

**2026 LiveLaw (SC) 47**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**PAMIDIGHANTAM SRI NARASIMHA; J., PANKAJ MITHAL; J.**

**S.L.P. (C) No. 8803 of 2021; JANUARY 07, 2026**

**JAN DE NUL DREDGING INDIA PVT. LTD. *versus* TUTICORIN PORT TRUST**

**Arbitration and Conciliation Act, 1996 — Section 34 and Section 37 — Scope of Appellate Interference —** The Supreme Court reiterated that the jurisdiction of an appellate court under Section 37 is extremely circumscribed and akin to the limited jurisdiction under Section 34 - An appellate court cannot undertake an independent assessment of the merits of the award or reappraise evidence as if it were an ordinary court of appeal - Its primary role is to ascertain whether the court exercising power under Section 34 acted within its prescribed limits or exceeded them - If an Arbitral Tribunal's interpretation of a contract is a "plausible view" and is upheld under Section 34, the Section 37 court has no authority to substitute it with a different interpretation.

**Interpretation of Contracts — Arbitral Autonomy — Patent Illegality — Section 34(2A) -** held that the interpretation of the terms of a contract is primarily the domain of the Arbitral Tribunal - Even if a second view is possible, an award cannot be set aside merely because the appellate court prefers an alternative interpretation – Held that the Tribunal's decision to award idling charges for a Backhoe Dredger (BHD) under Clause 51.1 of the License Agreement despite the respondent's claim that Clause 38 only specified charges for "major dredgers" was found to be a logical and reasonable construction of the agreement - For an award to be set aside for patent illegality, the error must be apparent on the face of the award - A speaking award based on logical reasoning and proper interpretation of clauses does not suffer from patent illegality - a mere contravention of substantive Indian law is no longer a standalone ground for setting aside an award – **Appeal allowed.** [Relied on *MMTC Limited vs. Vedanta Limited* (2019) 4 SCC 163; *UHL Power Company Limited vs. State of Himachal Pradesh* (2022) 4 SCC 116; *Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani* (2024) 7 SCC 218; *National Highways Authority of India v. M/s Hindustan Construction Company Ltd.* 2024 INSC 388; *Larsen Air Conditioning and Refrigeration Company vs. Union of India & Ors.* (2023) 15 SCC 472; Paras 30-46]

*For Petitioner(s) Mr. Chander U. Singh, Sr. Adv. Ms. Surekha Raman, Adv. Mr. Amarjit Singh Bedi, Adv. Mr. Shreyash Kumar, Adv. Mr. Yashwant Sanjenbam, Adv. M/S. K J John And Co, AOR.*

*For Respondent(s) Mr. S. Nagamuthu, Sr. Adv. Mr. Mohan Raj A, Adv. Ms. Charulata Chaudhary, AOR.*

**J U D G M E N T**

**PANKAJ MITHAL, J.**

1. Leave granted.
2. The appellant-Jan De Nul Dredging India Private Limited<sup>1</sup> is a company registered under the Indian Companies Act, 1956 with an expertise in executing complex dredging operations.
3. The respondent-Tuticorin Port Trust<sup>2</sup> is a statutory authority constituted under the Major Port Trust Act, 1963. It undertook a major dredging project titled "Deepening of the

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<sup>1</sup> Hereinafter referred to as 'appellant-Dredging India'

<sup>2</sup> Hereinafter referred to as 'respondent-Port Trust'

Channel and Basin to Cater to 12.80 meter Draught Vessels at Tuticorin Port”. In context with the above project to enhance the navigational depth of the port to accommodate larger sea vessels, the Port Trust on 15.07.2009 issued Notice Inviting Tender<sup>3</sup>.

