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## **ARBITRAL TRIBUNAL'S INTERPRETATION OF CONTRACT FINAL UNLESS FOUND UNFAIR**

The Supreme Court (“**SC**”), in *National Highways Authority of India* case,<sup>1</sup> held that any challenge to an arbitration award involving the terms of a contract, the arbitral tribunal must adjudicate upon its interpretation and the court cannot sit in appeal.

### **Brief Facts**

National Highways Authority of India (“**NHAI**”) awarded a contract to Hindustan Construction Company Ltd. (“**HCC**”) for construction of road forming part of Allahabad Bypass Project.

Disputes arose between NHAI and HCC, which were referred to arbitration by a panel of three arbitrators (“**Arbitral Tribunal**”) after the Dispute Resolution Board failed to resolve it.

The dispute referred to Arbitral Tribunal comprised of three claims: (i) Reimbursement of additional expenditure incurred due to increase in rates of royalty and sales tax on certain raw materials; (ii) Non-payment of work executed of embankment with soil removal as per contract; and (iii) Reimbursement of additional cost incurred due to an increase in forest transit fee.

The Arbitral Tribunal passed an award in favour of HCC in all claims (“**Award**”). With respect to the claim of non-payment, the Award was not unanimous.

NHAI challenged<sup>2</sup> the Award before the Delhi High Court<sup>3</sup> (“**HC**”) which was dismissed.<sup>4</sup> NHAI appealed before the SC.

### **NHAI's Contentions**

The increase in royalty rates falls within the purview of a contract clause.

HC rendered its decision by erroneously interpreting the relevant clauses in the contract.

The work for which HCC is claiming non-payment does not form part of embankment construction and cannot be sustained.

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<sup>1</sup> *National Highways Authority of India v. M/s Hindustan Construction Company Ltd.*, (2024) 6 SCC 809 (“**Judgement**”).

<sup>2</sup> Pursuant to section 34 of the Arbitration Act providing for application for setting aside arbitral awards.

<sup>3</sup> Before the Single Bench and subsequently before the Division Bench.

<sup>4</sup> The challenge was dismissed by both the benches of the High Court.

Arbitral Tribunal must strictly interpret the contract.

### **HCC's Contentions**

The scope of interference of the HC in challenge of an arbitral award is limited under the of the Arbitration and Conciliation Act, 1996 (“**ACA**”).<sup>5</sup>

HC’s reliance on *National Highways Authority of India* case,<sup>6</sup> where the SC partly allowed the appeal and set aside the award made pursuant to one of the multiple arbitration claims, squarely covers HCC’s reimbursement claims.

The Award was by majority members. Hence, no interference is required.

### **SC's Judgement and Reasoning**

The SC relied on various judgements reiterating the following settled legal position:

- (a) an arbitral award can only be interfered with “[o]nly when the award is in conflict with the public policy in India.”<sup>7</sup>
- (b) The construction of the terms of contract is primarily for an arbitrator to decide that can only be set aside if it is unfair or unreasonable.<sup>8</sup>
- (c) the court does not sit in appeal over the arbitral award and may interfere on merits on the limited ground that such award is in conflict with the public policy of India.<sup>9</sup>
- (d) the jurisdiction of the court under Section 34 is relatively narrow and that of the appellate court under Section 37<sup>10</sup> of the Arbitration Act is all the more circumscribed.<sup>11</sup>

It held that: “*the learned Single Judge and the Division Bench of the High Court have examined the challenge to the award within four corners of limitation imposed by Sections 34 and 37 of the Arbitration Act. The view taken by the Arbitral Tribunal, the learned Single Judge and the Division Bench cannot be found fault with.*”<sup>12</sup>

The appeal was dismissed.

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<sup>5</sup> Sections 34 and 37 of the ACA.

<sup>6</sup> *National Highways Authority of India v. M/s. ITD Cementation India Limited* 2008 (100) DRJ 431.

<sup>7</sup> *Parsa Kente Collieries Ltd. v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd.* (2019) 7 SCC 236.

<sup>8</sup> *ibid*

<sup>9</sup> *MMTC Ltd. v. Vedanta Ltd.* (2019) 4 SCC 163.

<sup>10</sup> Providing for appealable orders.

<sup>11</sup> *UHL Power Company Ltd. v. State of Himachal Pradesh.* (2022) 4 SCC 116.

<sup>12</sup> Para. 19 of the Judgement.