

India—Supreme Court upholds decision to set aside arbitral award (South East Asia Marine Engineering and Constructions (Seamec) v Oil India)

[First published on Lexis®PSL Arbitration on 01/06/2020](#)

Arbitration Analysis: The Supreme Court upheld a decision, on appeal from the Guwahati High Court, to set aside an arbitral award. In reaching its decision, the Supreme Court did not agree with all of the reasoning of the tribunal, the District Court and the High Court, but chose to set aside the award on various grounds including that the tribunal provided an incorrect, perverse and impossible interpretation of the contract. Vyapak Desai, head of the International Dispute Resolution and Investigations at Nishith Desai and Arjun Gupta, senior member of the team, discuss this decision.

South East Asia Marine Engineering and Constructions (Seamec) v Oil India LNIND [2020 SC 284](#)
(subscription to Lexis Advance® required)

What are the practical implications of this decision?

The judgment of the Supreme Court provides an expansive interpretation on the scope of powers for courts under section 34 of the Arbitration and Conciliation Act 1996 (ACA 1996) (the Act). This decision is in divergence from earlier judicial precedents which leaned towards minimal judicial interference and discouraged a re-interpretation or further appreciation of contractual provisions already interpreted by an arbitral tribunal.

This judgment can be possibly used as a precedent to justify a re-agitation of the merits of a matter in setting aside proceedings rather than restrict arguments to the narrow contour provided under ACA 1996. Further, an incorrect interpretation of a contract by a tribunal can be canvassed as a valid defence to set aside an arbitral award.

It is possible that litigants might use this decision to find a new approach and threshold to determine perversity of an award and seek setting aside of the same.

What is the background to the decision?

South East Asia Marine Engineering and Construction (the appellant), had by way of a tender secured a contract for well drilling and other auxiliary operations in Assam (the contract). The term of the contract was specified for two years but subsequently it was increased by another two years. During the course of operations, in effect of a government circular there was a hike in the price of High Speed Diesel, which was an essential component in the operations.

The contract contained a clause whereby any post-facto 'change in law' which would result in an upward or downward change in the cost incurred by the appellant would have to be appropriately accounted for. Therefore, post the price hike the appellant, citing the consequential cost burden, sought a reimbursement from Oil India Limited (the respondent). The respondent declined to honour this claim which led to reference of this dispute to arbitration.

In the arbitration proceedings, the tribunal decided in favour of the appellant and granted them compensation along with interest thereof. The tribunal used the principle of liberal and wide interpretation to hold that the hike in price would constitute a 'change in law' thereby allowing the appellant to be compensated for the increased cost incurred in the operations under the contract. The respondent unsuccessfully initiated set aside proceedings before the District Court and therefore was constrained to approach the High Court under

ACA 1996, s 37. The High Court adjudicated the matter in favour of the respondent thereby setting aside the order of the District Court and the award of the Tribunal granting compensation to the appellant.

The appellant filed an appeal before the Supreme Court, on the basis that the High Court had (a) replaced the view of the tribunal with its own view on a possible interpretation of the contract, which was contrary to the position of law and jurisprudence and (b) set aside the award basis considerations beyond the permissible grounds provided under statute. The respondent, challenged the appeal on the grounds that (a) the tribunal had gone beyond the scope of the contract thereby providing an impossible interpretation and (b) the award contemplates a scenario not provided under the contract thus being against the public policy of India.

What did the court decide?

In addressing the appeal, the Supreme Court considered the scope and ambit of ACA 1996, s 34. It relied on the Supreme Court judgment of *Dyna Technology Pvt Ltd v Crompton Greaves Ltd* 2019 SCC Online SC 1656 to observe that an arbitral award can be set aside if (a) the perversity of the award goes to the root of the matter without any possibility of an interpretation which can sustain the award and (b) the reasoning of the award is not impliedly or expressly permissible under ACA 1996, s 34.

The Supreme Court did not agree with all of the reasoning of the tribunal, the District Court and the High Court, but upheld the High Court's decision to set aside the award because (a) the tribunal had failed to interpret the contract as a whole; (b) the had tribunal used the principle of liberal and wide interpretation rather than literal interpretation to reach a conclusion; (c) the facts of the case were such that the interpretation of the tribunal would defeat the entire purpose of the contract; (d) there was no evidence adduced by the appellant before the tribunal to support its interpretation of the contract and (e) certain clauses of the contract point towards the impossibility of the conclusion reached by the tribunal.

Comments on the approach adopted by the Supreme Court

The Supreme Court has previously acknowledged the duty of the court not to interfere and substitute its views for that of an arbitral tribunal as mandated under law and jurisprudence. Further, it has agreed that an award may only be set aside if there exists one of the grounds mentioned in ACA 1996, s 34, which entails that even an erroneous conclusion of a tribunal shall stand the scrutiny of a court unless there exists an impossibility of its existence.

In line with the aforementioned position of law, the Supreme Court here concluded that the interpretation of the tribunal was impossible and therefore ought to be set aside. However, the Supreme Court reached this conclusion of an 'impossible interpretation' on the basis of certain factual assumptions, such as (a) the contract was based on a fixed rate and (b) the appellant would have taken into consideration price fluctuations before bidding for the contract. Further, the Court also stated that the tribunal should have adopted a literal approach to interpret the contract rather than a wide one.

In earlier decisions of various courts including the Supreme Court, it has been discussed how courts should not make these factual assumptions and impose its legal wisdom, while deciding whether to set aside an arbitral award. If it can be proved that a tribunal has failed to consider a factual consideration or contention which had been relied upon by the parties then the court can deliberate upon that aspect of non-consideration of a fact and apply it to the ultimate outcome/award on the basis of materiality.

From the stand point of a correct evaluation of the contract and obligations of the parties thereto, the Supreme Court might have highlighted correct lapses in the award passed by the tribunal. However, as per ACA 1996, s 34, these lapses should not result in a perversity liable to set aside the award.

Court details

- Court: Supreme Court of India
- Judges: Hon Justices NV Ramana, Mohan M Shantanagoudar, and Ajay Rastogi
- Date: 11 May 2020