4. The appellant-Dredging India was one of the bidders. After the evaluation of the bids, the contract was awarded to it. A formal work order was issued to it on 28.10.2010. Consequently, a License Agreement incorporating the tender conditions was formally executed between the parties on 27.12.2010 which involved the monetary value of Rs.465,47,56,517/- (Rupees Four Hundred Sixty Five Crore Forty Seven Lakhs Fifty Six Thousand Five Hundred and Seventeen only). It was stipulated that the work would be completed within 14 months from the commencement i.e. by 28.06.2012.

5. The equipment to be deployed for the execution of the project under the License Agreement included one Cutter Suction Dredger (CSD) with a cutter power of 3,000 HP or more, three Self-Propelled Barges with hopper capacity of 16,000 cubic meters each, Floating/Submersible Pipelines of 800-900 mm diameter and one Backhoe Dredger (BHD) Jerommeke with a bucket capacity of 3 to 4 cubic meters along with supporting and survey vessels.

6. Clause ‘C’ of the tender conditions which was part of the NIT stipulated as under: -

**“(C) Plant and Equipment – Dredgers and ancillary equipments:**

*The intending Tenderers should own or hire suitable plant and equipment if it is on hiring, proof of availability of the plant and equipment on lease/charter for the entire duration of the work at short notice specifically for this project shall also be attached. It will be incumbent on the intending Tenderers to describe fully the equipment and plant which they propose to utilize for completing the work within the prescribed period. The choice of technology and plant and equipment proposed to be deployed will be left to the choice of the intending tenderers, subject to satisfying the Port Trust and the adequacy of the proposed technology and plant and equipment.*

*The Port Trust has assessed and average daily output of 12000 cubic meters for the scenario of deployment of Heavy Duty CSD to complete the work within the specified period of Fourteen Months for which the following indicative plant & equipment could be required.*

1. Cutter Suction Dredger having cutter power 3000 HP or more -1 No.
2. Self-propelled barges having hopper capacity 1600 Cubic Meters - 3 Nos.
3. Sufficient length of Floating/Submersible Pipe lines with and without ball joints 800 mm to 900 mm diameter.
4. Backhoe Dredger having bucket capacity 3 to 4 Cubic Meters - 1 No.
5. Supporting vessels
6. Survey Vessels etc.,

*The tender document is open to firms/ companies/voluntary formed Joint Ventures/ Consortia meeting all the Minimum Eligibility Criteria as stipulated herein above.”*

7. In view of the above clause, it was open for the appellant-Dredging India to deploy such equipment as may be necessary for the dredging purposes including major/minor dredgers. It was also free to deploy as many dredgers as may be felt necessary by it, subject to satisfaction of the respondent-Port Trust. It included one Backhoe Dredger (BHD) having bucket capacity of 3 to 4 cubic meter.

8. The appellant-Dredging India commenced operations under the aforesaid project on 28.12.2010. It deployed sufficient equipment more than what was agreed upon in the

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<sup>3</sup> In short ‘NIT’

License Agreement, including two major Cutter Suction Dredger (CSD) as well as a Backhoe Dredger (BHD). The dredging work of the project was completed much ahead of schedule on 30.08.2011 i.e. eight months before the stipulated deadline.

**9.** Upon the completion of the work, a joint survey was conducted by the respondent-Port Trust and the National Institute of Oceanography, Goa. The work was found to have been completed satisfactorily. Accordingly, the port was commissioned at a new depth on 19.11.2011. A Completion Certificate/Taking Over Certificate was issued to the appellant-Dredging India on 02.04.2012, much before the deadline of 28.06.2012, for the completion of the work.

**10.** The appellant-Dredging India submitted a final bill on 29.05.2012 but it was not settled in full. Consequently, disputes arose between the parties relating to alleged nonpayment and under-payment of dues as raised under the final bill.

**11.** In the above scenario, the appellant-Dredging India was left with no option but to invoke the arbitration clause as contained in the License Agreement. The dispute was referred on 20.09.2012 to an Arbitral Tribunal consisting of three members. The appellant-Dredging India raised as many as eleven claims, one of which was Claim No.7 regarding idle time due to respondent-Port Trust's failure to provide possession of and access to site.

