



Confederation of Indian Industry

Look at alternate dispute resolution mechanisms before going into long drawn litigations for stalled infrastructure projects, emphasize on the words and designing of the contract and the capabilities of execution, judges opine

Conference on Legal Dimension of Infrastructure Development



(Left-Right)

Mr Manish Gupta, Partner, Beekay Engineering Corporation; Justice N C Sil, Former Judge, Calcutta High Court & Former Acting Chair Person W.B.H.R.C; Mr S C Sethi, Chairman, SPML Infra Ltd.; Justice Soumen Sen, Judge, Calcutta High Court; Mr Rakesh Bhutoria, Co-Chairman, Infrastructure Subcommittee CII ER & Chief Executive Officer, Srei Infrastructure Finance Limited; Justice Amitava Lala, Former Acting Chief Justice, Allahabad High Court; Ms Gargi Mitra, Director, CII

“The concept of making mediation mandatory before proceeding to litigations has become an important alternative tool for settling disputes for infrastructure projects,” Hon’ble Justice Soumen Sen, Judge, Calcutta High Court said while giving a special address at the inaugural of the conference on Legal Dimension of Infrastructure Development organised by CII in Kolkata. He advised the industry and all concerned stakeholders to explore the possibility of mediation to lessen the number of litigations presented to court. Justice Sen emphasized that one of the more important ways of dispute resolution are the wordings and designing of the contract and the capability to execute the contract. Speaking at the conference, Justice Sen said that mediation and arbitration has not only brought down the court intervention in solving infrastructure disputes to a minimum, but the legislature has also ensured that the schedule

of arbitration, the impartiality of the arbitrator and a timeframe of one year along with a “model fee structure” is adhered to. Justice Soumen Sen also spoke at length about land acquisition for various government projects and called for a transparent and clear-cut compensation and rehabilitation before projects start.

Hon’ble Justice N C Sil, Former Judge, Calcutta High Court & Former Acting Chairperson W.B.H.R.C said that there are practical hindrances in terms of execution of contracts as the government becomes an “undue influencer” and takes a dominant role vis – a-vis the contractor. This is buttressed by the fact that the industry has to sign a no-claim certificate which usually signifies a domination by the government, according to Justice Sil. In his address Justice Sil said that the lumpsum fees of the arbitrator will ensure that

the arbitration timeframe is adhered to but at the same time, he called for a standardization of all contracts of infrastructure to ensure lesser disruptions.

At the inaugural session, Hon'ble Justice Amitava Lala, Former Acting Chief Justice, Allahabad High Court said that in the infrastructure projects, the emphasis during the government tenders is usually on the "lowering of prices" and not enough attention is paid to execution of the contract which leads to legal disputes and eventual litigations. Reiterating what Justice Sil and Sen said, Justice Lala also stressed that mediation and arbitration should be looked into for disposal of disputes before any legal interventions come to the fore. He also said that "time bound solution of litigation is the need of the hour" if the infrastructure plans of the country are to move smoothly.

Welcoming all the stakeholders in the conference, Mr S C Sethi, Conference Chair & Chairman, SPML infra said that the Infrastructure in India is in a developing stage with a high potential to take the economy to a much higher orbit. "A number of regulatory bodies have been created to ensure smooth implementation of infrastructure projects in Public-Private-Partnership model. Hence, the legal framework and processes enabling this have become immensely significant", he added.

Setting the context of the conference, Mr Rakesh Bhutoria, Co-Chairman, Infrastructure Subcommittee CII ER & Chief Executive Officer, Srei Infrastructure Finance Limited said that India's judiciary and legal system can play a major role in giving a new lease of life to India's infrastructure assets. IBC, according to him, has been a game-changer but non-adherence to timeline continues to remain a concern. "The process which was supposed to ensure quick resolution is getting entangled in the legal system leading to delays in decision making. This is threatening the viability of many infrastructure projects in our country. The Indian judiciary should facilitate infrastructure development by providing speedy resolutions. Our country's economic progress hinges on this, Mr Bhutoria said."

Concluding the inaugural session, Mr Manish Gupta, Partner, Beekay Engineering Corporation said that there is a need of equity in contracts with governments and the condition of the contract should ideally not be lopsided.

The conference also saw the industry, legal consultants, lawyers and other infrastructure space stakeholders deliberate on the roadmap for stalled projects and on the issues pertaining to judiciary, arbitration, validity and sanctity of contracts and dispute resolution mechanisms. CM

SMoEF's Response on Chennai-Salem Highway Project; Tamil Nadu

The Supreme Court on sought the response of the Tamil Nadu government and the Union environment ministry to the National Highway Authority of India's appeal against a Madras High Court order that had quashed land acquisition for the Chennai-Salem highway.

A bench comprising Justices Indu Malhotra and MR Shah, while ordering to send notices to the state and the central ministry, didn't grant an urgent stay that the NHAI had sought on the Madras High Court's order. The Rs 10,000-crore work, part of the centrally-sponsored Bharatmala Pariyojana project, is opposed by sections of landowners and political parties in Tamil Nadu. The case will be taken up for further hearing in the first week of July, said lawyers present in the court.

The NHAI had sought an interim relief as the Madras High Court had directed that land records

be reversed to reflect original ownership within eight weeks of the order delivered in April. In its petition, the authority argued that the High Court order had already begun serving as a precedent for other cases and that it needed to be reversed. "All the highway projects in the country will come to a standstill," it said, pointing to an order of the Madurai bench of the Madras High Court that imposed status quo on a road project in Madurai, citing the Salem highway order.

The Salem 8-lane project will cut travel time between the two cities by half to 2.5 hours, resulting in savings of around 10.4 crore litres of diesel a year, said the petition.

"The court (Madras High Court) further failed to appreciate that there will be reduction in carbon emission, saving natural resources and reduction of atmospheric pollution, etc.," it argued. CM