

Principle of business efficacy cannot be invoked by the Arbitral Tribunal to rewrite the express terms of a contract or to imply a term that contradicts the agreed-upon structure, such as converting a deliberately chosen fixed charge into a variable one

The **Delhi High Court** in the case of **JSW Ispat Steel Limited vs Gas Authority of India [FAO(OS)(COMM) 4/2024]** dated **March 09, 2026**, has ruled that the principle of business efficacy cannot be invoked to rewrite the express terms of a contract or to imply a term that contradicts the agreed-upon structure, such as converting a deliberately chosen fixed charge into a variable one. An interpretation that does so is not a 'plausible view' but an 'impossible one' that amounts to perversity and is a ground for setting aside the award.

The Court clarified that an arbitral award is patently illegal and liable to be set aside if the Arbitral Tribunal fails to consider a vital contractual clause imposing a time limit for disputes and a waiver of rights, that goes to the root of the dispute, affecting jurisdiction, limitation, and the maintainability of the claims.

The Court also asserted that an arbitral award must contain intelligible reasoning that discloses the evidentiary path to its conclusions, especially on contested issues like limitation. Merely stating that one party's contention is 'correct' without addressing the opponent's arguments does not meet the standard of a reasoned award under Section 31(3) of the Arbitration and Conciliation Act, 1996, and can be a ground for setting aside the award for patent illegality.

Hence, an award that contains irreconcilable internal contradictions, such as finding that an obligation to pay is unaffected by an event but simultaneously ordering a refund based on that same event, is perverse, flawed, and legally untenable, added the Court.

The Court agreed with the Single Judge that the tribunal's failure to consider the amended Article 12.03 was a fatal flaw. It held that this clause was a vital contractual stipulation going to the root of the matter, as it directly affected the maintainability of the claim, limitation, and the tribunal's jurisdiction.

The Court also concurred with the Single Judge that the tribunal's reasoning on limitation was inadequate and legally unsound, as the award failed to provide any intelligible reasoning for rejecting GAIL's contentions on limitation and merely stated that JSW's argument was correct.

The Court however, disagreed with the Single Judge's finding that the tribunal's view on merits was plausible, and held that the tribunal's application of the 'business efficacy' principle was a misapplication, and the contract was deliberately amended to a fixed charge, and implying a term to make it variable amounted to rewriting the contract.

Further, the Court found the award to be internally contradictory, as the Tribunal first held that the force majeure event did not affect the obligation to pay fixed charges, but then directed a proportionate reduction of those very charges. This inconsistency was held to be a flaw that rendered the award untenable.