**12.** The Arbitral Tribunal dealt with all the eleven claims and with the agreement of the parties decided Claim Nos.5, 6 and 7 together. The Arbitral Tribunal *vide* its award dated 18.10.2014 *inter alia* awarded an amount of Rs.14,66,04,216/-(Rupees Fourteen Crore Sixty Six Lakh Four Thousand Two Hundred and Sixteen only) to the appellant-Dredging India in respect of Claim No.7 i.e. regarding idling charges of Backhoe Dredger (BHD).

**13.** The aforesaid arbitral award was challenged by the respondent- Port Trust before the Learned Single Judge of the Madras High Court under Section 34 of the Arbitration and Conciliation Act, 1996<sup>4</sup>, by means of O.P. No.152/2015. Though, the respondent-Port Trust assailed the amounts awarded under Claim Nos. 3, 4, 5, 6, 7, 9 and 10 but at the time of hearing restricted its challenge only to the amount awarded under Claim No.7 with regard to idling charges for Backhoe Dredger (BHD).

**14.** The respondent-Port Trust contended before the Learned Single Judge of the High Court that under Clause 38 of the License Agreement, the idle time charges were to be paid only in respect of idling of the major dredgers and that Backhoe Dredger (BHD) did not fall in that category. The Tribunal as such was not justified in accepting any claim in respect of idling of the Backhoe Dredger (BHD).

**15.** The Learned Single Judge of the High Court on 10.09.2019 dismissed the petition filed under Section 34 of the Act upholding the findings of the Arbitral Tribunal and that Clause 38 of the License Agreement did not confine the payment of idle time compensation in respect of major dredgers only inasmuch as under Clause 51 of the License Agreement, it was open for the appellant-Dredging India to deploy dredgers without specifying whether major or minor dredgers. The Learned Single Judge further noted that the Tribunal had adequately considered the material on record and had interpreted the relevant clauses in the proper perspective and as such, there was no occasion for him to interfere with the award in exercise of limited jurisdiction under Section 34 of the Act.

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<sup>4</sup> Hereinafter referred to as 'the Act'

**16.** Even after the award of the Arbitral Tribunal was upheld by the Learned Single Judge of the High Court, the respondent-Port Trust was not satisfied. It went in appeal under Section 37 of the Act before the Division Bench of the High Court by means of OSA No.101/2020. The appeal was restricted to the claim made and awarded under Claim No.7.

**17.** It was argued that idle time compensation applicable in respect of major dredgers, could not have been awarded in respect of a minor dredger i.e. Backhoe Dredger (BHD). It was also contended that the Arbitral Tribunal had erroneously awarded idle time charges for a non-major dredger. The Backhoe Dredger (BHD) was not a major dredger therefore no idle time compensation could have been claimed or awarded if it had remained idle for any reason.

**18.** The Division Bench of the High Court *vide* judgment and order dated 15.03.2021 allowed the appeal of the respondent-Port Trust and directed for the deletion of the claim awarded by the Arbitral Tribunal as upheld by the Learned Single Judge of the High Court in respect of Claim No.7 i.e. idle charges for the Backhoe Dredger (BHD).

**19.** The aforesaid judgment and order of the Division Bench, passed in exercise of powers under Section 37 of the Act, has been assailed by the appellant-Dredging India in this appeal.

**20.** Shri Chander U. Singh, learned senior counsel for the appellant-Dredging India, at the threshold argued that the scope of Section 37 of the Act is very limited and cannot extend beyond the ambit of Section 34 of the Act. Therefore, the Division Bench of the High Court manifestly erred in law in disturbing the judgment and order of the Learned Single Judge of the High Court upholding the arbitral award. Since the arbitral award had interpreted the various clauses of the License Agreement and had recorded a definite finding thereon in passing the award and as it was found that there was no scope for interference with it under Section 34 of the Act, the Appellate Court ought not to have varied or reversed the same. The interpretation of the clauses of the License Agreement, as made by the Arbitral Tribunal had to be accepted and that the appellate court had no jurisdiction to interpret those clauses in a different manner.

