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CASE COMMENT ON OIL AND NATURAL GAS COMPANY V SAW PIPES

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ABSTRACT

The case of Oil and Natural Gas Company v. Saw Pipes represents a pivotal moment in the legal landscape of contractual disputes, particularly within the realm of commercial transactions and arbitration law. This abstract delves into the intricacies of the case, analyzing its implications and the broader legal principles it elucidates. The dispute between Oil and Natural Gas Company (ONGC) and Saw Pipes revolves around contractual obligations and the interpretation of force majeure clauses in the context of unforeseeable events. ONGC, a prominent player in the oil and gas industry, entered into a contract with Saw Pipes for the supply of pipes essential to its operations. However, due to a force majeure event, Saw Pipes encountered delays in fulfilling its contractual obligations, prompting ONGC to terminate the contract and claim damages. The case raises fundamental questions regarding the interpretation of force majeure clauses and the extent of parties' obligations in the face of unforeseeable circumstances. The court's analysis delves into the contractual language, examining the intent of the parties and the scope of force majeure events contemplated within the agreement. Furthermore, the judgment sheds light on the principles of frustration of contract and the doctrine of impracticability, elucidating the circumstances under which contractual obligations may be excused due to external factors beyond the control of the parties.

Keywords: *ONGC, Saw Pipes, Arbitration and Conciliation Act, High Court, Contract.*

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INTRODUCTION

The present case illustrates the point of controversy wherein the arbitral award was rejected against the appellant Oil and Natural Gas Company. There were two paramount of important given light on the issue of section 34 of 'Arbitration and Conciliation Act,1996' and the jurisdiction of the court and patent illegality and also whether actual damage was to be proved to claim for compensation. In this discussion, we will delve deeper into the facts, issues, and implications of this notable legal battle.

FACTS

At the time, Saw Pipes, the respondent, and the Oil and Natural Gas Company (ONGC), the appellant, had an agreement in place for Saw Pipes to provide them with casing pipes measuring 26" and 30" in diameter by November 14, 1996. Saw Pipes is a company that deals in the supply of equipment for offshore oil exploration. Delivery of the casing pipes was delayed in September and October of 1996 due to a strike by European steel plant workers. The respondent provided the necessary raw materials, causing the strike to affect all of Europe as well as Italy, the supplier. Regretfully, they were unable to provide the materials on schedule. Due to this, the respondent was forced to request from the appellant an extension of 45 days from the prearranged date of the order's execution as specified in the contract on December 4, 1996[2]. The appellant, ONGC, agreed to extend the deadline, subject to the respondent's payment of the agreed-upon sum in liquidated damages. The ONCG subtracted the amount for custom duty, sales tax, and freight charges from the payment of $3,04,970.20 and Rs 15,75,557, respectively, and withheld the amount during the payment process. Arbitration was requested because saw pipes contested the deduction. The arbitral tribunal ordered ONGC to present evidence showing loss caused by breach even though it rejected Saw Pipe's argument of force majeure. To put it another way, this meant that when insufficient evidence was presented regarding financial losses incurred from breaches, it was shown that withholding liquidated damages was done so for

[2] (Indian kanoon) <https://indiankanoon.org/doc/919241/> accessed on 10 January 2024

improper reasons. ONGC argued that the award was obviously unlawful. According to the terms of the contract, the contractor will be compensated up to 1% of the total unit price of the order for each week that the project is delayed, or 1% of the total cost of the part that the contractor is not responsible for delivering. A maximum of 10% of the unit's total price may be charged, or 1% of the entire price. Additionally, the parties agreed that the agreed-upon amount of liquidated damages would not take the form of a penalty but rather would be a pre-estimated real amount of losses that may be subtracted from the invoice for payment. The Bombay High Court's Single Judge Division Bench dismissed the challenge. An arbitration ruling that demanded ONGC return $3,04,970.20 and Rs 15.76 lakhs was overturned by the Supreme Court. Liquidated damages were determined by the business.

ISSUES RAISED

1. Does the Arbitration and Conciliation Act of 1996's Section 34 grant the Supreme Court the authority to consider the current appeal?

2. Is it possible to have the award overturned if the tribunal did not adhere to the guidelines provided by the 1996 Arbitration and Conciliation Act?

3. Does the decision contravene provisions of significant law and can be set aside under Section 34 of the Arbitration and Conciliation Act, 1996 on the grounds of "public policy"?

JUDGMENT

The Hon'ble Court after the extensive discussion the court's jurisdiction to set aside an award under Section 34 of the Arbitration and Conciliation Act 1996 and the various grounds on which interference was permissible.

