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Delhi High Court upholds arbitral tribunal findings on delay analysis using the critical path method and reiterates limits of Section 34 review

The Delhi High Court (“**Delhi HC**”), in *Ircon International Limited vs. Afcons Infrastructure Limited*¹, has provided important guidance on the evaluation of critical path analysis and delay attribution in construction disputes. The Delhi HC examined whether an arbitral tribunal’s findings on delay, based on project schedules and critical path analysis, could be interfered with under Section 34 of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). While considering this, the Delhi HC discussed in detail the jurisprudence relating to delay analysis in construction contracts, including how tribunals should attribute responsibility for delays affecting project completion.

Brief facts

1. Ircon International Limited (“**IRCON**”) awarded a contract to Afcons Infrastructure Limited (“**AFCONS**”) for execution of tunnelling works forming part of the Udampur–Srinagar–Baramulla rail link project. The contract prescribed specific milestones and key dates for completion of different components of the project. Among these, the excavation of the main tunnel at Banihal constituted a major component of the project and was to be completed within a defined duration after completion of certain preliminary works.
2. During execution of the works, AFCONS encountered substantial delays, which AFCONS attributed to circumstances beyond its control, including unforeseen geological conditions encountered during tunnelling, difficult strata, and other operational challenges typical of underground excavation in mountainous regions as well as labour disturbances and logistical difficulties.
3. A central aspect of the dispute concerned the critical path of the project schedule. AFCONS contended that the excavation of the main tunnel constituted the critical path activity in the project. Since this activity governed the sequencing and completion of other works, any delay in its execution would inevitably delay the entire project. On this basis, AFCONS asserted that delays affecting the main tunnel excavation had a cascading impact on the overall completion schedule and therefore justified the grant of an Extension of Time (“**EOT**”) under the contract.
4. However, IRCON levied and deducted Liquidated Damages (“**LD**”) from the contractor’s payments on the ground that the works had not been completed within the contractual period.
5. AFCONS disputed the imposition of LD on the ground that the delay was not attributable to it and were due to circumstances beyond its control.
6. The disputes between the parties were ultimately referred to arbitration, where IRCON contended that it was entitled to impose LD since AFCONS failed to adhere to the contractual schedule. However, the arbitral tribunal

¹ 2026 SCC OnLine Del 558 (decided on February 13, 2026)

held that the main tunnel excavation formed part of the project's critical path and that delays affecting this activity had a direct impact on the overall project timeline. On that basis, the tribunal granted the EOT and found that the deduction of LD by IRCON was not sustainable. The arbitral tribunal also found that the delays were not attributable to AFCONS.

7. Aggrieved by the award, IRCON filed a petition under Section 34 of the Arbitration Act before the Delhi HC, challenging the arbitral award primarily on the ground that the tribunal had erred in granting EOT without any delay analysis and that its determination of critical path amounted to rewriting the contract.

Issue

The Delhi HC, *inter alia*, considered the following issues:

1. whether the arbitral tribunal was correct in applying the principles governing critical path analysis and attribution of delay; and
2. whether courts can review re-evaluate technical delay analysis undertaken by arbitral tribunals in construction disputes?

Findings and analysis

The Delhi HC dismissed IRCON's challenge and upheld the arbitral award on the following basis:

1. the Delhi HC reiterated the limited scope of Section 34 of Arbitration Act. Where the tribunal has examined all materials on record and thereafter arrived at findings regarding delay analysis, such findings constitute factual and technical determinations. In such cases, interference is permissible only if the findings are patently illegal, perverse, or unsupported by the record;
2. the Delhi HC upheld the determination of critical path by the tribunal and expressly recognised the concept of 'critical path' as being globally recognized in the construction industry. The Court recognised 'critical path' as the "*sequence of activity(ies)/ event(s) in any project which are of such nature that any delay in completion of the same would result in a delay in completion of the entire project*". The Court also referred to *Mirant Asia-Pacific Construction (Hong Kong) Limited vs. Ove Arup Partners International Limited*² and *Haney vs. United States*³ in its analysis of the concept and validity of critical path analysis;
3. the Delhi HC noted that the arbitral tribunal had analyzed the sequencing of project, the key dates and construction activities in order to determine which activities governed the timeline for completion of the works. In doing so, the tribunal identified the works for the main tunnel as forming part of the critical path of the project and concluded that delays affecting this would necessarily impact the overall completion date of the project. Such determination does not amount to rewriting the contract; and
4. the Delhi HC also noted that the arbitral tribunal comprised technically qualified members competent to determine the 'critical path' in a construction project. In view of the tribunal's detailed and reasoned analysis while assessing the critical path, the Delhi High Court held that such findings could not be revisited under Section 34 of the Arbitration Act.

Conclusion

The Delhi HC's decision assumes importance as it expressly recognises and upholds the validity of critical path analysis as a valid method for ascertaining delay in construction disputes in the Indian arbitration jurisprudence. Further, this decision reinforces the principle that critical path and delay attribution in construction arbitration disputes are

² [2007] EWHC 918 (TCC)

³ Reported in 676 F.2d 584 (Fed. Cir. 1982)

matters of technical evaluation best left to arbitral tribunals. Courts exercising jurisdiction under Section 34 of the Arbitration Act cannot reappreciate evidence unless the award suffers from patent illegality or perversity. The judgment, therefore, strengthens the finality of arbitral findings in infrastructure and construction disputes, particularly in matters involving complex delay attribution.

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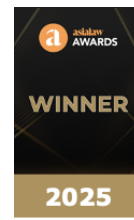
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