**21.** In defence, Shri S. Nagamuthu, learned senior counsel for the respondent-Port Trust, argued that the Division Bench had rightly set aside the arbitral award in respect of Claim No.7 as the claim of the appellant-Dredging India for the delay in handing over the site was under Clauses 41.1 and 41.2 of the License Agreement and, therefore, the Tribunal could not have awarded compensation under Clause 51.1 which deals with the interruption of work due to port traffic etc. Secondly, the Arbitral Tribunal could not have relied upon Claim Nos.5 and 6 which were based on delays due to traffic in and outside port channel to award any compensation under Claim No.7 which was independent and the delay was not on account of port traffic. The award of the claim by the Arbitral Tribunal for Claim No.7 was patently illegal. The claim for compensation due to idling of the Backhoe Dredger (BHD) which was admittedly a minor dredger, was not covered under Clause 38 which only provided for the compensation for the idling of the major dredgers.

**22.** Apart from other things, the broad question which falls for our consideration is whether the Division Bench in exercise of powers under Section 37 of the Act was justified to interfere with the judgment and order of the Learned Single Judge passed under Section 34 of the Act upholding the award of the Arbitral Tribunal.

**23.** The ancillary issues which may arise are: whether the Backhoe Dredger (BHD) can be categorized as a minor dredger or is a major dredger; or whether deployment of a minor

dredger was not stipulated under the License Agreement; and whether on the conjoint reading of Clauses 38, 41.1, 41.2 and 51.1, the appellant-Dredging India is entitled to any compensation for the idling of the said Backhoe Dredger (BHD).

**24.** The primary object of the Act is to provide speedy and inexpensive mode of resolution of disputes through the process of arbitration with the minimum intervention of the law courts. In this context, it would be beneficial to refer and quote Section 5 of the Act which reads as under: -

***“5. Extent of judicial intervention-***

*Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”*

**25.** The above Section 5 of the Act contemplates that in matters of arbitration governed by Part-I i.e. in relation to domestic arbitration, minimum intervention of the judicial authority is acceptable unless it is otherwise provided under Part-I of the Act. In other words, in order to speed up the remedial measures under the Act in relation to domestic arbitration, there has to be minimum intervention of the court and, if necessary, it has to be only in strict compliance with the provisions of the Act.

**26.** The Act provides for the challenge of the arbitral award before the court on limited grounds as contemplated by Section 34 of the Act i.e. where one of the party was under some incapacity; or where the arbitration agreement itself was not valid; or the parties were not given proper notice of the appointment of an arbitrator or the arbitral proceedings; or was unable, for some reason, to present his case before the Arbitrator or Arbitral Tribunal; or if the arbitral award deals with the dispute not contemplated or falling within the terms of the arbitration or deals with the matters beyond the scope of the arbitration; or where the constitution of the Arbitral Tribunal was not in accordance with arbitration agreement; and, or where the court finds the subject matter of the arbitral dispute was incapable of settlement by arbitration or the arbitral award is in conflict with the public policy of India.

**27.** In short, apart from the above grounds, the arbitral award is not open for challenge under Section 34 of the Act on any other ground. So, the intervention of the court is limited. Therefore, technicalities apart, the main ground for challenge of the arbitral award in the instant case, which survives is that of the award being in conflict with the public policy of India i.e. whether it is in contravention with the fundamental policy of India or is in conflict with the most basic notions of morality or justice.

**28.** In the case at hand, a challenge to the award of the Arbitral Tribunal before the Learned Single Judge of the High Court would reveal that it was confined to Claim No.7 and that too on the merits of the same and not on the ground of violation of the public policy of India or that it is against the basic notions of morality or justice.

