

M/s Apex Buildsys Ltd. v. IRCON International Ltd.

(ARB.P. 373/2023)

Vidya J*

Introduction

Arbitration is not merely a private mechanism for resolving disputes; it is a process grounded in fairness, neutrality, and party autonomy. However, as Indian jurisprudence evolves, courts are becoming increasingly vigilant against clauses that provide a tactical edge to one party in arbitral appointments. A case that recently highlighted this concern is *Apex Buildsys Limited v. IRCON International Ltd.*, decided by the Delhi High Court on March 15, 2024¹. This judgment is an important milestone in reinforcing the principle that neutrality must not be sacrificed at the altar of party autonomy.

What makes this case particularly striking is its intersection with insolvency law, the COVID-19 pandemic, and procedural fairness in arbitral timelines. The petitioner, a company undergoing liquidation, challenged a contractually embedded arbitration clause that disproportionately favoured the respondent, a government-owned enterprise. The Court's response, both balanced and bold, sheds light on how Indian courts are steering arbitration toward institutional credibility and constitutional ethos. This case is not just a critique of a flawed clause; it is a reaffirmation that even in private justice, public law principles must shine through.

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¹ *Apex Buildsys Limited v. IRCON International Ltd.*, ARB.P. 373/2023, I.A. 6403/2023 Judgment dated March 15, 2024 (Del. HC).

Background & Facts

Apex Buildsys Ltd. was given a contract by IRCON International Ltd., a government company, to carry out civil and structural work for the Rail Coach Factory in Rae Bareilly. During execution, typical project-related disputes arose including alleged delays, scope changes, and outstanding payments. The parties attempted conciliation in good faith. However, that process failed formally on December 17, 2020.

As per the terms of the agreement, Apex had 60 days post-conciliation failure to invoke arbitration. Yet, due to a combination of financial distress and the national disruption caused by the COVID-19 pandemic, Apex failed to act within that window. By the time it moved to initiate arbitration, the 60-day window had lapsed.

Compounding the challenge, the arbitration clause in the contract enabled IRCON to propose a panel of three arbitrators, from which IRCON itself would appoint two. The third arbitrator would then be chosen by the initial appointees. Apex objected, arguing that this structure allowed IRCON excessive control, effectively compromising the neutrality of the tribunal.

Faced with a deadlock, Apex approached the Delhi High Court under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking the appointment of a neutral, independent arbitrator².

Arguments

Petitioner's Arguments

Apex Buildsys raised strong objections to the arbitration clause, arguing that it was contrary to the core principle of natural justice and impartiality. The petitioner argued that the arbitration clause was unfair because it allowed IRCON to choose two out of the three arbitrators from its own panel. This, they felt, gave IRCON too much control over the tribunal deciding a dispute in which it was directly involved. They pointed out that the conciliation process, which was started as required under Clause 72.2.2 of the

² *Apex Buildsys Limited v. IRCON International Ltd*, ARB.P. 373/2023 & I.A. 6403/2023; Arbitration and Conciliation Act, 1996, § 11(6), No. 26, Acts of Parliament, 1996 (India).

General Conditions of Contract (GCC), had clearly failed as officially recorded by the conciliator on 17.12.2020. Since conciliation didn't work, the arbitration clause should now come into effect, and the court's help was needed to move the matter forward to arbitration.

Apex argued that although the GCC provided a procedure wherein the Managing Director of the respondent was empowered to appoint an arbitrator from a panel, this process had now been judicially declared as invalid, void ab initio, and infringing party autonomy by various High Court rulings such as *Taleda Square (P) Ltd. v. Rail Land Development Authority*.³ and *Sri Ganesh Engineering Works v. Northern Railway*⁴. As such, insisting on adherence to that clause was both procedurally unfair and legally unsustainable.

Apex pointed out that the delay in invoking arbitration was due to its ongoing liquidation under the IBC⁵ and the pandemic-induced disruptions, which were beyond its control. They argued that liquidation proceedings under the IBC did not extinguish their right to pursue arbitration and that the resolution professional had a duty to preserve and revive all legal remedies in favour of the corporate debtor⁶. The petitioner urged the Court to intervene and ensure a fair tribunal by appointing an independent arbitrator under Section 11(6).

Respondent's Arguments

IRCON took a strictly contractual approach. The main ground raised was that the petitioner failed to follow the agreed arbitration procedure mentioned in the contract, specifically under Clause 73.2 and Clause 73.4(a)(ii) of the General Conditions of Contract (GCC).

According to the respondent, the conciliation process officially failed on 17.12.2020, triggering a 60-day period for invoking arbitration as per Clause 73.2. But instead, the

³ MANU/DE/7981/2023.

⁴ 2023 SCC OnLine Del 6321

⁵ Insolvency and Bankruptcy Code, 2016, Sec. 35(1)(k).

