

● **FAST-TRACKED ECONOMY**

# Infra creation with minimum delays, disputes

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In recent years, all three arms of the State, namely executive, legislature, and judiciary, have taken steps to ensure that infrastructure projects remain appealing and profitable for investors and minimise the likelihood of protracted disputes. Legislative changes have been made to prevent infrastructure projects from being held hostage to conflicts among parties. In 2018, the Specific Relief Act was amended to allow infrastructure projects to operate smoothly, reduce delays and the consequent losses caused to the public exchequer, and attract more investors. The amendment, introduced by way of Sections 20A and 41(ha), provide that no injunctions would be granted by a court in matters relating to infrastructure projects where they may hinder or delay progress or interfere with the continued provision of related facilities or services.

The broad categories of the infra-



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structure projects covered under the amended act include transport, energy, water and sanitation, communication, and social and commercial infrastructure. The High Court of Delhi, in a recent decision in *Roadway Solutions India Infra Ltd vs NHAI*, noted that courts should interfere minimally to ensure that public works are not stalled. It opined that Sections 20A and 41(ha) of the Specific Relief Act

were squarely applicable as any injunction would lead to further delays.

Recent judicial precedents also appear to favour unhindered completion of infrastructure projects. In a matter pertaining to road construction, the Supreme Court in *NG Projects Ltd vs Vinod Kumar Jain*, opined that courts must realise their limitation and the likely havoc caused by needless interference in

commercial matters, especially infrastructure projects. In contracts involving technical issues, the apex court opined that courts must be even more wary of interfering, on account of the lack of domain expertise. Lastly, the apex court relied on the decision in *Silppi Construction Contractors vs Union of India* to opine that courts must not interfere in cases where it can cause needless loss to the exchequer.

In *Uflex Ltd vs Government of TN*, the Supreme Court deprecated the tendency of parties that unsuccessfully bid for a tender or parties that did not even participate in the tender process to seek injunctive reliefs under writ jurisdiction. It opined that while transparency is always required in tenders and other similar economic activities carried out by the State, the objective should not be to make the writ courts a body for scrutinising the tender process.

Following the general trend of protecting the progress of infrastructure projects, the ministry of finance launched the Vivad se Vishwas I scheme for micro, small and medium enterprises (MSMEs). The

scheme, announced in Budget 2023-24, said that where MSMEs failed to execute contracts during the pandemic period, 95 per cent of the forfeited amount would be returned to them by government or government undertakings. Vivad se Vishwas - II aims to settle contractual disputes between vendors and procuring entities, including the government or public enterprises.

The introduction to the scheme stated that, statistically, when an arbitral award against the government or government enterprises was challenged, the matter was mostly decided in favour of the contractor. The amounts become payable with interest at a rate that often far exceeds the government's cost of funds, leading to substantial financial losses to the government.

The legislative amendments, judicial precedents, and executive initiatives discussed above reflect a concerted effort to minimise disputes, delays, and unnecessary court interventions in infrastructure projects..