**29.** The Arbitral Tribunal, in making the award, has interpreted the various clauses of the License Agreement so as to hold that the appellant-Dredging India is entitled for appropriate compensation with regard to idling of its Backhoe Dredger (BHD) for want of non-supply of site within time. Apparently, the challenge to the award of the Arbitral Tribunal was neither on any of the grounds enumerated under Section 34, nor even on the ground that the award of the Claim No.7 is against the fundamental policy of India or the basic notions of morality or justice.

**30.** That being the position, the award of the Arbitral Tribunal was not liable to be disturbed under Section 34 of the Act and was rightly not disturbed. It is settled in law that

the appellate powers under Section 37 are limited to the scope of Section 34 and cannot exceed beyond it. Certainly, therefore, if an award is not liable to be disturbed under Section 34 of the Act, the same could not have been interfered with in exercise of powers under Section 37 of the Act.

**31.** In **MMTC Limited vs. Vedanta Limited**<sup>5</sup>, this Court has very succinctly laid down the powers of Appellate Court under the Act. It held as under: -

*“14. As far as interference with an order made under Section 34, as per Section 37, is concerned, it cannot be disputed that such interference under Section 37 cannot travel beyond the restrictions laid down under Section 34. In other words, the court cannot undertake an independent assessment of the merits of the award, and must only ascertain that the exercise of power by the court under Section 34 has not exceeded the scope of the provision. Thus, it is evident that in case an arbitral award has been confirmed by the court under Section 34 and by the court in an appeal under Section 37, this Court must be extremely cautious and slow to disturb such concurrent findings.”*

**32.** In **Konkan Railway Corpn. Ltd. v. Chenab Bridge Project**<sup>6</sup>, a three-judge bench of this Hon'ble Court has extensively dealt with the jurisprudence around Sections 34 and 37 of the Arbitration Act. This Court has held that:

*“18. At the outset, we may state that the jurisdiction of the court under Section 37 of the Act, as clarified by this Court in MMTC Ltd. v. Vedanta Ltd.<sup>7</sup>, is akin to the jurisdiction of the court under Section 34 of the Act. Scope of interference by a court in an appeal under Section 37 of the Act, in examining an order, setting aside or refusing to set aside an award, is restricted and subject to the same grounds as the challenge under Section 34 of the Act.*

*19. Therefore, the scope of jurisdiction under Section 34 and Section 37 of the Act is not akin to normal appellate jurisdiction. It is well-settled that courts ought not to interfere with the arbitral award in a casual and cavalier manner. The mere possibility of an alternative view on facts or interpretation of the contract does not entitle courts to reverse the findings of the Arbitral Tribunal.”*

**33.** In **Punjab State Civil Supplies Corpn. Ltd. v. Sanman Rice Mills**<sup>8</sup>, this Hon'ble Court, while examining the scope of Section 34 and Section 37 of the Arbitration Act, has held that:

*“20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is*

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<sup>5</sup> (2019) 4 SCC 163

<sup>6</sup> (2023) 9 SCC 85

<sup>7</sup> (2019) 4 SCC 163

<sup>8</sup> 2024 SCC OnLine SC 2632

*made out. It cannot be disturbed only for the reason that instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.*

**21.** *It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a fullfledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”*

**34.** In ***UHL Power Company Limited vs. State of Himachal Pradesh***<sup>9</sup>, a three judges Bench of this Court observed as under: -

*“The jurisdiction conferred on the courts under Section 34 of the Arbitration Act is fairly narrow, when it comes to the scope of an appeal under Section 37 of the Arbitration Act, the jurisdiction of the Appellate Court in examining an order, setting aside or refusing to set aside an order, is all the more circumscribed.”*

**35.** In a recent case of ***Bombay Slum Redevelopment Corporation Private Limited vs. Samir Narain Bhojwani***<sup>10</sup>, a Bench of this Court, of which one of us (P. Mithal, J.) was a member, had held that the jurisdiction of the Appellate Court dealing with an appeal under Section 37 of the Act against the judgment in a petition under Section 34 of the Act is more constrained than the jurisdiction of the court dealing with a petition under Section 34 of the Act.

