

Supreme Court Reiterates The Hands-Off Approach On Contract Interpretation In Deciding Challenges To Arbitral Awards

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Introduction

In a recent decision in *NHAI v. Hindustan Construction Company Ltd.*, the Supreme Court reiterated the legal position that a Court shall not intervene with the findings of the arbitral tribunal, especially in matters of factual appreciation and interpretation of the contract except where the limited grounds under Section 34 of the Arbitration Act (defined below) are attracted. In this article, we navigate through the facts and findings of the decision rendered by the Supreme Court.

Brief Facts

The appellant – National Highways Authority of India Ltd. ("**NHAI**" / "**Appellant**") awarded a contract to Hindustan Construction Company ("**Respondent**") for certain road construction works, the total cost of which was INR 4,46,99,12,839.

As disputes arose amongst the parties, the matter was first referred to the dispute adjudication board which gave its recommendations. Ultimately, as the disputes amongst the parties continued to remain unresolved, the matter was then referred to a three-member arbitral tribunal. The claims put up before the arbitral tribunal were as follows:

1. Claim No. 1: Reimbursement of additional expenditure incurred due to an increase in the rates of royalty and associated sales tax on soil, sand, and crushed stone aggregates;
2. Claim No. 2: Non-payment for executed work of embankment with soil/ pond ash for the initial 150mm depth stripped in accordance with the requirements of the contract; and
3. Claim No. 3: Reimbursement of additional costs incurred due to an increase in the forest transit fee rates.

On 30 March 2010, the arbitral tribunal passed an award ("**Award**") granting the following reliefs:

1. Claim No. 1: The arbitral tribunal granted an amount of INR 2,69,91,248 as additional cost to the Respondent until 31 December 2008, along with interest and future interest of 12% per annum. A direction was also issued to the appellant to pay an additional cost to the respondent post 31 December 2008 on account of an increase in royalty charges and associated sales tax.
2. Claim No. 2: Two of the three-member arbitral tribunal held that the Respondent was entitled to INR 3,47,35,522 towards the formation of the embankment for an initial 150mm, along with a price adjustment on the said amount in accordance with the terms of the underlying contract with interest at 12% per annum.

The third member of the arbitral tribunal presented a dissenting opinion holding that the Respondent was not entitled to any amount under the aforesaid claim.

3. Claim No. 3: The Respondent was granted INR 3,77,74,427.39 along with interest and future interest at 12% per annum.

Being aggrieved by the Award rendered by the Arbitral Tribunal, the Appellant filed a petition under Section 34 ("**Section 34 Petition**") of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**"). By a judgment dated 30 November 2011, the Single Judge affirmed the Award with respect to the first and the third claim placing reliance on the decision rendered in *NHAI v. ITD Cementation India Ltd.*¹ On the second claim, the Single Judge held that the Award was a majority decision of the Tribunal based on an analysis of the material placed before the Tribunal. Therefore, the Award for the second claim was also upheld.

Being aggrieved by the judgment rendered by the Single Judge in the Section 34 Petition, the appellant filed an appeal under Section 37 ("**Section 37 Appeal**") of the Arbitration Act before the Division Bench of the High Court, which also came to be dismissed. Eventually, the matter reached the Supreme Court of India.

Submissions

In relation to the first and the third claim, the Appellant argued that the Single Judge and the Division Bench of the High Court fell in error by misinterpreting the underlying contract on account of which, the Respondent was alleged to have been granted amounts which it otherwise did not deserve in the first place. On the second claim, the Appellant argued that the work of embankment construction was a part of the Respondent's scope of work. Even otherwise, as per the Appellant, no evidence was led to substantiate that works beyond the originally agreed scope were actually performed. The Appellant also argued that the underlying contract was subject to strict interpretation and even if the Respondent incurred some expenditure beyond the contractual purview, it would not amount to a liability on the Appellant.