⁶ *Apex Buildsys Limited v. IRCON International Ltd*, Available at ibclaw.online.

petitioner sent the arbitration notice much later on 20.04.2021 clearly missing the deadline laid out in the agreement. The actual petition under Section 11 was filed even later, on 01.02.2023. The respondent argued that the COVID-19 limitation extensions issued by the Supreme Court applied only to statutory deadlines, not to contractual timelines agreed upon by parties. Since the 60-day period under Clause 73.2 was a contractual condition, not governed by the Limitation Act, the petitioner couldn't rely on the pandemic-related relaxations.⁷

Additionally, the respondent submitted that the notice dated 20.04.2021 did not comply with the arbitration procedure under Clause 73.4(a)(ii). Since the total claim exceeded ₹2 crores, the dispute should have been referred to a three-member tribunal, with the respondent proposing a panel of arbitrators. The petitioner skipped this step, making the notice invalid. The respondent also clarified that the Supreme Court's extension of limitation periods during the COVID-19 pandemic does not apply to arbitration timelines fixed by contract. They referred to the case of *New Delhi Municipal Council v. Minosha India Ltd.*⁸ to support this point.

Judgment

The Delhi High Court, while deciding the petition under Section 11(6) of the Arbitration and Conciliation Act, 1996, held that the matter was fit to be referred to arbitration, rejecting the objections raised by the respondent.

The Court clarified that under Sections 8 and 11, judicial intervention is limited and should only prevent arbitration when it is manifestly clear that the dispute is non-arbitrable, the arbitration agreement is invalid, or non-existent. If the issue is debatable or requires deeper factual inquiry, the matter must be referred to arbitration, reaffirming the principle of “when in doubt, do refer.”

The respondent had objected that the notice invoking arbitration was issued beyond the 60 days prescribed under Clause 73.2.2 of the contract. However, the Court held that such

⁷ *New Delhi Municipal Council v. Minosha India Ltd.*, 2022 SCC OnLine Del 3204.

⁸ 2022 8 SCC 384.

contractual timelines cannot override statutory rights under the Arbitration Act. It observed that conciliation had failed on 17.12.2020, and the notice dated 20.04.2021 was valid, as it conveyed the petitioner's intention to arbitrate. Moreover, the respondent's knowledge of the dispute was already established through earlier proceedings and the failed conciliation process.

The Court also rejected the argument that failure to follow the agreed appointment procedure rendered the arbitration clause void. Referring to *Perkins Eastman Architects DPC v. HSCC (India) Ltd.*,⁹ It held that invalid or unfair procedural parts of an arbitration clause are severable, and do not affect the overall enforceability of the clause. Accordingly, the Court appointed an independent sole arbitrator and allowed the petition.¹⁰

Analysis

This judgment by the Delhi High Court is a meaningful step toward promoting fairness and transparency in arbitration proceedings in India. At its core, the Court made it clear that arbitration, as an alternative dispute resolution mechanism, cannot be skewed in favour of one party especially when that party is a powerful public sector entity like IRCON.

One of the central issues in this case was the structure of the arbitration clause. The Court observed that allowing IRCON to select two out of three arbitrators from its own panel would compromise the neutrality of the tribunal. This creates a real risk of bias, which goes against the very spirit of arbitration, where both parties should feel they are being heard by an impartial body. The Court firmly rejected such a lopsided arrangement, reinforcing that fairness must always come before contractual convenience.

The Court also showed a thoughtful, practical approach when it came to timelines. While IRCON insisted that the petitioner had missed the 60-day deadline to invoke arbitration, the Court looked at the bigger picture. It recognized that conciliation had failed, the petitioner had shown clear intent to arbitrate, and minor procedural lapses should not override substantive

⁹ (2020) 20 SCC 760. Available at <https://www.mondaq.com/india/arbitration-dispute-resolution/878038/perkins-eastman-v-hscc-is-it-the-end-of-party-appointed-sole-arbitrators>

¹⁰ Overview of the Judgment, Available at <https://lawbeat.in/news-updates/party-must-be-notified-initiating-arbitration-delhi-high-court>

rights to arbitral recourse. The judgment reflects a move away from rigid technicalities and toward a more balanced, real-world view of how disputes should be resolved.

Importantly, this case highlights that arbitration should not become a tool for the stronger party to delay or control the process. The Court's message is simple but strong: neutrality, fairness, and access to justice are non-negotiable even if the contract says otherwise. It also confirms that Indian courts are increasingly mindful of safeguarding the integrity of arbitration, especially in cases where one party tries to exploit procedural clauses to its advantage. Overall, this decision strengthens India's evolving arbitration landscape, one that values equity over formality and aims to make arbitration a truly fair and effective method of resolving disputes.

Conclusion

Apex Buildsys Ltd. v. IRCON International Ltd. is more than a contractual arbitration dispute; it is a reaffirmation of the judiciary's responsibility to ensure fairness in private justice mechanisms. The judgment speaks much about the Indian courts' growing intolerance toward biased arbitration clauses, even when embedded within sophisticated government contracts. More importantly, the decision demonstrates how courts can balance technical contract enforcement with human and contextual considerations, especially during global disruptions like the pandemic or financial crises under the IBC. It sets a powerful precedent that neutrality is not negotiable, and even the most detailed contractual frameworks must bow before the basic demands of procedural fairness.