferred and efficient dispute resolution mechanism.

– Kshama A. Loya, Sahil Kanuga & Vyapak Desai
You can direct your queries or comments to the authors

[1] FAO(OS)(COMM)107/2017, dated January 24,2018, High Court of Delhi

[2] *Section 37: Appealable Orders- "An appeal shall lie fromthe following orders (and fromno others) to the Court authorised by law to hear appeals fromoriginal decrees of the Court passing the order, namely: inter alia (c)setting aside or refusing to set aside an arbitral award under section 34."*

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

Vaibhav Parikh, Partner, Nishith Desai Associate on Tech, M&A, and Ease of Doing Business
March 19, 2025

SIAC 2025 Rules: Key changes & Implications
February 18, 2025