

**Transferee of a business undertaking has a right to invoke arbitration under the arbitration clause of an agreement which formed part of the business transfer (originally executed by the transferor) (Delhi High Court)**

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Published on 13 June 2020

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**M/s Distribution Logistics Pvt. Ltd. v. M/s BPB Builders Pvt. Ltd.**

**Court:** High Court of Delhi | **Case Number:** ARB.P. 383 of 2019 | **Judge:** Jyoti Singh J | **Citation:** MANU/DE/1033/2020 | **Date:** 12 May 2020 | **Available at:** <https://indiankanoon.org/doc/69677882/>

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ETA Engineering and BPB Builders entered into an agreement on 23 August 2007 for the purchase and consolidation of land parcel for a project to construct an inland container depot<sup>1</sup>.

Later, in 2011 ETA transferred its logistics business to Vikram Logistics and Maritime Services Pvt. Ltd. (“VLMS”) under a Business Transfer Agreement. VLMS changed its name to Distribution Logistics Infrastructure Pvt. Ltd. (“DLI”) and acquired all of ETA’s rights and liabilities.

A dispute arose between ETA and DLI on the issue of consolidation of the land parcels. DLI invoked the arbitration clause and made its nomination. Since ETA did not, in turn, appoint an arbitrator, DLI applied to the High Court of Delhi under Section 11 (6) ACA for appointment of a sole arbitrator.

BPB resisted the application saying it did not have an arbitration agreement between DLI. It also said that the claim was time barred, and in any event the disputes sought to be referred were outside the scope of the supposed arbitration agreement.

Jyoti Singh J rejected those arguments:-

- (a) First, she noted that BPB’s agreement with ETA included ETA’s assignees and successors. She then examined the terms of the Business Transfer Agreement and found that the entire business undertaking of ETA was transferred to DLI. This included the agreement for consolidation of land parcels as well as the arbitration agreement.
- (b) She therefore concluded that once DLI took over ETA as a going concern, all its assets, rights and liabilities were transferred to DLI and it has every right under the consolidation agreement to invoke the arbitration clause.
- (c) Then, she relied on a single-judge bench judgment of the Karnataka High Court in *Force Fitness (India) Private Limited v. Bengaluru Fitness Centre Private Limited*, Civil Miscellaneous Petition No. 92 of 2012] which was “very close to the present case on facts and the proposition of law.” That judgment had concluded that the petitioner Force Fitness had stepped into the shoes of the original party to the agreement after a business transfer, and was entitled to invoke arbitration.

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<sup>1</sup> A facility for handling temporary storage of cargo and containers.

- (d) As to the question of claims being barred by time, the court concluded that under Section 11 it could only examine the existence of an arbitration agreement, and other matters were within the domain of the arbitral tribunal [citing to *Mayavati Trading Pvt. Ltd.v. Pradyut Deb Burman*, (2019) 8 SCC 714].
  
- (e) A former Judge of the Delhi High Court was appointed as a sole arbitrator.