**36.** The gist of the aforesaid decisions is that the jurisdiction of the court under Section 37 of the Act is akin to the jurisdiction of the court under Section 34 of the Act, and, therefore, the scope of interference by the court in appeal under Section 37 cannot go beyond the grounds on which challenge can be made to the award under Section 34 of the Act. Moreover, the courts exercising powers under Sections 34 and 37, do not act as a normal court, and therefore, ought not to interfere with the arbitral award on a mere possibility of an alternative view.

**37.** In other words, the scope of interference of the court with the arbitral matters is virtually prohibited, if not absolutely barred. The powers of the Appellate Court are even more restricted than the powers conferred by Section 34 of the Act. The appellate power under Section 37 of the Act is exercisable only to find out if the court exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court exercising powers under Section 37 of the Act has no authority of law to consider the matter in dispute before the Arbitral Tribunal on merits so as to hold as to whether the award of the Arbitral Tribunal is right or wrong. The Appellate Court in exercise of such power cannot sit as an ordinary court of appeal and reappraise the evidence to record a contrary finding. The award of the Arbitral Tribunal cannot be touched by the court unless it is contrary to the substantive provision of law or any provision of the Act or the terms of the agreement.

**38.** Undoubtedly, in the case at hand, the award of the Arbitral Tribunal is not contrary to any substantive provision of law or any provision of the Act. Yet, it has been disturbed by the Appellate Court, apparently by giving a different interpretation of the clauses of the License Agreement which jurisdiction was not vested in it. Ordinarily, the interpretation

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<sup>9</sup> (2022) 4 SCC 116

<sup>10</sup> (2024) 7 SCC 218

given by the Arbitral Tribunal, as affirmed by the court in exercise of powers under Section 34 of the Act ought to have been accepted.

**39.** In regard to the contention that the arbitral award was contrary to the terms of the Licence Agreement, it would be trite to state that due and proper interpretation of the various clauses of the Licence Agreement was given by the Arbitral Tribunal and the same also had the approval of the Learned Single Judge by his judgment passed in exercise of powers under Section 34 of the Act and as such the Appellate Court could not have given a different interpretation to the said clauses. The Appellate Court was actually bound by the interpretation of the clauses of the Licence Agreement as given by the Arbitral Tribunal and accepted by the Court under Section 34.

**40.** In **National Highways Authority of India v. M/s Hindustan Construction Company Ltd.**<sup>11</sup> a Bench of this Court, speaking through Justice Oka, of which one of us (Shri P. Mithal, J.) was also a member held as under:

*“There cannot be any dispute that as far as the construction of the terms of a contract is concerned, it is for the Arbitral Tribunal to adjudicate upon. If, after considering the material on record, the Arbitral Tribunal takes a particular view on the interpretation of the contract, the Court under Section 34 does not sit in appeal over the findings of the arbitrator.”*

In view of the aforesaid decision, if the interpretation given by the Arbitral Tribunal cannot be disturbed under Section 34 of the Act, the same cannot also be disturbed by exercising powers under Section 37 of the Act.

**41.** Shri S. Nagamuthu, learned senior counsel for the respondent-Port Trust, had cited **Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)**<sup>12</sup>, to contend that when there is patent illegality in the award, the same could always be corrected in appeal under Section 37 of the Act. A close reading of the above decision would reveal that in order to apply the same, first, it has to be established that there is a patent illegality on the face of the award; secondly, mere contravention of substantive laws of India by itself is no longer a ground available to set aside the award; and if the Arbitrator gives no reason for an award, it would amount to patent illegality. In the present case, no patent illegality on the face of the award stands established. The Arbitral Award is a speaking award with findings and interpretations based upon reasons. Moreover, there is apparently no violation of the fundamental policy of any Indian law or the basic notions of morality and justice to enable the courts to interfere with the award.

