



Asian Exporters' Chamber *of* Commerce and Industry

# AECCI VIEWPOINT

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EXAMINE THE NOTEWORTHY AND DISTINCTIVE DEVELOPMENTS AND **TRANSFORMATIONS THAT ARE PRESENTLY EXERTING A SUBSTANTIAL INFLUENCE.**

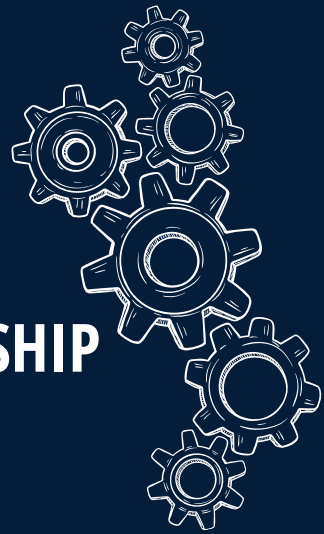
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BY: VINUTH KUMAR( DIGITAL EFFORTS)



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(Recognized by Ministry of Commerce, Govt. of India)

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# INDIA DOMINATES VIETNAM'S FIBRE EXPORTS WITH 32% SHARE

The textile and apparel (T&A) exports constitute about 15% of Vietnam's exports turnover. T&A exports of Vietnam earned US\$ 39.4 bn. in 2019, while growing at a CAGR of 10% from US\$ 27.3 bn. in 2015.

While Vietnam's exports have seen a stable growth, the imports of T&A commodities have also grown at a significant pace. Vietnam's T&A imports in 2015 were worth US\$ 15.4 bn, which has grown since at a CAGR of 8% to reach US\$ 20.8 bn in 2019. This signifies that Vietnam mostly relies on imports for conversation of textile and apparel domestically.

These large imports of textile raw materials are attractive for textile producing countries like India and China.

China is the largest supplier of T&A products to Vietnam with exports worth US\$ 10.7 bn, accounting

for 51% of Vietnam's total T&A imports. South Korea and Taiwan are the second and the third largest suppliers with a share of 13% and 11%, respectively.

Man-made (MMF) textiles dominates the T&A imports of Vietnam's.



# OPINION COLOUMN

## TO WHAT EXTENT CAN COURT INTERFERE WITH ARBITRAL AWARD UNDER SECTION 34 OF THE ARBITRATION AND CONCILIATION ACT, 1996? CALCUTTA HIGH COURT DETERMINES.

Calcutta High Court used the analogy of a doctor removing a poisoned leg to prevent the spread of poison throughout the body to illustrate the concept of severability in arbitral awards



### CALCUTTA HIGH COURT.

While deciding an application for setting aside of an arbitral award, a single-judge bench comprising of Shekhar B. Saraf,\* J., upheld the arbitral award while setting aside the Arbitral Tribunal's findings on specific issues due to patent illegality. The Court emphasised on the need for careful consideration of claims and adherence to contract terms. The Court clarified the standards for setting aside arbitral awards under the 1996 Act and reinforces the principle that arbitral tribunals are the ultimate authorities within the scope of the contract's explicit terms. The Court also encouraged reforms to reduce judicial interference in arbitration and promote efficiency.

### FACTUAL MATRIX

In the instant matter, the petitioner, Damodar Valley Corporation, filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 (the Act) against an arbitral award dated 21-12-2019.

The petitioner is a statutory corporation established under the Damodar Valley Corporation Act, 1948 and the respondent, Reliance Infrastructure Limited, is a company under the Companies Act, 2013. On 18-05-2007, the petitioner issued a Notice Inviting Tender (NIT) as part of an international competitive bidding process for the construction of Phase – 1 of a power plant near Raghunathpur, West Bengal. After pre-bid meetings with various bidders, the respondent was the sole surviving bidder and submitted a composite proposal for the project. The petitioner accepted the bid and issued a Letter of Acceptance on 11-12-2007, with a total contract price of Rs. 2271.70 crores and a Euro component of ₹,271.895 million. The project's commencement date was set for 14-12-2007 and 3

