

Case Analysis

By: Tishya Singh

ANTRIX CORPORATION LTD versus DEVAS MULTIMEDIA PRIVATE LIMITED

Decided on: 29.08.2022

Court: Delhi High Court

Sections and applicability:

- Arbitration And Conciliation Act, 1996 - Section 11(4)
- Arbitration and Conciliation Act, 1996 - Section 11(6)
- Arbitration and Conciliation Act, 1996 - Section 34

Facts:

- 28th January, 2005

Antrix and Devas entered into a contract for the Lease of Space Segment Capacity on ISRO/Antrix S-band Spacecraft. No government agencies were a party to this contract. Devas agreed to pay to Antrix Upfront Capacity Reservation Fees of US\$ 20 million per satellite, and lease fees of US\$ 9 million to US\$ 11.25 million per annum.

- In 2006 and 2007

Devas made payment of two installments of 7 million USD each.

- 23rd February, 2011

The Department of Space directed the Petitioner (Antrix) to notify the Respondent (Devas) of the decision of the Government of India regarding the termination of the Contract both the parties held.

- 25th February, 2011

Antrix notified Devas that the Contract was terminated inter alia citing Article 11 and Article 7(c) of the Contract which talked about Force Majeure. Devas refused to accept the termination and instead claimed specific performance of the contract and in the alternative claimed damages to the tune of US\$ 1.6 billion.

Proceedings in the court:

- 29th July, 2011

Antrix proposed a meeting of the senior management in terms of Article-20(a) of the Contract. However, Devas instead of agreeing to the same filed a request for Arbitration with the International Court of Arbitration of the International Chamber of Commerce (ICC Court) relying upon the ICC rules.

- Antrix disputed the applicability of arbitration clause under Article 20 of the contract as they have appointed an arbitrator which the International Chamber of Commerce declined to accept the same.
- Antrix accordingly approached the Supreme Court of India by way of a petition under section-11(4) read with section-11(10) of the Act for a direction to Devas to nominate its arbitrator as per UNCITRAL Rules.

- 10th May, 2013

The Supreme Court of India by its judgment dismissed the petition filed under section-11 of the Act holding that once an Arbitral Tribunal was constituted, an application under section-11 of the Act would not lie.

- Before the Arbitral Tribunal, Devas contended that Antrix was not entitled to terminate the agreement under Article-7(c) and Article-11 of the contract.

- 14 September, 2015

The arbitral tribunal constituted by the International Chamber of Commerce awarded ₹15,000 crore as damages and interest to Devas and allowing their claim.

- Antrix had sought winding up of Devas before the National Company Law Tribunal alleging that Devas was formed for a fraudulent and unlawful purpose and its affairs had been conducted in a fraudulent manner.
- In 2021, a Provisional Liquidator was appointed by the NCLT and NCLT had allowed winding up of Devas.

- 17 January, 2022

The Supreme Court upheld NCLT's orders.

- Antrix filed plea under section 34 of the Arbitration and conciliation act, 1996 in the Delhi High Court to set aside the arbitral award given by the ICC. The Delhi High Court thus allowed the plea filed by Antrix under Section 34 of the Arbitration and Conciliation Act, 1996.

- The impugned order on *14th September, 2015* was set aside by the Delhi High Court. The objections filed by the Petitioner (Antrix) under Section 34 of the Act were allowed as it suffered from patent illegalities and fraud and is in conflict with the Public Policy of India.

- 29th August, 2022

The arbitral award of Rs. 15,000 crores to Devas were set aside by Delhi High Court.

Reasoning and conclusion:

- In the case of Antrix Corporation Ltd vs Devas Multimedia Pvt. Ltd., there were two parallel cases in front of the Supreme Court of India and the Delhi High Court decided on 17th January, 2022 and 29th August, 2022 respectively.
- Antrix sought to the Supreme Court to sought the winding up of Devas and rejected the claims made by the arbitral tribunal presided over by a former Chief Justice of India that such attempts by a corporate entity entirely controlled by the Government of India would send the wrong message to foreign investors.
- The Supreme Court in this case established that if the seeds of the business between Antrix and Devas were a result of fraud committed by Devas, which is against the public policy of any country, including India, after affirming the concurrent finding of fraud.
- The Supreme Court by its orders upheld the findings of NCLT and NCLAT and rendered that establishment of Devas was for fraudulent purpose and quoted that “the very seeds of the commercial relationship between Antrix and Devas was a product of fraud perpetrated by Devas and thus every part of the plant that grew out of those seeds, such as the agreement, the disputes, arbitral awards etc., are all infected with the poison of fraud”.
- In the parallel case, Antrix has tried to set aside the order by the International Chamber of Commerce to pay Rs. 1500 Crores as damages to Devas. Antrix approached the Delhi High Court under Section-34 of the Arbitration and Conciliation Act for the same.
- The Delhi High Court’s in its judgement incorporated the findings returned in the judgments of the NCLT, NCLAT, and Supreme Court and concluded that the winding up of Devas operated as Res Judicata.
- Furthermore, the High Court ruled that because courts do not hear appeals against Arbitral Awards, it is improper for them to consider new material to draw the conclusion that the decision is clearly unconstitutional based on what is written on its face.
- The claim made on behalf of Devas is that Antrix is actually trying to wind up Devas in order to deny Devas the benefits of an ICC's unanimous decision of the advantages of a decision made by the ICC in unanimity.
- The Court gave reasons for its judgement as follows-
 - i) They incorrectly excluded the pre-contractual negotiations between the parties.
 - ii) They rendered contradictory findings on the applicability of the force majeure clause
 - iii) The finding of fraud in the Winding-up Proceedings established that the ICC Award “*conflict[s] with the most basic notions of justice*”, and “*thus antithetical to the fundamental policy of Indian law*”.
- For all these reasons, the Court allowed the s34 application and set aside the ICC Award.

- The Delhi High Court considering the Judgments of the NCLT, NCLAT and the Supreme Court are interred party and of the finding returned therein would operate as res judicata. Therefore, the Delhi High Court **set aside the arbitral award** of ₹15,000 crore as damages and interest to Devas and allowing their claim under section-34 of the Arbitration and Conciliation Act, 1996 by the International Chamber of Commerce.