



Advocates
& Solicitors

Delhi High Court sets aside Arbitral Award requiring Antrix to pay over \$560 Million to Devas

Antrix Corporation Ltd. v. Devas Multimedia Private Limited

Case No.	O.M.P. (Comm.) 11/2021
Date	29 August 2022
Court	High Court of Delhi
Coram	Hon'ble Ms. Justice Sandeep Sachdeva

1. BACKGROUND:

1.1 The Hon'ble High Court of Delhi was dealing with a petition preferred by Antrix Corporation Ltd ("**Petitioner**") under Section 34 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") seeking setting aside of the arbitral award passed on September 14, 2015 by the arbitral tribunal constituted by the International Chamber of Commerce ("**ICC**") allowing the claim of Devas Multimedia Private Limited ("**Respondent**") and directing the Petitioner to pay more than US\$560 million to it.

2. BRIEF FACTS:

2.1 The dispute is emerging out of a contract ("**Contract**") dated 28.01.2005 executed between the parties with respect to a Lease of Space Segment Capacity concerning ISRO's Antrix S-band Spacecraft. It is pertinent to mention that neither the Department of Space nor ISRO or any other governmental agency was a party to said Contract.

2.2 As per the terms of Contract, the Petitioner was supposed to build, launch, and operate satellites and lease the spectrum capacity of those satellites to the Respondent. However, in February 2011, the Cabinet Committee on Security ("**CCS**") in a meeting decided to deny the S-Orbital slots to the Petitioner and further directed the Petitioner to repudiate the Contract. Therefore, the Petitioner repudiated the Contract citing Clause 11 (Force Majeure) and Clause 7(c) (termination by convenience) of the Contract.

2.3 The Petitioner proposed a meeting of senior management according to section 20 (a) of the Contract. Instead, on 29.06.2011 the Respondent filed a request for arbitration with the ICC as per ICC Rules. The Arbitral tribunal held that terminating the Contract by citing Article 11 and Article 7(c) of the Contract was wrongful repudiation of the Contract and directed the Petitioner to pay a sum of US\$ 562.2 million to the Respondent besides interest.

2.4 Meanwhile, the Petitioner sought the winding-up of the Respondent under Section 271(c) read with Section 272(1)(e) of the Companies Act, 2013 ("**Companies Act**") before the NCLT alleging that the Respondent was formed for fraudulent and unlawful purposes and its affairs were being conducted in a fraudulent manner. The NCLT vide order dated 25.05.2021 directed winding up of the Respondent and observed that the Respondent and its management are involved in various fraudulent activities.

2.5 Devas and Devas Employees Mauritius Private Limited ("**DEMPL**") challenged the order dated 25.05.2021 before the NCLAT and the same was dismissed vide order dated 08.09.2021. Subsequently, an appeal before the Hon'ble Supreme Court was preferred against the NCLAT order which was dismissed vide order dated 17.01.2022.

2.6 The Petitioner filed an application under Section 34 of the Arbitration Act before the Hon'ble Delhi High Court challenging the Award passed by the Tribunal.

3. ISSUE:

3.1 Whether Award passed by the Tribunal liable is to be set aside under section 34 of the Arbitration Act?

4. DECISION:

4.1 The Delhi High Court observed that the Court does not sit in appeal over the arbitral award and may make interfere on merits on the limited grounds. However, it was held that an award can be set aside if an arbitrator acts in an unfair and unreasonable manner or improperly exercises jurisdiction by going beyond the scope of contract, or turns a blind eye towards important evidence on grounds of patent illegality.

4.2 It was held that the commercial relationship between the parties was a product of fraud

committed by Devas and anything arising out of it i.e. the Contract, the disputes, arbitral awards etc., are all influenced by fraud which in turn is in conflict with the public policy of India.

- 4.3 Further it was observed that *“the basic notions of morality and justice are always in conflict with fraud and that allowing Devas and its shareholders to reap the benefits of their fraudulent action, would send another wrong message namely that by adopting fraudulent means and by bringing into India an investment in a sum of INR 579 crores, the investors can hope to get tens of thousands of crores of rupees, even after siphoning off INR 488 crores.”*
- 4.4 Further the Arbitral Tribunal committed an error by excluding the evidence pertaining to the pre-contractual negotiations considering it is essential to understand the intention of the parties. In view of the same, the Delhi High Court set aside the Arbitral Award passed by the International Chamber of Commerce observing that it is completely perverse, suffers from patent illegality and is contravening the fundamental policy of Indian law being in conflict with the most basic notions of justice.

5. PSL Opinion:

- 5.1 It is evident that public policy and patent illegality have now emerged as two distinct and efficient tools for challenging an award under Section 34 of the Arbitration Act. However it is necessary for the courts to strike a balance on judicial interference and at the same time uphold justice in light of Section 34 of the Arbitration Act.