### COURT'S ASSESSMENT

#### Scope of interference under Section 34 of the Act.

The Court determined that the scope of interference under Section 34 of the Act is exceptionally narrow, and his approach aligns with the legislative intent, which aims to minimize judicial intervention in arbitral awards. It was observed that the courts are expected to exercise their powers under this section as a matter of exception. An arbitral award can only be set aside if it is so perverse that it would shock the conscience of the court or if it is fundamentally erroneous, such that no trained legal mind could have arrived at such a decision. The Court cited series of judgments where the Supreme Court emphasised that there are extremely limited grounds on which courts may exercise their powers under Section 34 of the Act. The Court stated that the court does not function as an appellate forum when reviewing awards under Section 34; rather, it acts as a mere watchdog to ensure that there is no serious infirmity or perversity in the arbitral award.

#### Patent Illegality – 'On the face of the Award'.

The Court stated that the courts, while generally not embarking on contract interpretation themselves, are empowered under Section 34 of the Act to ensure that arbitrators do not exceed the explicit understanding between the parties contained in the contract. An arbitral tribunal cannot go beyond the contract's provisions, as it cannot act against its creator. The Court observed that though the scope of interference with arbitral awards is limited, but a fundamental shift has occurred since *Allen Berry & Co. (P) Ltd. v. Union of India*.

Letters of Intent were issued to the respondent for supply of equipment and services.

On 06-12-2008, three detailed contracts were executed between the petitioner and the respondent for the power plant. The completion dates for the two units were specified, but both units were not completed within the stipulated period, resulting in the granting of extensions by the petitioner. Unit No. 1 was handed over on 15-05-2015, and Unit No. 2 was handed over on 23-02-2016.

The respondent requested payment of outstanding dues and the return of bank guarantees. The petitioner, in response, sought to impose Liquidated Damages, attributing a delay of 468 days in the completion of Unit No. 2.

The respondent, in a letter dated 03-04-2017, requested the petitioner to nominate an adjudicator. An adjudicator was appointed, but the process did not resolve the disputes. Subsequently, in a letter dated 15-06-2017, the respondent invoked arbitration. The arbitral tribunal was constituted, and the parties were informed of the constitution on 05-08-2017. Various issues were framed by the arbitral tribunal, and specific issues were not pressed or argued by both parties. On 21-12-2019, the arbitral tribunal issued an award in favor of the respondent, awarding specific sums with interest. The petitioner was allowed to deduct Rs, 6,00,00,000/- from the amount payable to the respondent. The petitioner filed the present application under Section 34 of the Act seeking to set aside the entire arbitral award dated 21-12-2019, on the grounds of being aggrieved by the award

#### MOOT POINTS.

- The scope of judicial interference under Section 34 of the Act concerning arbitral awards.
- The principles governing the interpretation of contractual terms and the limits of arbitral tribunal authority.
- The requirement for arbitral tribunals to provide proper, intelligible, and adequate reasons for their decisions. The circumstances under which courts can set aside arbitral awards, focusing on the presence of patent illegality.
- The evolution of the law regarding judicial examination of arbitral awards, particularly in contrast to the previous 1940 Act.
- The ability of courts to consider the entire record of arbitral proceedings, including documents not explicitly mentioned in the award.

#### COURTS DECISION

The Court partially upheld the impugned arbitral award dated 21-12-2019. However, findings related to issues 17, 18, 21, and 27 are set aside due to patent illegality and these issues are severed from the rest of the award. The case is disposed of with no cost orders.

#### 1940 Act and 1996 Act.

The Court observed that the use of the term “patent illegality appearing on the face of the award” is common in both the 1940 Act and the 1996 Act. The principle of interpreting the same words in a later statute to convey a similar meaning as in the earlier statute is acknowledged. However, the interpretation of these words has evolved over time based on court decisions. The Court observed that under the 1996 Act, the addition of Section 28(3) and Section 31(3) expanded the scope of examination available to the courts when assessing the challenge to an arbitral award. Courts can now consider documents that, while not incorporated into the award, were part of the record of arbitral proceedings.