After reviewing the time of determining by the court that stipulation for damages is thus penalty awards, it can award due compensation proportional to damage issues proved. Nonetheless, if experts sign an agreement that binds themselves and the other party, they should carefully reconsider every clause that specifies liquidated damages in the event of non-compliance with contractual obligations, particularly with regards to the Complainant. In "{Maula Bux v Union of India", it is established that when a court faces difficulties in estimating compensation, awarding damages serves the purpose of natural justice. In such circumstances, the party claiming dissatisfaction with the fixed amount for each stipulation would bear the burden of proof. In the case under discussion, no such contention was made. In the "Maula Bux case", the plaintiff, Maula Bux, entered into a contract with the Indian government to supply potatoes to the American military headquarters. He then deposited 10,000 rupees as security for the performance of the contract. He entered into another contract with the Government of India to supply poultry eggs and fish to the same place for a year and deposited Rs 8,500 for the fulfillment of the contract.

After the plaintiff repeatedly failed to make regular and full deliveries of the agreed goods, the government terminated the contract and forfeited the amount deposited by the plaintiff, as it was no longer available as collateral in accordance with the terms of the contract. If the plaintiff fails to fulfill his obligations under the contract, the government will rescind his part of the contract.

Considering these facts, the court held that the Government of India could adduce evidence as to the price at which it purchased potatoes, poultry, eggs, and fish if the plaintiff did not supply the quantities "regularly and completely". According to the terms and conditions of the contract, the court held that it will determine separately what happens after the contract ends.

They must provide evidence of the price they had to purchase and any other additional costs incurred in procuring the contracted goods would have been done. However, no such attempt was made. Therefore, the claim for damages was not allowed.

In Maula Bux, the court held that in any case of breach of contract, the person injured by the breach is not required to prove actual loss or damage suffered before making a disposition; The court explicitly held that it was a fact that could be proven.

Courts are empowered to award appropriate compensation in the event of a breach of contract, even if it can be shown that no actual damages have been caused as a result of the breach.

The court also specifically held that if some contracts are breached, it may be impossible for the court to assess compensation for the breach.

In its decision on the forfeiture, the court in Union of India v Rampur Distillery[3] stated that it can interpret the forfeiture clause as either liquidated damages or a penalty, depending on the reasonableness of the amount to be forfeited.

The conclusion at which the Court arrived at was that the Liquidated damages regarded as a fair compensation, while penalties should not be levied. In the event of penalty damages have to be proved. The Courts have reiterated that no compensation will be awarded if the court determines that no loss is likely to occur as a result of the violation.

The court considered that the appellant had rightly deducted liquidated damages from the amount claimed by the defendant and that, in light of the terms of the payment agreement, the appellant would have to prove the damage caused thereto.

The award is thus subject to clear illegality and should be set aside on the ground that the clear legal error falls under public policy considerations.

PATENT ILLEGALITY

Recently, India's policy focuses on the cahoots of business and promotes India as an investment hub. The government made the amendment to the Act to minimize the court's intervention. If an arbitral award is perverse or erroneous in law, the court can set it aside.

The following should be strictly followed:

- Incompetence of the parties, if a party to Contract is an infant or has unsound mind. Section 9 of the Act provides that a guardian can be appointed for an arbitral proceeding
- Invalidity of Arbitration Agreement
- They haven't informed either of the parties about the appointment of arbitrators or the arbitral proceedings
- If the award is a dispute that does not fall within or fails to be covered under the terms of submission agreement
- If the structure of tribunal does not conform to both parties agree what

[3] *Union of India v Rampur Distellery*, AIR 1973, SC 1098

- Arbitration is not possible for this type of dispute.

The Hon'ble Court held that any "violation of a substantive law in force in India or a decision contrary to its terms" would amount to illegality of the patent. It also set standards for reasonable compensation for referral under Section 74 of the Indian Contract Act. The previous interpretation selected a narrow view of public order, which meant more than just breaking the law. The implied broader meaning of the latter can therefore lead to many cases being brought to court challenging minor legal errors in some of these decisions. The lack of definition of the concept of public policy increases the likelihood of its misuse. The court also noted that a subsidy is clearly illegal if the illegality goes to the heart of the matter. Limiting its right to ownership to situations where the agreed contract is contrary to express and clearly defined public policy supported by positive Indian law rather than to the interests of society at large.

ANALYSIS OF SECTION 73 AND 74 OF THE INDIAN CONTRACT ACT[4]

Sections 73 and 74 of the Indian Contract Act, 1872 allow for damages and liquidated damages. Liquidated damages refer to damages that can be awarded by a court based on an actual assessment of the damage caused by the other contracting party's breach in the contract. Liquidated damages are damages that both parties can agree to as punishment for a breach.

