



**Indian Law Society's Centre for Arbitration and Mediation (ILSCA), Pune  
National Commercial Arbitration Award Writing Competition**

**1<sup>st</sup> Edition**

**Kevin Infrastructure Ltd.**

**Vs.**

**Indraprastha Metro Rail Corporation Ltd.**

**STATEMENT OF FACTS**

1. Indraprastha Metro Rail Corporation Ltd. is a company incorporated in India with its registered office at Mumbai. It is a government company which oversees the development and implementation of metro projects in Maharashtra. Indraprastha Metro Rail Corporation Ltd. called for bid of tenders through a public notice dated 5th February 2013 for construction of metro rail in Mumbai.
2. Kevin Infrastructure Ltd. is a company incorporated in India with its registered office at Mumbai. It has been conducting business since last 30 years in the field of construction and infrastructure development. It has been associated in various projects undertaken by various State Governments as well as Central Governments.
3. There were various competitive bidders, bid for the tender floated by Indraprastha Metro Rail Corporation Ltd. Eventually Kevin Infrastructure Ltd. was selected for the project. A contract was entered into and was signed and executed on 5<sup>th</sup> May 2013, between Indraprastha Metro Rail Corporation Ltd. and Kevin Infrastructure Ltd.
4. The terms of the contract dated 5<sup>th</sup> May 2013 was agreed between the two parties are as under:

- The contract stipulated that the first phase of the metro rail project should be completed by 31<sup>st</sup> December 2018.
- The work of construction of the metro rail project was to commence on 1<sup>st</sup> October 2013.
- The equipment, labour and other employees were to be decided and remunerated by Kevin Infrastructure Ltd.
- Kevin infrastructure Ltd. had agreed to mobilise its men and machinery by 15<sup>th</sup> September 2013.
- It was agreed that Kevin Infrastructure Ltd. will provide all safety measures to secure safety of their workers while working.
- Indraprastha Metro Rail Corporation had agreed to carry on safety audits at regular intervals.
- The responsibility of land acquisition and necessary permissions from the State Governments and other public authority for the purposes of commencement of metro rail work rested with Indraprastha Metro Rail Corporation Ltd.
- It was agreed that the Indraprastha Metro Rail Corporation will hand over the possession of the entire stretch of land to Kevin Infrastructure by 15<sup>th</sup> September 2013.
- Kevin Infrastructure Ltd. was required to adhere to the time schedule as agreed in the contract – time being essence of contract, except in case of **Force Majeure**.
- It was agreed between the parties for price escalation depending upon the price index.
- In case of delay on either side to complete their part of the contract no compensation is payable by either party to the other party.
- In case of any delay in acquisition process not attributable to Metro Rail Corporation it was agreed that they will not be liable to any compensation to Kevin Infrastructure Ltd for such delay.
- It was agreed between the parties that if Kevin Infrastructure Ltd, commits a breach of contract then Metro Rail Corporation, shall have the right to levy penalty up to Rs.100 crores and recover the same from running account bills of Kevin Infrastructure Ltd.
- It was agreed between the parties that in case of any dispute arising out of this contract will be referred to Institutional Arbitration of ILSCA and the Rules laid down by ILSCA will be binding on both the parties.

5. Indraprastha Metro Rail Corporation Limited commenced the process of land acquisition on 30<sup>th</sup> June 2013. However, till 10<sup>th</sup> November 2013 the acquisition process of even initial stretch of land was not completed.
6. The Indraprastha Metro Rail Corporation Limited, through letter dated 1<sup>st</sup> November 2013 to Kevin Infrastructure Ltd., enquired about the reasons for delay in the commencement of the construction.
7. Kevin Infrastructure Ltd through their letter dated 25<sup>th</sup> November 2013, to Indraprastha Metro Rail Corporation Limited stated that the delay was attributable to the Indraprastha Metro Rail Corporation Limited because the Land Acquisition process even of the initial stretch (i.e. acquisition of area where the construction was to commence) was not completed till 10<sup>th</sup> November 2013.
8. Metro work was actually commenced by Kevin Infrastructure Ltd on 10<sup>th</sup> January 2014.
9. In May 2015, there was a strike of 10 days by the labourers who were involved in the construction of the metro rail project. The reason of the strike was that while working, one labourer met with an accident and died. Thus, it came to the notice of the Mumbai Metro Rail Workers Union that there were no safety measures taken by Kevin Infrastructure Ltd. and no safety audits were conducted by Indraprastha Metro Rail Corporation Limited (even though the contract stated that safety audits were to be conducted by Indraprastha Metro Rail Corporation Limited).
10. In July 2016, due to torrential rain and flooding in Mumbai, the construction work of the metro rail was stopped for a period of 3 weeks. The work soon started in August, 2016.
11. It was noticed by the Indraprastha Metro Rail Corporation Limited given the current developments, the first phase cannot be completed by 31<sup>st</sup> December 2018. Thus they sent a letter dated 5<sup>th</sup> May 2018 to Kevin Infrastructure Ltd. demanding the reasons for the delay and eventual possibility of non-completion of the project by 31<sup>st</sup> December 2018.
12. Kevin Infrastructure Ltd. replied with a letter dated 10<sup>th</sup> May 2018 which gave reasons and stated that due to floods, strike and lethargic attitude of the

Indraprastha Metro Rail Corporation Limited, the work will not be completed within the stipulated time. Through the same letter they further stated that they required extension of time and are ready to have a dialogue with the Indraprastha Metro Rail Corporation Limited. They also stated that the increased costs must be considered.

13. Indraprastha Metro Rail Corporation replied by their letter dated 30th May 2018 wherein they refused to give any extension of time and in turn levied penalty of Rs.100 crores.
14. A notice for referring the dispute to arbitration was sent by Kevin Infrastructure Limited to Indraprastha Metro Rail Corporation Limited on 1st September 2018. Kevin Infrastructure Limited filed a claim at ILS Centre for Arbitration and Mediation (ILSCA) on 15th October 2018, claiming specific performance of contract, compensation and enhancement of cost.
15. The statement of defence was filed by Indraprastha Metro Rail Corporation Limited wherein it challenged the jurisdiction of the Arbitrator, along with some other defences and also made a counter claim for Rs.100 Crores.
16. Kevin Infrastructure Limited filed a written statement to the counter claim and denied the claim of Indraprastha Metro Rail Corporation Limited. Even as on today, the construction work of the first phase of metro rail project is not complete.
17. The ILSCA Institutional Arbitration Rules provides that - "...both the parties may file all the documents and list of witnesses while filing statement of claim and statement of defence."
18. Kevin Infrastructure Ltd. filed certain additional documents after the first sitting of the Arbitrator, which was objected by the Indraprastha Metro Rail Corporation Limited. Thereafter evidence was recorded and the matter is fixed for final arguments.