The Respondent argued that the scope of interference in a petition under Section 34 of the Arbitration Act was narrow and the jurisdiction of the appellate Court under Section 37 was even further narrower. The Respondent placed reliance on the decision in *NHAI v. ITD Cementation India Ltd.*² which was subsequently affirmed by the Supreme Court in *NHAI v. ITD Cementation India Ltd.*³ to argue that the present case was completely covered in facts and law by the aforesaid decisions. Lastly, the Respondent argued that the majority view taken by the Arbitral Tribunal on the second claim was a view taken by experts which did not call for any interference.

Findings

At the outset, the Supreme Court observed that the disputes amongst the parties were rooted in the interpretation/ construction of the terms of the contract between the parties. The Supreme Court placed reliance on its decision in *Parsa Kente Collieries Ltd. v.*

¹ *NHAI v. ITD Cementation India Ltd.*, 2008 (100) DRJ 431.

² *NHAI v. ITD Cementation India Ltd.*, 2008 (100) DRJ 431.

³ *NHAI v. ITD Cementation India Ltd.*, (2015) 14 SCC 21.

Rajasthan Rajya Vidyut Utpadan Nigam Ltd.⁴ and opined that it was well-settled that an arbitral award could be interfered with only when the same was in conflict with the public policy of India. However, in case the arbitral tribunal construed a term of the contract in a reasonable manner, the same would not warrant any interference.

The Supreme Court also reiterated that the construction of a contract was primarily for an arbitral tribunal to decide. It is only when the arbitral tribunal construes the contract in a manner that no fair-minded or reasonable person can do would the Court set aside the award on account of being against the public policy of India. The Supreme Court also observed that a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of the evidence to be relied upon while delivering an award.

On the limited scope of intervention under Section 34 of the Arbitration Act, the Supreme Court relied on the decision in **MMTC Ltd. v. Vendanta Ltd.**⁵ and observed that the position is now well-settled that the Court acting under Section 34 does not sit in appeal over an arbitral award and may interfere on merits on the limited ground provided under Section 34(2)(b)(ii) of the Arbitration Act. If the scope of interference under Section 34 of the Arbitration Act was limited, the scope of interference was even further limited in proceedings under Section 37 of the Arbitration Act.⁶

The Supreme Court then referred to the decisions in **NHAI v. ITD Cementation India Ltd.**⁷ subsequently affirmed by the Supreme Court in **NHAI v. ITD Cementation India Ltd.**⁸ which deal with a similar set of issues raised in context of similarly worded contracts. The Supreme Court opined that in light of the findings of the Supreme Court in **NHAI v. ITD Cementation India Ltd.**⁹, the Respondent's contentions on the first and third claim lacked merit.

As regards the second claim, the Supreme Court opined that the same was allowed by two of the three expert arbitrators and the Division Bench of the High Court acted correctly in giving deference to the majority view taken by the arbitral tribunal.

In view of the above findings, the Supreme Court dismissed the appeal.

Conclusion

The Supreme Court has aptly declined to intervene with the findings of the Arbitral Tribunal. By reaffirming the well-established principle that the interpretation of contracts primarily falls within the purview of the arbitral tribunal, the Court has highlighted the limited scope of its intervention under Section 34 and Section 37 of the Arbitration Act. The emphasis on arbitral tribunal's expertise and discretion in assessing evidence and construing contractual terms, reflects the Supreme Court's commitment to upholding the finality of arbitral awards unless they contravene public policy or exhibit manifest error.

⁴ *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.*, (2019) 7 SCC 236.

⁵ *MMTC Ltd. v. Vendanta Ltd.*, (2019) 4 SCC 163.

⁶ *UHL Power Company Ltd. v. State of Himachal Pradesh*, (2022) 4 SCC 116.

⁷ *NHAI v. ITD Cementation India Ltd.*, 2008 (100) DRJ 431.

⁸ *NHAI v. ITD Cementation India Ltd.*, (2015) 14 SCC 21.

⁹ *NHAI v. ITD Cementation India Ltd.*, (2015) 14 SCC 21.

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