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CHANGING TRACK

Long arm of law tugs at corporate veil

DELHI METRO SIGNAL. How an arbitration award is pushing lawmakers to ring-fence public assets against attachment

Vasanth Rajasekaran
Harshvardhan Korada

A recent decision of the Delhi High Court involving the cash-strapped Delhi Metro Rail Corporation (DMRC) and the Delhi Airport Metro Express Private Limited (DAMEPL), a consortium formed by Reliance Infrastructure Ltd, has caught the attention of lawmakers.

The long-fought legal battle originates from an arbitral award in May 2017 that directed DMRC to pay DAMEPL over ₹2,780 crore plus interest. As DMRC exhausted all options to challenge the award through multiple rounds of litigation, DAMEPL initiated execution proceedings before the high court.

On March 10, 2022, the high court opined that the award could not remain on paper and directed DMRC to pay up from available funds or through loans. DMRC contested the order unsuccessfully through multiple rounds of litigation before the Supreme Court of India.

Interestingly, after passing its order, the high court had noticed a drastic reduction in the funds held by DMRC. The high court attributed this to the directive of the Union Ministry of Housing and Urban Affairs to repatriate all money held by DMRC to various projects. According to the ministry, the funds provided to DMRC were dedicated to project works and not any other purpose.

DMRC stated before the high court that it had requested the Union ministry and the Delhi government to extend sovereign guarantees for raising loans to repay the award amount. However, neither appear to have extended the sovereign guarantees.

CROSSED PATHS. The Airport Express line of Delhi Metro, which is at the centre of a complex web of litigation PTI

'CORPORATE VEIL'

As DMRC made all efforts to pay the award amount, the high court decided to pierce the corporate veil and implead DMRC's two shareholders, namely the Union ministry and the government of Delhi.

The Union ministry and the government of Delhi argued that the matter before the high court did not warrant invocation of the 'doctrine of piercing the corporate veil'. Moreover, the Delhi government contended that holding a shareholder liable for the company's dues would go against the principle of limited liability. Further, the Union ministry and the Delhi government argued that the corporate veil could be lifted only under a few circumstances, such as fraud or where the corporate structure itself could be shown to be a sham. Lastly, both shareholders argued that the doctrine could not be employed merely because it is seen necessary in the interest of justice.

Analysing judicial precedents, the high court opined that the shield of a corporate legal personality is neither inviolable nor impenetrable. Observing that the law must grow along with the modernisation of commerce, it concluded that the 'doctrine of piercing the corporate veil' could also be deployed where equity, ends of justice, and considerations of public policy or interest sanction it.

RESCUE ACT?

Section 89 of the Metro Railways (Operation and Maintenance) Act, 2002, bars the attachment of assets that are used for the operation and administration of DMRC's railway services without the Central government's sanction. Such assets include the rolling stocks, metro railway tracks, plant, stations, and workshops. The high court held that DMRC funds under the heads 'total DMRC funds', 'total project funds', and 'total other funds' were not barred from attachment, and hence the DMRC did not need the Union government's approval.

In response, the Union ministry has proposed to amend Section 89 to ensure that no properties or bank accounts of the metro railway can be attached in execution proceedings.

Both the Union and Delhi governments have challenged the high court's decision in the Supreme Court.

IMPLICATIONS

The dispute between DMRC and DAMEPL, as also the high court decision have given rise to a sense of déjà vu as the Indian government has faced similar awards and threats of attachment of assets, albeit in an international context, in tax arbitration involving the Vodafone group and Cairn Energy, among others.

The high court's direction to the Union ministry and the government of Delhi to attend to the DMRC's request related to the payment of award amount has raised several critical legal issues. Of interest is the way the Supreme Court would deal with the 'doctrine of piercing the corporate veil'.

Another issue involves balancing public interest with the execution of unfavourable decrees or awards against public enterprises — based on the principle that no party should be permitted to wriggle out of obligations arising from court decrees.

The Union government's proposal to amend Section 89 comes at a time when India has progressed in the 'ease of doing business' rankings. If the Union government uses an amendment to pre-empt the attachment of assets of other public enterprises under execution, many private enterprises may be discouraged from bidding in public-private partnership (PPP) projects.

Further, to offset the potential risk of inability to enforce a decree or award, bidders may inflate bids, severely impacting end-consumers.

Clearly, the issues arising in the matter are complex and have cross-sectoral implications. For now, much depends on how the Supreme Court proceedings pan out.

The writers are advocates at Trinity Chambers, Delhi