

Courts Cannot Reassess Merits Or Re-Interpret The Contract Under Sections 34 And 37 Of The Arbitration Act: Supreme Court Of India Reiterates

Authors: Vasanth Rajasekaran* and Harshvardhan Korada**

Introduction

In *Jan De Nul Dredging India Pvt. Ltd. vs Tuticorin Port Trust* [2026 INSC 34], the Supreme Court reasserted the minimal-intervention design of the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**"/ "**the Act**") by setting aside a judgment rendered under Section 37 of the Act, which had interfered with an arbitral award on merits. The Supreme Court held that a Section 37 Court also cannot do what a Section 34 Court cannot. It cannot re-interpret the contract, re-evaluate the evidence, or substitute the tribunal's view merely because another interpretation appears possible.

The dispute concerned idling compensation awarded for a Backhoe Dredger (BHD). While the Section 34 Court had upheld the award as a plausible contractual view, the Division Bench, in appeal, set aside the award by adopting its own interpretation of the contract. The Supreme Court restored the award, holding that the appellate interference transgressed the narrow limits of Sections 34 and 37 of the Act.

The judgment is also relevant for a common arbitration tactic: attacking a claim on the basis that it has been pitched under the wrong clause. The Supreme Court clarified that if the entitlement to compensation is traceable to the contract read as a whole, the claim cannot be defeated merely because the claimant cited or labelled the claim under a different clause.

Facts

Tuticorin Port Trust undertook a large dredging project titled "*Deepening of the Channel and Basin to Cater to 12.80 metre Draught Vessels at Tuticorin Port*", intended to enhance navigational depth for larger vessels.

A Notice Inviting Tender was issued on 15 July 2009. Jan De Nul Dredging India Pvt. Ltd. participated and was awarded the work. A work order was issued on 28 October 2010, and a Licence Agreement incorporating the tender conditions was executed on 27 December 2010. The contract value was INR 465,47,56,517, with a completion period of 14 months from commencement, namely by 28 June 2012.

The tender conditions contained stipulations on plant and equipment. While the Port Trust provided an indicative list of outputs, the choice of technology and equipment was left to the contractor, subject to the Port Trust being satisfied as to their adequacy. The indicative list included a Cutter Suction Dredger (CSD) of

3000 HP or more, supporting barges and pipelines, and one Backhoe Dredger with bucket capacity of 3 to 4 cubic metres.

Operations commenced on 28 December 2010. The contractor deployed equipment that exceeded what was contemplated, including two major CSDs and a BHD. The work was completed well ahead of schedule on 30 August 2011. A joint survey was conducted with the National Institute of Oceanography, Goa. The work was found satisfactory, and the port was commissioned at the new depth on 19 November 2011. Consequently, a completion or taking-over certificate was issued on 2 April 2012.

Disputes nevertheless arose as the final bill submitted on 29 May 2012 was not settled in full. Arbitration was invoked under the Licence Agreement. A three-member tribunal was constituted on 20 September 2012. Among several claims, Claim No. 7 sought compensation for the idle time of equipment, attributed to the Port Trust's failure to provide possession of, and access to, the site in the manner required for uninterrupted execution.

The Arbitral Award And The Section 34 Proceedings

By award dated 18 October 2014, the tribunal allowed Claim No. 7 and awarded INR 14,66,04,216 towards idling compensation for the BHD. The tribunal's approach proceeded on a reading of the contractual scheme as enabling compensation for idle time where the employer's acts or omissions caused stoppage or interruption, and where the claim was supported on facts.

The Port Trust filed a Section 34 petition before the High Court. At the stage of final hearing, the challenge was confined to Claim No. 7. The Port Trust's central contention was that idle time charges, on a proper interpretation of Clause 38, were contemplated only for "*major dredgers*", and that the BHD did not fall within that category. It was contended that the tribunal's award of idling compensation for the BHD therefore travelled beyond the contract.

By judgment dated 10 September 2019, the learned Single Judge dismissed the Section 34 petition. The High Court held that the tribunal had adopted a plausible contractual interpretation and that the award did not disclose any ground warranting interference within the limited jurisdiction under Section 34.

Appeal Under Section 37

Still aggrieved by the decision of the Single Judge, the Port Trust filed an appeal under Section 37 of the Act. The Division Bench, by judgment dated 15 March 2021, interfered with the award and set aside the amount awarded for BHD idling. In substance, it accepted the Port Trust's submission that the contractual provision for idling compensation was confined to "*major dredgers*" and could

not be extended to a BHD, and it proceeded to displace the tribunal's contractual reading with its own.

This appellate interference, despite the award having been upheld under Section 34, was the central issue before the Supreme Court.

Issue Before The Supreme Court

The Supreme Court treated the principal question as one of jurisdictional limits: whether the Division Bench, in a Section 37 appeal, could interfere with a reasoned award upheld under Section 34 by undertaking a fresh contractual interpretation.

Supreme Court's Decision

The Supreme Court allowed the appeal, set aside the Division Bench judgment, and restored the award insofar as Claim No. 7 was concerned.

The Supreme Court reiterated the Arbitration Act's minimal-intervention architecture. Section 34 is not a merits appeal. It permits interference only on limited statutory grounds. Section 37, which provides for appeals against certain orders (including orders under Section 34), does not widen the scope of judicial scrutiny. It is even more constrained, and cannot be used to re-adjudicate merits through a re-reading of the contract or a re-assessment of evidence.

Applying these principles, the Supreme Court held that the Division Bench had exceeded jurisdiction by substituting its interpretation of the Licence Agreement for that of the tribunal, even though the tribunal's view was, at the least, a plausible one and had been accepted by the Section 34 Court. The Supreme Court made clear that the test is not whether the Court can craft a better or more attractive interpretation, but whether the tribunal's view is a possible view within the contract. If it is, interference is impermissible.

On the contract, the Supreme Court's reasoning is noteworthy in two ways. *First*, it held that a clause requiring a mechanism for idle time charges for major dredgers cannot be rewritten as an implied prohibition against compensation for other equipment. The contractual scheme had to be read as a whole.

Secondly, the Supreme Court dealt with the clause labelling objection. The Port Trust sought to confine the claim to a narrow compartment, arguing that if the factual foundation was failure to provide possession and access, the claim must stand or fall only within that specific clause, and could not be supported by other provisions dealing with stoppage, interruption, or idling. The Supreme Court rejected that approach. It held that so long as the relief granted is traceable to the contract read conjointly, it is immaterial that the claim may have been framed with reference to one clause rather than another.

The Supreme Court further held that no ground, such as patent illegality, was made out. The award was reasoned, and the tribunal's contractual reading could not be characterised as perverse or as travelling outside the contract so as to attract Section 34 interference, much less Section 37 interference.

Comment

This judgment reinforces that Section 37 of the Act is not a second merits hearing. Parties cannot use a Section 37 appeal to secure a re-interpretation of the contract and setting aside of an award after failing at the Section 34 stage.

Equally, the decision discourages overly formalistic objections based on how a claim is "*labelled*" against individual clauses. The correct enquiry is whether the entitlement is traceable to the contract read as a whole and whether the tribunal's view is a plausible one. If those thresholds are met, Courts must respect arbitral finality.

Authors



Vasanth Rajasekaran
Founder & Head

vasanth@trinitychambers.in



Harshvardhan Korada
Counsel

harshvardhan@trinitychambers.in