
Failure to Consider Contractual Amendment Justifies Setting Aside of an Arbitral Award: Delhi High Court

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Introduction

In *ONGC Ltd v. JSIW Infrastructure Pvt. Ltd.* [2025:DHC:430-DB], the Delhi High Court examined whether an arbitral award dismissing a contractor's claim for excise duty reimbursement could be challenged under Section 34 of the Arbitration and Conciliation Act, 1996. The dispute centred around a revised contractual clause that specifically addressed excise duty reimbursement, the language of which became the focal point of the contention between the parties.

The judgment offers timely guidance on how to approach amendments to contract clauses in dispute resolution, especially when such clauses reflect negotiated deviations from standard contractual terms.

Brief Facts

The dispute arose from two contracts awarded by the Oil and Natural Gas Corporation Ltd. ("ONGC") to JSIW Infrastructure Pvt Ltd. for pipeline replacement works. Both contracts were granted on a lump sum basis, with the contract price inclusive of all duties, including excise and customs duties. However, after the contracts were awarded, JSIW informed ONGC that domestic procurement of line pipes was unfeasible and that importing them would require payment of the Countervailing Duty (CVD). JSIW then requested an amendment to allow for reimbursement of the CVD component, comparable to excise duty.

By way of correspondence dated 27 August 2008, ONGC agreed to reimburse the excise duty paid by the manufacturer of the line pipes to the tax authorities, subject to specific conditions and limits. Consequently, Clause 3.4.1.5 of the General Conditions of Contract (GCC) was amended and formalised in the contract executed on 4 September 2008. Notably, the amended clause included a special provision for reimbursement of excise duty on line pipes, even if paid by the manufacturer and not directly by JSIW.

During the contract implementation, JSIW purchased line pipes domestically and paid excise duty to the manufacturer. When JSIW requested for reimbursement, ONGC rejected the claim, arguing that JSIW had not paid the excise duty directly to the authorities. This led to a dispute over the interpretation of Clause 3.4.1.5, initially referred to an Outside Experts Committee and later to arbitration.

The Arbitral Tribunal initially ruled in favour of JSIW, but that award was set aside by consent, and a sole arbitrator was appointed afresh. The sole arbitrator ultimately ruled in favour of ONGC, rejecting JSIW's claim for reimbursement. JSIW challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996. The learned Single Judge allowed the challenge and set aside the award. ONGC thereafter filed an appeal under Section 37 of the Act.

Issues and Submissions

The central issue before the Court was whether the arbitral award could be sustained in light of its interpretation of Clause 3.4.1.5 of the contract. Specifically, the question was whether the arbitrator had acted within the permissible bounds of contractual interpretation when the award denied reimbursement of excise duty, despite an express amendment that permitted such reimbursement even where the duty had not been paid directly by the contractor.

Counsel for JSIW submitted that the amendment to Clause 3.4.1.5 had been introduced precisely to address the problem arising from excise duty being paid by the manufacturer. The modified clause expressly provided that reimbursement would be permitted where excise duty was paid by the manufacturer to the tax authorities, subject to production of proof. It was argued that the arbitrator's approach effectively treated the amended clause as non-existent and instead applied the rationale applicable only to the standard GCC provision, which required the contractor to pay the duty directly.

JSIW contended that the award failed to consider the plain language of the amended clause and had imposed a condition not found in the contract. According to the petitioner, such an interpretation was contrary to commercial common sense and the parties' intention as reflected in the correspondence exchanged before the amendment was formalised.

ONGC defended the award by arguing that the contract was on a lump sum basis and that excise duty was not separately reimbursable unless it could be shown that the contractor had incurred the expense. It was submitted that since JSIW had not directly paid the duty, it had no enforceable claim under the contract. ONGC contended that the award reflected a plausible view of the contract and therefore did not merit interference under Section 34.

Findings of the Court

The Court began by reaffirming the limited scope of interference under Section 34 of the Arbitration and Conciliation Act, 1996, but clarified that such deference does not extend to awards which are perverse or manifestly disregard the terms of the contract. The Court held that the arbitrator had failed to consider the express amendment to Clause 3.4.1.5, which was introduced by mutual consent to resolve a specific contractual difficulty regarding excise duty reimbursement.

In the Court's view, the amended clause unequivocally permitted reimbursement of excise duty even where such duty was paid by the manufacturer, provided documentary proof was furnished. The clause was the product of a negotiated agreement and was supported by contemporaneous correspondence. The Court noted that the arbitrator had not only overlooked the amended language but had also relied on reasoning that was inapplicable to the revised clause.

The Court rejected ONGC's contention that the award merely reflected a possible view. It held that the arbitrator had disregarded the binding terms of the contract and had imposed a condition that found no place in the text. Such an approach, the Court observed, amounted to rewriting the contract under the guise of interpretation.

Further, the Court found that the arbitrator had entirely ignored the rationale behind the amendment, namely the practical impossibility of JSIW paying excise duty directly when the same was remitted by the manufacturer. By failing to give effect to this commercially significant arrangement, the award was rendered unreasonable and unsustainable.

Accordingly, the Court held that the award was liable to be set aside. It affirmed the judgment of the learned Single Judge and dismissed the appeal under Section 37.

Comment

The judgment in *ONGC Ltd v. JSIW Infrastructure Pvt. Ltd. (supra)* reinforces the principle that arbitral tribunals must faithfully interpret contracts in accordance with their text, context and commercial purpose. While arbitral awards are accorded deference, courts will intervene where the tribunal disregards an express amendment or adopts an interpretation that renders key contractual provisions meaningless.

The amendment to Clause 3.4.1.5 was not incidental or collateral. It was negotiated and formalised to address a specific commercial concern regarding the method of paying excise duty. The parties consciously altered the standard contractual structure to accommodate a scenario where duty would be paid by the manufacturer rather than the contractor. By failing to account for this modification, the arbitrator effectively reimposed the unamended version of the clause and thereby subverted the parties' agreed risk allocation.

This decision affirms that party autonomy in contract formation includes the right to depart from standardised forms where circumstances so require. Once such departure is codified through a contractual amendment, any arbitral interpretation that nullifies the effect of the amendment risks crossing into the territory of perversity.

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