



March 2025

Delhi High Court upholds exemption granted to Delhi International Airport Limited from payment of Annual Fee

On March 7, 2025, the single judge of the High Court of Judicature at Delhi (“**Delhi HC**”) in the case of *Airports Authority of India vs. Delhi International Airport Limited and Anr.*¹, granted relief to Delhi International Airport Limited (“**DIAL**”) in proceedings filed by Airport Authority of India (“**AAI**”) under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) by upholding an arbitral award dated 21 December 2023 (as corrected under Section 33 of the Act *vide* order dated 16 January 2024) decided in favour of DIAL (“**Arbitral Award**”).

The issue before the Arbitral Tribunal (“**AT**”) was whether during the period of the pandemic, the general provisions of the contract between AAI and DIAL, which mandates DIAL to pay an Annual Fee (“**AF**”) at a certain percentage, will continue to operate if DIAL had sought benefit of the *force majeure* clause. The case of DIAL was that though they continued to run the operation, their revenues had fallen down so much that they were unable to meet even the expenses. On the other hand, the case of the AAI was that firstly, it cannot be said that the DIAL was unable to pay the AF and secondly, the conditions as provided in the *force majeure* clause never existed in entirety. The AT agreed with the contentions of DIAL and passed an award against AAI.

AAI filed a petition under Section 34 of the Arbitration Act challenging the Arbitral Award on the grounds that it is perverse, contrary to law and fundamentally alters the contractual framework between the parties, which has been dismissed by the Delhi HC.

Brief facts

AAI executed an Operation, Management and Development Agreement (“**OMDA**”) dated April 4, 2006, with DIAL, whereunder Article 11 required DIAL to pay AAI an AF for each year during the term of OMDA at 44.99 % of projected revenue as set forth in the business plan for a said year. The AF is payable in 12 (twelve) equal Monthly Instalments (“**Monthly AF**” or “**MAF**”) to be paid through an escrow bank. A delay in MAF bears interest calculated at State Bank of India prime lending rate + 10% p.a.

In March 2020, upon the outbreak of the COVID-19 pandemic, DIAL sought relief under *force majeure* provision of OMDA i.e. Article 16, citing *force majeure* and requested AAI to refrain from instructing the escrow bank regarding the Monthly AF for April 2020 and sought a 3 (three) month waiver upto June 2020 on MAF payments due to the nationwide lockdown.

In response, AAI requested a board resolution confirming the invocation of *force majeure*. While the board resolution was pending, AAI accepted DIAL’s request and granted a 3 (three) month deferral of MAF payments from April to June 2020 on a ‘without prejudice’ basis. Under this arrangement, DIAL was required to pay the cumulative MAF for April,

¹ O.M.P. (COMM) 186/2024

May and June 2020, computed on actual revenues by July 15, 2020, without incurring interest under Article 11 of the OMDA. However, DIAL did not provide the required board resolution confirming the invocation of *force majeure* and continued to pay the MAF for April, May and June 2020 despite the above arrangement agreed with AAI. In fact, on May 1, 2020, DIAL reaffirmed its commitment to paying MAF.

On June 24, 2020, DIAL provided AAI a board resolution and formally requested deferment of MAF payments on a cash basis, submitting board meeting minutes and a document titled '*Detailed Note on Relaxation in Business Plan Submission and Payment of MAF*'. On August 7, 2020, AAI rejected this request and directed DIAL to comply with its OMDA obligations.

Pertinently, even while DIAL formally sought to be excused from MAF payments, nonetheless, it continued to remit the MAF as per the usual practice.

Parties invoked Article 15.1.1 of the OMDA for seeking resolution of the ongoing dispute. The AT was constituted on January 13, 2021. The Arbitral Award was passed on December 21, 2023, whereby the Tribunal *inter alia* excused DIAL from making payment of AF for the period March 19, 2020, to 28 February 2022, while rejecting all the counterclaims of AAI. The Arbitral Award was pronounced on January 6, 2024, and on January 2024 16, the learned AT, *sou motu*, passed an order under Section 33 of the Arbitration Act, correcting certain stenographical errors in the Arbitral Award.

Issue

Whether Impugned Arbitral Award is patently illegal and contrary to public policy, warranting its setting aside under Section 34 of the Act?

