

March 2025

## **A Division Bench of the Delhi High Court in an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 sets aside a Section 34 order as well as the arbitral award**

A Division Bench of the Hon'ble Delhi High Court ("**Delhi HC**") has in the matter of the *Union of India (through the Ministry of Petroleum & Natural Gas) vs. Reliance India Limited and Ors.*<sup>1</sup>, allowed an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") ("**Appeal**") and set aside: (a) an arbitral award dated July 24, 2018 ("**Award**"); and (b) an order dated May 9, 2023 passed by a single judge of the Delhi HC under Section 34 of the Arbitration Act ("**S.34 Order**").

The Appeal was filed by the Union of India against the Award and S.34 Order, both of which were passed in favour of Reliance Industries Limited ("**RIL**") and arose from arbitration proceedings invoked by RIL against the Union of India under a Production Sharing Contract ("**PSC**") *inter alia* for exploration of natural gas in the Krishna-Godavari Basin.

### **Brief facts**

The Union of India entered into a PSC with a consortium of *inter alia* RIL and Niko Limited ("**Niko**") regarding Block Kg-DWN-98/3 ("**Reliance Block**") situated in Krishna-Godavari Basin. The Union of India also entered into another PSC with Cairn Energy India Limited ("**CEIL**") and Oil and Natural Gas Corporation Limited ("**ONGC**") regarding Block KG-DWN-98/2 and Block KG-OS-IG ("**ONGC Blocks**"). ONGC acquired the rights from CEIL in respect of Block KG-DWN-98/2. The ONGC Blocks adjoined the Reliance Block.

These proceedings have their genesis in a dispute between ONGC and RIL regarding the migration of gas from the ONGC Blocks to the RIL Block and a report prepared by DeGolyer and MacNaughton ("**D&M**") for Niko, which was not forwarded to the Union of India ("**D&M Report**"). The D&M Report had concluded that there was an indication of reservoir connectivity and gas migration across the ONGC Blocks and the RIL Block.

In 2015, ONGC filed a writ petition before the Delhi HC against RIL and the Union of India alleging that due to migration of gas, RIL had been unjustly enriched. During the pendency of the writ petition, ONGC and RIL agreed to the appointment of D&M to undertake a third-party study on the allegations of migration of gas. The Union of India constituted a single member committee to consider this report and based on the findings of the single member committee, the Union of India issued a demand notice of USD 1.5 billion (US Dollars one point five billion) (plus interest) to RIL for unjust enrichment for benefitting from the migration of gas.

RIL invoked arbitration under the PSC seeking *inter alia* a declaration that it had the right to produce all hydrocarbons from wells in its contract area, which would include hydrocarbons that could have migrated to its wells from an

<sup>1</sup> 2025 SCC OnLine Del 841

adjacent block. By a majority of 2:1, the arbitral tribunal allowed RIL's claim and *inter alia* held that: (a) RIL was permitted and required to extract all available gas within its contract area for the benefit of the Union of India, even if, such gas migrated from beyond the contract area; (b) RIL was not unjustly enriched; and (c) RIL was *inter alia* required to disclose the D&M Report and other important information regarding connectivity of the reservoirs, however, the non-disclosure was not a material breach of the PSC.

The Union of India filed a petition under Section 34 of the Arbitration Act before a single judge of the Delhi HC challenging the Award on *inter alia* the following grounds: (a) the Award suffered from patent illegality since despite holding that RIL had suppressed the D&M Report, the same was held not to be a material breach of the PSC; and (b) the Award erred in holding that RIL could not be made accountable for selling gas beyond its contract area in the teeth of the Public Trust Doctrine ("**PTD**") as the same fell within the public policy of India.

By the said order, the challenge came to be rejected on the basis of the following findings: (a) the arbitration was an international commercial arbitration and the ground of patent illegality was not available to interfere with the Award; and (b) there was no dispossession of title/ownership of the gas from the Union of India and the PTD was not contravened.

The Union of India preferred the Appeal against the said order under Section 37 of the Arbitration Act.

## Issues

1. Whether the arbitration proceeding *inter se* the Union of India and RIL was an international commercial arbitration?
2. Whether the single judge erred in not examining the Award under Section 34 (2A) of the Arbitration Act on account of patent illegality, leaving the appeal court under Section 37 of the Arbitration Act to decide the issue?

## Findings and analysis

The Division Bench of the Delhi HC allowed the Appeal on the following grounds:

1. the single judge erred in holding that the arbitration was an international commercial arbitration, since the Award had come to the conclusion that RIL, an Indian entity was the sole claimant, and that Niko was not a formal party to the arbitration. In this regard, the Delhi HC relied upon the decisions of the Supreme Court in *L&T-SCOMI vs. MMRDA*<sup>2</sup> and *Perkins Eastman Architects DPC vs. HSCC (India) Limited*<sup>3</sup>, which held that the lead claimant's nationality determined the nature of the arbitration and when the lead member in an arbitration was an Indian entity, the arbitration must be treated as a domestic arbitration;
2. the scope of Section 37 of the Arbitration Act is akin to that of Section 34 of the Arbitration Act. RIL's non-disclosure of the D&M Report was a material breach of the PSC and the Award's findings were patently illegal;
3. RIL had no right to extract the migrated gas without explicit approval of the Union of India as held by the Supreme Court in *Reliance Natural Resources Limited vs. Reliance Industries Limited*<sup>4</sup>;
4. RIL had unjustly benefitted from the non-disclosure of the D&M Report and extraction of the migrated gas from the ONGC Block, thus causing losses to the public exchequer especially given that the commodity at hand was a vital resource held by the Union of India as a trustee in public interest; and
5. the Award was based on conjectures and surmises. The view taken in the Award was not a possible view and was in violation of the fundamental law of India and patently erroneous.

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<sup>2</sup> (2019) 2 SCC 271

<sup>3</sup> (2020) 20 SCC 760

<sup>4</sup> (2010) 7 SCC 1

## Conclusion

This decision is a rare instance in which a court acting under Section 37 of the Arbitration Act has set aside both an arbitral award as well as the order passed under Section 34 of the Arbitration Act on that award by applying the principles of patent illegality under Section 34 of the Arbitration Act. This judgment reaffirms the principle that the provisions of Section 34 of the Arbitration Act apply equally to proceedings under Section 37 of the Arbitration Act.

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