#### Severance of Arbitral Awards.

The Court affirmed that under Section 34 of the Act, the courts have the power to sever and partially set aside arbitral awards and this principle of severability is essential to prevent the impact of infirmities in one part of the award from affecting the entire award. The Court referenced *R.S. Jiwani v. Ircon International Ltd.*, 2009 SCC OnLine Bom 2021, to provide insight into the issue of severability in arbitral awards.

The Court observed that when the severed or perverse part of an arbitral award is not connected to the legally sound portion, courts are empowered to set aside only the portion suffering from infirmity. The Court encouraged this practice, highlighting the benefits of separating the valid and problematic aspects of an award, as opposed to setting aside the entire award.

#### Other issues.

The Court observed that awarding significant monetary sums requires evidence and reliable certifications and in the absence of such evidence, certifications lack evidentiary value. It was stated that a party claiming damages should not raise irrelevant or nonessential claims. It was further observed that claims for damages without specific provisions in the contract for quantification are permissible, and Arbitral Tribunals can use legally sound methods to determine the damages..



Asian Exporters'  
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**10**  
NOV 2023

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AND  
LOGISTICS

AGRICULTURE  
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PRODUCTS AND  
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10:00AM-4.00PM

**25**  
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# INDIA'S RUSSIA OIL BUYING SPREE GOES ON EVEN AS PRICES RISE



Indian buyers, key consumers of cheap Urals crude since the invasion of Ukraine, have no plans to turn away from Moscow even as the discount to global benchmarks narrows, arguing Russian barrels remain among their most affordable options.

India's consumption of Russian crude has soared since last year, with the country becoming a leading supplier, ousting Saudi Arabia and Iraq from the top spots. Much of that has been driven by price — and by Prime Minister Narendra Modi's efforts to control energy inflation — but that dynamic is changing. Earlier this year, the gap between Russian crude and the Dubai benchmark stood at around \$20 on a delivered basis. Today, the discounts offered for Urals cargoes are closer to \$8.


Pricing data from Argus Media Ltd. puts Urals crude delivered to the west coast of India close to \$83 a barrel on Aug. 10, compared with about \$70 a month earlier.

Still, officials at four major refiners in India said they would continue purchasing Russia's flagship Urals blend, arguing similar-quality barrels from the Middle East remain significantly more expensive.



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- In the period from January to May 2023, India was the largest market for Vietnam's fibre exports, accounting for 32.20 per cent of total shipments.
- India imported fibre worth \$36.387 million from Vietnam, who was the eighth largest source.
- The two countries are looking to expand trade in textiles, with significant trade volumes in raw fibre, fabric, and yarn.
- The introduction of these new services aligns with the National Strategy for Transport and Logistics Services, which aims to further cement Saudi Arabia's position as an international logistics center and a hub connecting three continents.
- Even increased trading headaches and scrutiny as Urals last month broke through the \$60-a-barrel set by Western nations to curb Moscow's revenue haven't put off Indian processors

# PORTS AUTHORITY ADDS 20 NEW SHIPPING SERVICES IN H1

In a bid to boost supply chains and consolidate its position as a global logistics center, Saudi Ports Authority added 20 new shipping services in the first half of 2023.

Also referred to as Mawani, the authority added these new shipping services across Jeddah Islamic Port, King Abdulaziz Port in Dammam and Jubail Commercial Port to link the Kingdom with other global ports while facilitating trade and export, the Saudi Press Agency reported.

The introduction of these new services aligns with the National Strategy for Transport and Logistics Services, which aims to further cement Saudi Arabia's position as an international logistics center and a hub

connecting three continents.

In terms of operational performance, the first half of 2023 witnessed an increase in the number of standard containers handled at the authority's ports by 15.12 percent to reach 4.08 million, compared to 3.55 million in the same period last year. The number of transshipment containers also rose by 12.19 percent to reach 1.56 million compared to 1.39 million in the corresponding period of the previous year.