First, the prerequisite for such damages is a breach of contract, regardless of its nature. In other words, if the contract between the parties has not been breached, then compensation cannot be claimed.

Second, in order to receive compensation for the damages, the party requesting it must prove that the damage occurred. Practical compensation for injury or damage caused by the breach of contract can be determined according to section 74, which means that the claim is based on damage. On the other hand, as long as it serves as a form of compensation, liquidated damages should be allowed if no proof of actual damages is required. To prove the damage incurred by any party a sufficient amount of damages needs to show the; actual damage suffered. Only in

[4] Sameena Sayyed, 'A Brief Overview of Sec. 73 and 74 of the Contract Act' (*Lawwire*, January2022) <https://lawwire.in/a-brief-overview-of-sec-73-and-74-of-the-contract-act/> accessed on 13 January 2024

those cases where it is not possible to prove the damage or loss, the calculation of damage or loss specified in the contract and the actual preliminary calculation can be given. Therefore, it must be ascertained whether the nature of the liquidated damages clause is in the form of a penalty/deterrence for foreseeable damage caused by the breach of contract.

In particular, this concerns the case of Maula Bux, where the court said that even if it is not proven that the breach caused actual damage, reasonable compensation can still be awarded. On the other hand, it also explicitly stated that no court could assess damages for a breach of any breach of contract. However, if considered as a true estimate, the amount presented by the parties can be read and accepted as acceptable compensation, but not if it is called a bill with a higher penalty. In case of pecuniary damage, the party seeking compensation must prove that he has lost such amount.

PUBLIC POLICY

'Public Policy' has not been defined in the Arbitration and Conciliation Act. The clause of section 34(2)(b) uses the word 'Public Policy of India', it is a robust concept and cannot be put into a restrictive definition. There is a narrower ambit of interpretation and a broader ambit of interpretation. The doctrine of 'public policy' is equivalent to the 'policy of law' the consequences of the decision taken might affect the administration of principles of justice.

THE NARROWER SCOPE OF PUBLIC POLICY[5]

In the landmark case of "Renusagar Power Co Ltd v. General Electric Company",[6] the doctrine of public policy was applied in the essence of private international law. The award's enforcement requirements were challenged because they ran counter to the following:

i. the core principles of Indian law; ii. India's interests; iii. justice or morality;

[5] O.P. Malhotra, 'The scope of public policy under the Arbitration and Conciliation Act, 1996'(*National Law School of India Review,* 2007) <https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1056&context=nlsir> accessed on 15 January 2024.

[6] *Renusagar Power Co Ltd v. General Electric Company* (1994) SCC 644

These were the grounds, aside from breaking Indian law.

THE WIDER AMBIT

According to the Supreme Court, the public interest and the public good must be considered while referring to the "public policy of India" in section 34. The general interest shifts periodically. The parties in this case had the chance to contest the arbitral award in the 1990s on the grounds that it was an incorrect ruling from a legal standpoint. A few people may be protected by the public interest and the laws that have been enacted, but eventually they may be violated. The ruling expanded the definition of public policy to include the idea that an award would be against it if it were "patent illegal." The idea was restricted to the “fundamental policy of Indian Law or the interest of India” in the previous case by the court's decision. It was argued that the award could not be properly applied in the current instance after looking into the foreign case. The administration of justice may suffer from an award that violates the patent legality statutes.

CONCLUSION

The circumstances of the case "Oil and Natural Gas Company v Saw Pipes" make it abundantly evident that there were arguments and conflicts between the two parties about the caliber and timeliness of the pipes. The evidence and arguments presented by both sides were closely scrutinized by the court. Following a careful analysis, the court found that Saw Pipes had delivered inferior pipes that did not adhere to the necessary specifications, in violation of its contractual responsibilities. The Oil and Natural Gas Company was also found to have incurred damages and financial losses as a result of this breach by the court. The court decided in favor of the Oil and Natural Gas Company based on these conclusions. Saw Pipes was found accountable for the contract violation and mandated to make up the lost money to the Oil and Natural Gas Company. This case serves as a reminder of the significance of keeping your end of the bargain and the potential repercussions of breaking it. It emphasizes how important prompt delivery and quality assurance are to business dealings. Overall, the court's decision in “Oil and Natural Gas

Company v Saw Pipes" provides a clear resolution to the dispute and ensures that the party affected by the breach of contract is appropriately compensated.