

COURT-UNQUOTE

Case Title: South Delhi Municipal Corporation v. M/s Delhi Gurgaon Super Connectivity Limited



The Delhi High Court in ***South Delhi Municipal Corporation v. M/s Delhi Gurgaon Super Connectivity Limited, EX.P. 23/2017, decided on 01.07.2026***, examined whether a Report submitted by an Expert Board constituted pursuant to consent orders passed in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, could be executed as an arbitral award, decree or any other executable determination.

The principal issue before the Court was whether an expert determination rendered by an expert board, constituted pursuant to a series of consent orders passed by the Court under Section 9 of the Arbitration and Conciliation Act, 1996, which merely directed the constitution of the Expert Board and submission of its report without recording any adjudication or conferring finality upon its determination, could attain the status of an executable adjudication. The Hon'ble Delhi High Court dismissed the Execution Petition and held that:

1. An Expert Board Report is not executable as an arbitral award.

The Court observed that the Board was constituted only to undertake a technical assessment regarding the service charges

payable for integrated toll collection at the Rajokari Border. Although the Board recommended that the service charges be fixed at 7% for the contractual period from 16.05.2011 to 16.05.2014, it neither followed the adjudicatory procedure contemplated under the Arbitration and Conciliation Act, 1996 nor functioned as an arbitral tribunal. No pleadings were exchanged, no evidence was recorded and no oral hearings were conducted. The Report itself culminated in "Conclusions and Recommendations", demonstrating that it merely expressed expert opinion rather than adjudicating disputes between the parties.

2. The mere constitution of an Expert Board by consent does not imply that its determination is final and binding unless such intention is expressly recorded by the parties or the Court.

The Court held that none of the consent orders directing constitution or reconstitution of the Board contained any stipulation that the Board would function as an adjudicatory forum, exercise powers akin to an arbitral tribunal, or render a determination that would conclusively determine the rights and liabilities of the parties. Likewise, there was no agreement that

the Report would constitute an executable decree, arbitral award or any other enforceable instrument. In the absence of consensus ad idem regarding the binding nature of the Board's determination, the Court refused to infer finality or enforceability by implication.

3. The Court clarified that orders of a Civil Court are capable of execution under Section 36 of the Code of Civil Procedure, 1908, provided they embody an adjudicatory determination of rights and liabilities.

The Court reiterated the settled proposition that Section 36 of the Code extends the provisions relating to execution of decrees to executable orders as well. However, it clarified that before invoking Section 36, the order sought to be executed must itself contain a judicial determination or decision affecting the rights or obligations of the parties. Mere procedural directions constituting an expert body or facilitating future determination do not become executable orders in the absence of any adjudication or quantified liability. Since the consent orders in the present case merely constituted an Expert Board to obtain its opinion and did not determine any liability or

record that the Board's determination would be final and binding, they were held to be incapable of execution. The decisions in *Angle Infrastructure Pvt. Ltd. v. Ashok Manchanda* and *Anand Gupta v. Almond Infrabuild (P) Ltd.* were distinguished as they concerned court-recorded settlements embodying executable rights and liabilities, unlike the present case.

VA View:

The judgment draws a clear distinction between expert determination and adjudicatory determination. The Delhi High Court rightly held that a technical report prepared by an Expert Board, even if constituted pursuant to consent orders passed in proceedings under Section 9 of the Arbitration and Conciliation Act, 1996, cannot, without an express agreement conferring finality and binding effect, attain the status of an arbitral award or any other executable instrument. Equally significant are the Court's observations on Section 36 of the Code of Civil Procedure, 1908. While reaffirming that court orders embodying an adjudicatory determination are executable in the same manner as decrees, the Court clarified that

procedural or facilitative orders merely constituting an expert body cannot be enforced through execution. The judgment therefore underscores the importance of expressly stipulating the legal effect of expert determinations where parties intend such determinations to be final and directly enforceable.

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