The ports also recorded 10.8 million tons of foodstuff, reflecting an increase of 9.82 percent compared to the 9.86 million tons in the same period a year ago.





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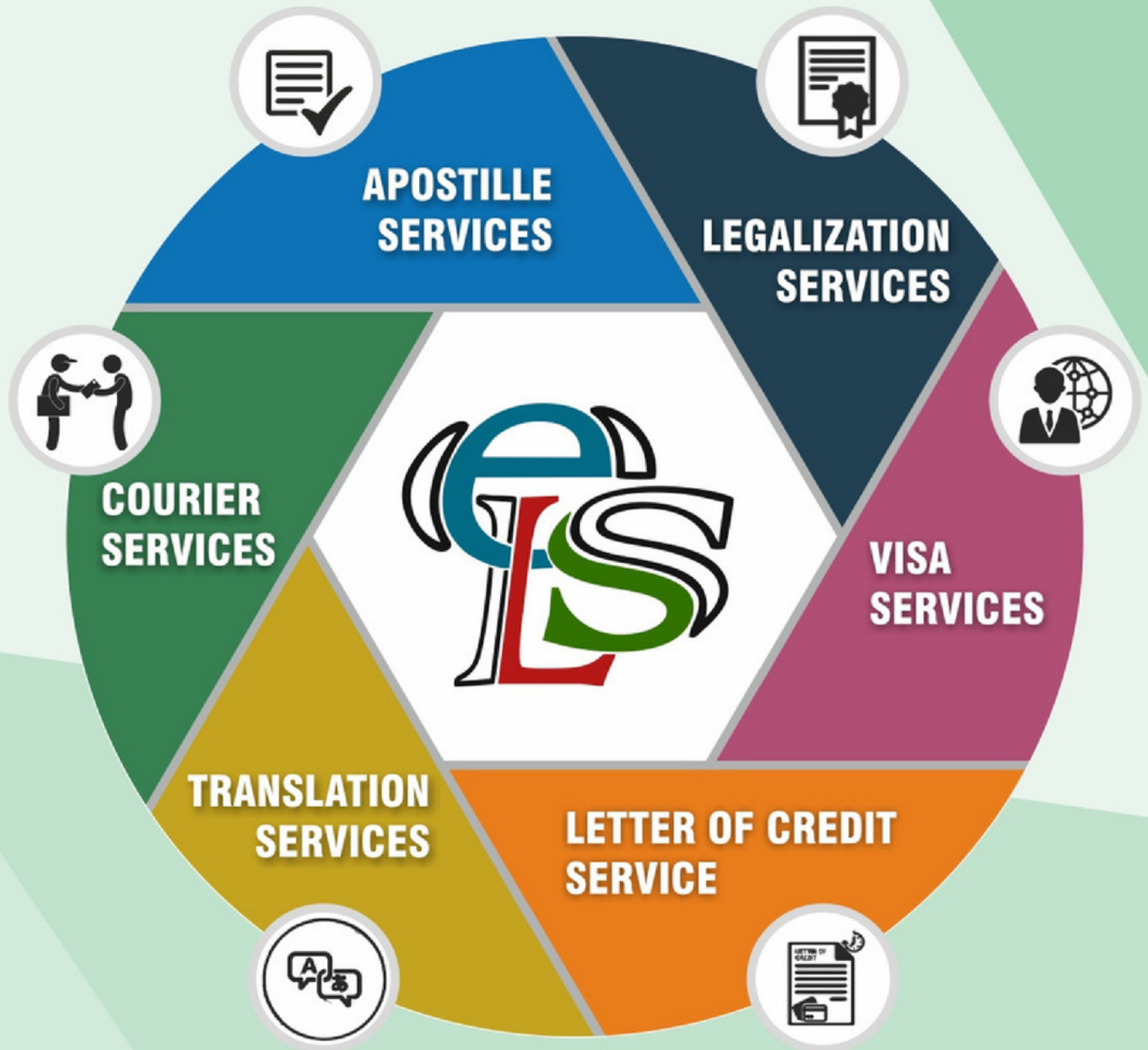
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