**42.** Insofar as the merits of the case or other ancillary points arising in the matter as referred to above, it would be relevant to refer to Clauses 38, 41.1, 41.2 as well as Clause 51.1 of the License Agreement. The aforesaid clauses are being reproduced hereinbelow for the sake of convenience: -

**“Clause 38- STOPPAGE OF WORKS**

*The Contractor may be instructed to stop the works from time to time due to security reasons, moving ships, or any other reasons as per the instructions of the Port Authorities.*

*The Contractor shall furnish idle time charges for the major dredgers proposed to be deployed by him in the BOQ. The rate for idle time charges, quoted by the lowest Bidder, will be finalized taking into account the lowest idle time charges quoted by the other Bidders.*

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<sup>11</sup> 2024 INSC 388

<sup>12</sup> (2019) 15 SCC 131

### **Clause 41.1- POSSESSION OF SITE AND ACCESS THERETO**

*Save in so far as the Contract may prescribe:*

- a) the extent of portions of the Site of which the Contractor is to be given possession from time to time and*
- b) the order in which the Works shall be executed as may be mutually agreed on and as per the programme,*
- c) so much of the Site, and*
- d) such access as, in accordance with the Contract, is to be provided by the Employer as may be required to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme referred to in Clause 44.1, if any, and otherwise in accordance with such reasonable proposals as the Contractor shall, by notice to the Engineer. The Engineer will, from time to time as the Work proceeds, give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the execution of the Works with due dispatch in accordance with such programme or proposals, as the case may be.*

### **Clause 41.2- FAILURE TO GIVE POSSESSION**

*If the Contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 41.1, the Engineer shall, after due consultation with the Employer and Contractor, determine any extension of time to which the Contractor is entitled under Clause 43.1, and the amount of such costs which shall be added to the Contract Price and shall notify the Contractor accordingly.*

### **Clause 51.1- INTERRUPTIONS TO WORK**

*The Contractor shall allow in his rates for any loss of working time due to weather, surveying, positioning of craft, shifting of dredger/equipment during maintenance. Idle time of the dredger/equipment exceeding a continuous period of 4 (four) hours due to interruption caused by Port traffic, berthing, unberthing, or shifting of vessels and other operations in the Harbour basin and Approach Channel, excluding the specified times under Sub-Clause 6.0*

*Section III shipping operations (i.e., from 07.00 hours to 14.00 hours) as instructed/agreed by the Engineer, shall be paid for at the quoted rates included in the Bill of Quantities, subject to the Engineer being notified by the Contractor within 12 hours on each occasion of such interruptions. The idle time for such payment shall be reckoned as the total time in one continuous interruption minus 2 hours. Berthing programme of vessels will be provided every day after berthing meeting at 12.00 hours or when ETAs are made available to Port by shipping agencies.*

*Notice will be given approximately 1 hour before the sailing of vessels, and the Contractor shall contact the Port Marine Department for any information in this regard. No claim whatsoever for additional payments on account of the specified interruption will be entertained.”*

**43.** The aforesaid Clause 38 though speaks about stoppage of work and about idle time charges for the major dredger deployed by the contractor i.e. the appellant-Dredging India, but it nowhere prohibits the appellant-Dredging India to claim compensation in respect of any other equipment including Backhoe Dredger, if it remains idle. The aforesaid Clause 38 cannot be read so as to mean that since it provides for idle time charges for major dredgers, compensation in respect of other equipment or minor/special dredgers is not permissible.

**44.** Clauses 41.1 and 41.2 provide for the consequences of failure on part of the respondent-Port Trust to give possession of the site in time including extension of time and costs. However, this does not *ipso facto* mean that idle time compensation would not

be admissible if the site is not made available for any other reason covered under the terms of the License Agreement.

