An award can be set aside if the tribunal's interpretation of the contract is perverse or is not a possible view (Supreme Court of India)

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South East Asia Marine Engineering and Constructions Ltd. (SEAMEC Ltd.) v. Oil India Limited

Court: Supreme Court of India | **Case Number**: C.A. No. 673 of 2012 | **Citation**: 2020 SCC OnLine SC 451 | **Judges**: NV Ramana, Mohan M Shantanagoudar, Ajay Rastogi JJ | **Date**: 11 May 2020

On 11 May 2020, the Supreme Court of India upheld the setting aside of a domestic arbitral award dated 19 December 1999, citing the ground of perversity. The Court found the interpretation of the underlying contract and the reasoning of the arbitral tribunal completely unsustainable.

A. The contract, the claim and the award

Oil India Limited ("OIL") awarded a contract to South East Asia Marine Engineering and Constructions Ltd. ("SEAMEC") for well-drilling and other ancillary operations.

A clause in the contract stipulated that the rates would apply until the abandonment of the last well. Another term, Clause 23, provided that OIL would be obligated to reimburse SEAMEC if there was a change, enactment or interpretation of any law that increased SEAMEC's costs of carrying out its obligations.

High-speed diesel was essential for SEAMEC's operations. Its price increased during the term of the contract.

Later SEAMEC initiated arbitration for recovery of its claim of reimbursement.

The arbitral tribunal allowed SEAMEC's claim and awarding damages. The Supreme Court's decision notes that the tribunal by majority had concluded that the executive order by which the price of HSD's was increased, had the force of law. Since the rate was never raised by primary legislation but always by executive order, the tribunal ruled, the parties must have had that in contemplation. It applied the rule of harmonious construction as well as the rule of beneficial construction.

B. Rejection of the set-aside by district court, but appeal allowed by High Court and award set aside

The district court rejected a set-aside application filed by OIL.

OIL appealed, and a single-judge of the Gauhati High Court set aside the award by a judgment of 13 December 2007.

A copy of the judgment does not appear to be available on the website of the High Court. However, as the Supreme Court's decision notes, the High Court concluded that Clause 23 was "inserted in the agreement" to meet uncertain and unforeseen eventualities and not for revising a fixed-rate contract. It was of the view that Clause 23 was like a force majeure provision. Also, it was *pari materia* to the "doctrine of frustration and supervening impossibility."

C. The Supreme Court upheld the setting aside

SEAMEC filed an appeal in the Supreme Court in 2008, and the matter came to be considered by a 3-judge bench. It decided not to interfere with the judgment of the High Court, setting aside the award.

This is how the court reached its conclusion.

C1. Limited interference with arbitral awards

Speaking for the court, Ramana J began by delving "into the ambit and scope of the court's jurisdiction under Section 34 of the Arbitration Act." He referred to his December 2019 judgment in *Dyna Technologies Pvt. Ltd.* v. *Crompton Greaves Ltd.*, 2019 SCC OnLine SC 1656 and two passages from it in which he highlighted the following principles:

(a) "Arbitral awards should not be interfered with in a casual and cavalier manner unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award."

(b) The Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act."

C2. Examining the reasoning in the award as well as the High Court

After citing Dyna, Ramana J said that "the question in the present case is whether the interpretation provided to the contract in the award of the Tribunal was reasonable and fair so that the same passes (*sic*) the muster under Section 34 of the Arbitration Act?"

He first set out the conclusions of the tribunal and then what the High Court said (summarised in Section A above). He focused on the High Court's observation on force majeure and the doctrine of frustration and examined the authorities on the subject.

He then said that the court did not agree either with the tribunal or the High Court: "the tribunal correctly noted that a contract should be interpreted after considering all clauses, but did not apply that principle. The High Court's view on frustration is not something "we completely subscribe to"."

Then, Ramana J distinguished *Sumitomo Heavy Industries Limited* v. *Oil and Natural Gas Corporation Limited*, (2010) 11 SCC 296, which was cited because the court had "interpreted an indemnity clause and found that an additional tax burden could be recovered under such clause". The distinction was that the Sumitomo was "based on an appreciation of the evidence … which was … a plausible view that a reasonable person could take."

However, Ramana J said (referring to Clause 23) that the "evidence on record does not suggest that the parties had agreed to a broad interpretation to (*sic*) the clause in question". On the point of interpretation. He concluded that: –

(a) Clause 23 was interpreted widely. It cannot be accepted. The thumb rule of interpretation is that the document forming a written contract should be read as a whole and so far as possible as mutually explanatory. This basic rule was ignored.

(b) (After considering some clauses) The contract was based on a fixed rate. The parties contracted after mitigating the risk of such an increase. If the purpose of the tender was to limit the risks of price variations, then the interpretation placed by the tribunal cannot be said to be a possible one, as it would ultimately defeat the explicit wordings and purpose of the contract.

(c) There is no gainsaying that there will be price fluctuations which a prudent contractor would have taken into the margin. Such price fluctuations cannot be brought under Clause 23 unless specific language points to the inclusion.

(d) The interpretation of the tribunal to expand the meaning of Clause 23 to include a change in the rate of High-Speed Diesel is not a possible interpretation of this contract, as SEAMEC did not introduce any evidence to prove it.

(e) Other terms of the contract also suggest that the tribunal's interpretation is perverse. For instance, specific clauses indicated that fuel would be supplied by the contractor at his expense. The existence of such a clause shows that the interpretation of the contract by the tribunal is not a possible interpretation of the contract.