

Arbitral Tribunal's Findings Based on Plausible Contractual Interpretation Should Stand Unless Tainted by Patent Illegality or Jurisdictional Error: Calcutta High Court

Authors: *Vasanth Rajasekaran and Harshvardhan Korada*

Introduction

The Calcutta High Court, in *Kolkata Metropolitan Development Authority v. South City Projects (Kolkata)* [APO 205 of 2023], upheld an arbitral award in favour of the respondent consortium, dismissing the appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 ("A&C Act"). The High Court reaffirmed that an arbitral tribunal's findings, when based on a plausible interpretation of contractual obligations, should not be interfered with unless they suffer from patent illegality or jurisdictional error. The judgment delves into significant legal issues, including the enforceability of obligations under public-private partnership (PPP) agreements, the role of government authorities in providing clear land titles for development projects, and the limited scope of judicial interference in arbitration proceedings. In this article, we navigate through the facts of the case and the findings rendered by the High Court.

Brief Facts

The dispute arose from a Memorandum of Understanding ("MoU") dated 17 December 2007 between the Kolkata Metropolitan Development Authority ("KMDA") and South City Projects (Kolkata) ("Consortium") for the development of residential-cum-office complexes near Ruby General Hospital and Nilachal Co-operative Society Housing Complex. The MoU was structured to establish a joint venture company (JVCO) that would be responsible for undertaking the project.

Under the terms of the MoU, the following terms were agreed:

- (i) The Consortium was to pay 10% of the financial bid amount upfront as part of the lease premium.
- (ii) KMDA's capital contribution was to be adjusted against the lease premium payable by the JVCO.
- (iii) KMDA was required to execute a development agreement within 30 days of the JVCO's incorporation, formally granting the JVCO the right to develop the sites.
- (iv) KMDA was obligated to transfer physical possession of the land within 30 days of executing the development agreement.

Despite receiving the initial payment, KMDA failed to execute the development agreement and did not provide encumbrance-free possession of the land, citing ongoing legal disputes concerning portions of the land. The delay led to repeated attempts at resolution, culminating in a supplementary MoU on 16 November 2011, which reduced the total project scope. The consortium alleged that the persistent

lack of clear title and possession rendered the project unfeasible and sought a refund of Rs. 11,41,40,000, along with interest and damages.

Following the failure of further negotiations, the matter was referred to arbitration, which resulted in an award dated 22 June 2020, holding KMDA liable for breach of contract and ordering a refund along with interest. KMDA challenged the award under Section 34 of the A&C Act, arguing that the tribunal had exceeded its jurisdiction and misinterpreted the contractual obligations. The Single Judge dismissed the challenge, leading KMDA to file an appeal under Section 37, which was also rejected by the Division Bench.

Findings of the High Court

Failure to Execute Development Agreement Constituted a Fundamental Breach

The High Court concurred with the arbitral tribunal's finding that KMDA's obligation to execute the development agreement within 30 days of JVCO's incorporation was a key contractual term. By failing to meet this obligation, KMDA prevented the consortium from fulfilling its part of the contract, leading to project failure and financial losses. The High Court emphasized that KMDA's failure amounted to a fundamental breach, rendering the contract unenforceable.

Encumbrances on the Land Rendered the Project Unviable

The arbitral tribunal had found that KMDA misrepresented the status of land encumbrances, which significantly impacted the viability of the project. Evidence presented during arbitration revealed that multiple civil suits and injunctions were pending concerning various portions of the project land, making it impossible for the consortium to take possession. The High Court upheld the tribunal's ruling that KMDA's non-disclosure of these encumbrances amounted to misrepresentation and contractual breach.

KMDA's Argument on Non-Joinder of JVCO Rejected

KMDA contended that since the JVCO was a separate legal entity, it was the only party entitled to seek arbitration, and thus, the consortium's claims should be dismissed due to non-joinder. The High Court rejected this argument, affirming that the consortium, as the primary contracting party, had an independent cause of action against KMDA. It further noted that KMDA failed to raise this issue before the arbitral tribunal under Section 16 of the A&C Act and could not introduce it at the appellate stage.

Termination of the MoU was justified

KMDA argued that the MoU did not contain an express termination clause, and therefore, the consortium could not have unilaterally terminated the agreement. The High Court, however, upheld the tribunal's finding that KMDA's failure to fulfill its obligations made performance impossible, thereby entitling the consortium to seek termination and claim restitution under Sections 39 and 56 of the Indian Contract Act, 1872.

Award of Interest Was Justified and Not Contrary to Contract Terms

The tribunal had awarded pre-award interest at 15% per annum from 17 December 2007 until the date of the award and post-award interest at 12% per annum. KMDA challenged this, citing Supreme Court rulings that arbitral discretion in awarding interest must be exercised within reasonable limits. However, the High Court upheld the tribunal's findings, noting that it relied on the State Bank of India's benchmark lending rate and provided adequate justification. The High Court ruled that the interest awarded was neither excessive nor contrary to public policy.

Limited Scope of Judicial Review in Arbitration Proceedings

The High Court reaffirmed that under Sections 34 and 37, judicial review is restricted to procedural fairness and legal compliance and does not permit a reappraisal of evidence or contractual interpretation. Citing *UHL Power Co. Ltd. v. State of Himachal Pradesh* [(2022) 4 SCC 116], the High Court reiterated that as long as the tribunal's interpretation is plausible, it must be upheld. Since the tribunal had considered all relevant contractual obligations, factual circumstances, and legal principles, there was no jurisdictional or procedural defect warranting judicial interference.

Comment

By rejecting KMDA's arguments on limitation, jurisdiction, and non-joinder, the High Court reinforced that statutory authorities cannot evade liability by relying on procedural technicalities. The judgment also reiterates the limited scope of judicial intervention in arbitration, ensuring that Courts do not casually set aside awards unless they suffer from patent illegality or jurisdictional errors.

Contact

For any query, help or assistance, please reach out at info@trinitychambers.in or visit us at www.trinitychambers.in.

Authors



Vasanth Rajasekaran
Founder & Head
vasanth@trinitychambers.in



Harshvardhan Korada
Counsel
harshvardhan@trinitychambers.in