**45.** The aforesaid Clauses 41.1 and 41.2 cannot be read in isolation. If we read the aforesaid clauses of the Licence Agreement conjointly with Clause 51.1, it would be evident that idle time charges or compensation are available even if any equipment is kept idle on account of delay or nonproviding of the site for operation within time. In view of Clause 51.1, the argument that since the Claim No. 7 was virtually under Clauses 41.1 and 41.2, the Arbitral Tribunal could not have awarded claim under Clause 51.1 is misconceived, inasmuch as it is settled in law that if the power to grant a relief is available under the Act or the terms and conditions of the Licence Agreement, it is immaterial as to under which clause the same is claimed.

**46.** In the instant case, the power to award compensation for idle time of the equipment including Backhoe Dredger is traceable to Clause 51.1 of the Lease Agreement and therefore the Arbitral Tribunal was not wrong in interpreting the clauses so as to make an award in favour of the appellant-Dredging India under Claim No. 7. In such a situation, the interpretation given by the Arbitral Tribunal is apparently a plausible view and was rightly not disturbed by the Learned Single Judge in exercise of power under Section 34 of the Act. Therefore, in appeal under Section 37 of the Act, the said reasoning could not have been disturbed so as to permit a different view. The interpretation given by the Arbitral Tribunal had to be accepted by the Appellate Court.

**47.** In paragraph 15 of **Larsen Air Conditioning and Refrigeration Company vs. Union of India & Ors.**<sup>13</sup>, this Court observed that the limited and extremely circumscribed jurisdiction of the court under Section 34 of the Act, permits the court to interfere with an award, sans the grounds of patent illegality but if an arbitrator construes a term of a contract in a reasonable manner, it will not mean that the award can be set aside on that ground.

**48.** In the case at hand, the Arbitral Award contains logical reasons in construing the various clauses of the License Agreement and the view taken by the Arbitral Tribunal had been accepted by the court under Section 34 of the Act as a reasonable and a possible view. Therefore, in the light of above referred decision of **Larsen Air Conditioning (supra)**, the Arbitral Award could not have been set aside even if there was a possible second view regarding the interpretation of the clauses of the License Agreement.

**49.** In the light of the above discussion, the ancillary issues, whether the Backhoe Dredger (BHD) is a minor or a major dredger or whether it could have been deployed for the project work, pales into insignificance. The License Agreement permits deployment of Backhoe Dredger (BHD) without specifying whether it is a minor or a major dredger. Moreover, as discussed earlier, it was open for the appellant-Dredging India to deploy the equipment as may be felt necessary by it, and, therefore, the deployment of the Backhoe Dredger (BHD) was not contrary to any terms of the License Agreement.

**50.** In view of the aforesaid factual and legal position, we are of the opinion that the Appellate Court manifestly erred in law in interfering with the judgment and order of the Learned Single Judge of the High Court passed under Section 34 of the Act so as to disturb the arbitral award in respect of Claim No.7.

**51.** Before parting, we consider it proper to note that the Act is a special enactment which aims to resolve contractual/commercial disputes through arbitration with the

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<sup>13</sup> (2023) 15 SCC 472

minimum intervention of the court, if not without the intervention of the court. In the event, the courts are allowed to step in at every stage and the arbitral awards are subjected to challenge before the courts in hierarchy before court of first instance, through regular appeals and finally by means of SLP/Civil Appeal before the Supreme Court, it would obviate/frustrate and defeat the very purpose of the Act. It is therefore, necessary to accept the arbitral award if it is not patently illegal or does not fall within the scope of intervention under Section 34 of the Act. The appeal thereof has a much narrower scope of intervention particularly when the arbitral award has been upheld under Section 34 of the Act. The appellate jurisdiction acquires little significance only when the arbitral award has been erroneously upheld or set aside by the court in exercise of its power under Section 34 of the Act as discussed earlier, but has no authority of law to consider the matter which was before the Arbitral Tribunal on merits.

**52.** In the light of the above discussion, in our opinion, the impugned judgment and order dated 15.03.2021 passed by the Division Bench of the High Court under Section 37 of the Act is unsustainable in law and is accordingly set aside.

**53.** The appeal is allowed with no order as to costs.

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