
CASE NOTE: DELHI METRO RAIL CORPORATION (DMRC) VS DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED (DAMEPL)

S. Chinmayee, BBA LLB, Symbiosis Law School, Hyderabad

ABSTRACT

For the Airport Metro Express Line Project, Delhi Airport Metro Express Private Limited (DAMEPL) and the Delhi Metro Rail Corporation (DMRC) signed a contract. DAMEPL terminated the agreement due to operational challenges and construction flaws, which prompted an arbitration where DMRC was ordered to repay DAMEPL. The Division Bench of the High Court partially overturned the award, but a Single Judge upheld it. The Division Bench's ruling was eventually upheld by the Supreme Court in a curative petition, highlighting the financial strain on DMRC and the court's limited involvement in arbitral awards. Initially, the Supreme Court had reversed this ruling.

Keys Facts of the case

Delhi Metro Rail Corporation (DMRC) which is a state-owned enterprise had entered into a concession agreement with Delhi Airport Metro Express Private Limited (DAMEPL) which is a consortium formed between Reliance Infrastructure Limited and Construcciones Y Auxiliars de Ferrocarriles SA, Spain for construction of Airport Metro Express Line Project in Delhi. The project was delayed due to defects in the construction and operational disruptions. Stating these safety issues and other reasons citing DMRC's failure to rectify its issues within 90 days period, DAMEPL terminated the contract. A dispute was raised by DMRC which resulted in arbitration.

Arbitration and proceedings before the Arbitral Tribunal

In May 2017 an arbitral award was passed in favor of DAMEPL directing DMRC to pay over Rs. 2782 Crores plus interest as they failed to fix the defects in the structures in the project. DAMEPL also stated that the said defects were not resolved within the 90 days period provided.

The Arbitral Tribunal framed the following issues:-

- Whether there were any defects and faults of the airport metro line's civil structure?
- Did those effects have an impact on the performance of DAMEPL mentioned in the Concession Agreement?
- Did DMRC cure these defects and did they cure them within the 90 days period given?
- Whether DAMEPL was reasonable in terminating the Concession Agreement?
- Did CMRS certificate mention that the defects were cured?

Legal Principle held by the Arbitral Tribunal- The Tribunal held that DMRC failed in curing those defects within the 90 days time frame which resulted in the breach of the Agreement which justifies the act of DAMEPL in terminating the agreement. The tribunal further stated that the CMRS certificate did not mention that the defects were cured.

High Court's Decision

The arbitral award was upheld by a Single Judge¹ favoring DAMEPL stating that the award was reasonable and plausible.

But the Division Bench of High Court partially set aside the arbitral award exercising its power under section 37 of Arbitration and Conciliation Act, 1996. The High Court took this decision based on the following grounds:-

- The termination is not legally justified as it was immediate and did not mention the proper termination date and the period to cure defects.
- The Tribunal failed to address the issue that the termination notice by DAMEPL did not mention any safety or speed issues which is considered unreasonable act in giving the award.
- The Tribunal incorrectly divided the problems of structural defects and their effects from the certificate's significance to the termination and ignored the CMRS certificate's binding legal effect.²

Then an appeal was made to the Supreme Court.

Supreme Court's decision for the Appeal

Aggrieved by the decision of the Division Bench of the High Court, DAMEPL filed a special leave petition under Article 136 of the Constitution of India.

The main issue raised in front of Supreme Court is whether the Division Bench of High Court was reasonably right in interfering with the award given by the Arbitral Tribunal while exercising its power under section 37 of Arbitration and Conciliation Act, 1996.

Ground on which the appeal was allowed- That Arbitral Tribunal's finding that the defects were not cured within the 90 days time period and such finding cannot be re-appreciated by the court while exercising the power under section 34 of Arbitration and Conciliation Act, 1996.

¹ Delhi Metro Rail Corporation Limited v. Delhi Airport Metro Express Private Limited, 2018 SCC OnLine Del 7549.

² DMRC v. Delhi Airport Metro Express (P) Ltd., 2019 SCC OnLine Del 6562

The Supreme Court held that the courts cannot re-examine or re-assess the evidence or facts while examining the arbitral awards under section 34 of Arbitration and Conciliation Act, 1996. The Supreme Court further held that the courts cannot contradict the interpretation done by Tribunal as long as that interpretation is legally valid and reasonable.

The Supreme Court before Justice L. Nageswara Rao and Justice S. Ravindra Bhat overruled the decision of Division Bench and revoked the arbitral award in favor of DAMEPL stating that the courts interference with the arbitral awards should be limited and narrow under section 34 of Arbitration and Conciliation Act, 1996.

Review Petition

Supreme Court before Justice L. Nageswara Rao and Justice S. Ravindra Bhat, dismissed the review petition on 23rd November, 2021 stating that, “We have gone through the Review Petitions and the connected papers filed therewith. In our opinion, no case for review of order¹ is made out. The review petitions are dismissed”³

Curative Petition

A three-judge bench headed by Chief Justice of India D.Y. Chandrachud allowed the curative petition⁴. Issues in this curative petition are –

- Whether the curative petition was valid?
- Whether it was right to restore the arbitral award that the Division Bench of Delhi High Court has set aside?

Held- The Supreme Court has exercised its power under article 146 of Constitution of India and stated that the curative petitions should not be frequent (as stated in the case of Rupa Hurra vs Ashok Hurra⁵) and that it should stop the misuse of process of courts. The Supreme Court emphasized that there should be limited interference by the courts with the arbitral awards under section 34 of Arbitration and Conciliation Act, 1996. The Court further stated that the arbitral award did not mention the fact whether DMRC took effective steps to cure the defects

³ DMRC v. Delhi Airport Metro Express (P) Ltd, 2021 SCC OnLine SC 3613

⁴ DMRC v. Delhi Airport Metro Express (P) Ltd, 2024 SCC OnLine SC 522.

⁵Rupa Hurra vs Ashok Hurra , (2002) 4 SCC 388

and that the Tribunal has missed an important evidence like the CMRS certificate that stated that few defects were cured. The Supreme Court further stated that the Division Bench has taken a correct decision in setting aside the arbitral award due to its illegality and that by overturning this decision, the Supreme Court in the appeal has caused grave injustice. The Supreme Court allowed the curative petition by restoring the decision of Division Bench of Delhi High Court in setting aside the arbitral award stating that this would put a financial burden on a government enterprise especially when the enterprise was financially weak due to the covid pandemic.

I personally feel that the decision of Division Bench of High Court and the Supreme Court in the allowing curative petition has removed a huge financial burden on part of a government entity and that the arbitral awards going through a long process of litigation has contradicted the concept of finality of an arbitral award.