Findings and analysis

The Delhi HC undertook a detailed analysis of the limited grounds on which a court can interfere under Section 34 of the Arbitration Act. While relying on plethora of judgments, the single judge *inter alia* noted the following ratios:

1. the 3 (three) characteristics of a reasoned order can be fathomed i.e. that the order is: (a) proper, (b) intelligible and (c) adequate. The award can only be interfered with if the court reaches to the conclusion that the perversity of the award goes to the root of the matter and there is no possibility of alternative interpretation which may sustain the arbitral award (*Dyna Technologies vs. Crompton Greaves Limited*²);
2. the court, in exercising its jurisdiction under Section 34 of the Arbitration Act to set aside an award, must determine whether the award is so irrational that no reasonable person could have reached the same conclusion. (*Associate Builders vs. DDA*³);
3. if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with (*Kuldeep Singh vs. Commr. of Police*⁴);
4. the court is of the considered view that 'a *force majeure* clause' in a contract is generally an exception or an eclipse provision, meaning thereby if a *force majeure* is enforced the performance as mandated in the other terms of the contract will remain eclipsed till the *force majeure* event persists (*Treitel on Frustration and Force Majeure, 3rd Edition*). Whether the force majeure has taken place or not or it exists or not or the time till when it exists is a question of fact to be determined by the AT;
5. a business-like interpretation of contractual provisions must be adopted in construing contracts entered into by persons of business to govern business dealings. The court must ensure that interpretation of law in commercial

² (2019) 20 SCC 1

³ (2015) 3 SCC 49

⁴ (1999) 2 SCC 10

cases must not be disjointed from the intent and object which those having business dealings seek to sub-serve (*Mumbai Metropolitan Region Development Authority vs. Unity Infraprojects Limited*⁵);

6. the law is not divorced from business realities nor can the vision of the judge who interprets the law be disjointed from the modern necessities to make business sense to business dealings (*UHL Power Company Ltd. vs. State of Himachal Pradesh*⁶); and
7. Construction of the terms of a contract is primarily for an arbitrator to decide (*Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Limited*⁷), etc.

On basis of the above jurisprudence on Section 34 of the Arbitration Act, the Delhi HC held that there is no illegality or perversity in the impugned award passed by AT. The Delhi HC observed that AT has duly taken into account all the conditions as contained in Article 16.1.2 of the OMDA and appreciated the evidence of both parties. The AT also noted that OMDA was entered into with the motive of earning profit with the exception of contracted relief pertaining to *force majeure* circumstances and endeavour of the adjudicator should be to neutralise profit/losses between the parties.

As per the financial statement of DIAL for the year ending March 31, 2021, the total income/receipt from the sundry operations of the Airport aggregated at INR 1669.31 crore (Indian Rupees one thousand six hundred sixty-nine point thirty one crore) while the total expenses aggregated at INR 2567.10 crore (Indian Rupees two thousand five hundred sixty-seven point ten crore). The evidence produced by DIAL demonstrated an adverse impact on DIAL's revenue with effect from March 2020 which has rightly been noted by the AT. DIAL was mandated to ensure that the airport services continued to function for handling permitted flight operations/transportation for essential goods/fire, law and order and emergency services. Therefore, DIAL was compelled by law to incur all the costs in the maintenance and operation of the airport. There is no fault with the finding of the AT that merely because the payment was made, it cannot be held that they were unable to make payment of the AF.

The Delhi HC also observed that the arbitrator is the final Arbiter of the disputed facts between the parties. The question of 'inability' is pre-dominantly a question of fact, which has been determined by the AT on the basis of the evidence produced by the parties. There is no finding which can be said to have been rejected without any evidence, nor is there any material on record to suggest that any extraneous material has been taken into account, or any relevant material has not been considered. In a situation where the closure of the Airport was not an option and the expenditure was more than the revenue earned, the AT has rightly held that DIAL had to be excused from the payment of MAF. In view of the same, the Delhi HC did not find any perversity in the Arbitral Award passed by the AT and dismissed the petition filed by AAI.

Conclusion

The Delhi HC has once again reiterated and upheld the principle that interpretation of the terms of the contract falls within the domain of the arbitrator alone and even if the alternative view is available, the court cannot substitute its own while exercising powers under Section 34 of the Arbitration Act.

⁵ (2008) SCC OnLine Bom 190

⁶ (2022) 4 SCC 116

⁷ (2019) 7 SCC 236

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