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Bombay High Court upholds sanctity of arbitral award on *Fédération Internationale Des Ingénieurs-Conseils* frameworks in infrastructure contracts: pre-bid adoption *vis-à-vis* tender conditions and limits of Section 34 review

The Hon'ble Bombay High Court ("**Bombay HC**"), in *Pratibha Industries Limited (in liquidation) vs. Navi Mumbai Municipal Corporation*¹, has delivered an important ruling in the context of infrastructure arbitrations involving composite contractual structures and *Fédération Internationale Des Ingénieurs-Conseils* ("**FIDIC**") frameworks.

The Bombay HC, in this case, has reiterated that where an arbitral tribunal adopts a commercially reasonable interpretation of an infrastructure contract, particularly one shaped through pre-bid contractual modifications and escrow structuring, courts exercising jurisdiction under Sections 34² and 37³ of the Arbitration and Conciliation Act, 1996 ("**Arbitration Act**") cannot substitute their own interpretation merely because another view appears preferable.

The judgment is particularly significant for infrastructure projects because it recognises that pre-bid adoption of FIDIC conditions and escrow mechanisms can materially alter risk allocation under standard tender documents, and that such commercial structuring must be respected at the stage of judicial review.

Brief facts

Navi Mumbai Municipal Corporation ("**NMMC**") awarded a contract dated April 4, 2005 ("**Contract**") to Pratibha Industries Limited (in liquidation) ("**Pratibha Industries**") for laying pipelines under a deferred payment scheme ("**Project**"). The Project cost was approximately INR 200,00,00,000 (Indian Rupees two hundred crore) and required NMMC to provide a right of way over a 30 (thirty) kilometre stretch. All payments were to be released only upon completion of the milestones, thereby requiring Pratibha Industries to independently achieve financial closure and sustain cash flows until completion.

The Project was expected to be completed within 1 (one) year. However, the last parcel of land required for right of way was made available by NMMC to Pratibha Industries nearly 2 (two) years after the commencement of the Project. Pratibha Industries raised claims towards increased financing costs, cost escalation during the extended period, cost

¹ 2026 SCC OnLine Bom 842 (decided on February 06, 2026)

² In terms of Section 34 of the Arbitration Act, an arbitral award may be set aside only on the limited statutory grounds specified therein, and such jurisdiction does not permit re-appreciation of evidence or substitution of the arbitral tribunal's interpretation on merits.

³ In terms of Section 37 of the Arbitration Act, an appeal lies only from specified orders, including orders setting aside or refusing to set aside an arbitral award under Section 34, and the appellate court's jurisdiction remains confined to examining whether the Section 34 court acted within the limits of that provision; a merits review of the arbitral award is not contemplated.

of extended stay and other heads. Dispute having arisen between the parties in relation to the aforesaid claims, Pratibha Industries invoked arbitration under the contract.

The central dispute before the arbitral tribunal concerned a direct conflict between 2 (two) sets of contractual provisions. Under the tender terms of NMMC, specifically General Conditions of Contract (“GCC”), delay in provision of right of way entitled the contractor to a time extension only, with the GCC specifically stipulating that no compensation could be granted for delay in obtaining sanctions. Under the FIDIC conditions, which had been adopted at the pre-bid stage at the instance of the bidders to make the Project bankable, delay in provision of right of way by the employer entitled the contractor to both a time extension and monetary compensation. The Arbitral Tribunal resolved this conflict in favour of the FIDIC conditions, holding that they prevailed over the tender terms wherever there was an inconsistency.

The learned sole arbitrator partly allowed the claims and awarded an aggregate sum of INR 26,29,00,000 (Indian Rupees twenty-six crore twenty-nine lakh) with interest at 18% per annum from the date of the award until realisation (“**Arbitral Award**”). The arbitral tribunal held that NMMC was responsible for providing right of way at its own cost and time, and that in the event of delay, Pratibha Industries was entitled to both time extension and cost compensation. NMMC challenged the Arbitral Award under Section 34 of the Arbitration Act before the Principal Judge in Thane (the “**Principal Judge Court**”). The Principal Judge Court set aside the Arbitral Award, principally on the ground that the arbitral tribunal had erred in its interpretation of the priority between the tender documentation, the GCC, the special conditions, the FIDIC conditions and the escrow arrangement. Pratibha Industries preferred an appeal under Section 37 of the Arbitration Act before the Bombay HC.

Issues

The Bombay HC identified the following 2 (two) principal and key issues for consideration:

1. whether the Principal Judge Court exceeded the permissible scope of review under Section 34 of the Arbitration Act by reinterpreting the Contract and reappreciating the evidence on record, in circumstances where the arbitral tribunal had returned reasonable interpretation; and
2. whether the arbitral tribunal erred in its interpretation of the interplay between the FIDIC conditions having been adopted through pre-bid process, and GCC (which formed part of the tender terms) and the priority of documents in case of a conflict?

Analysis and Findings of the Bombay HC

Whether the Principal Judge Court exceeded the permissible scope of review under Section 34 of the Arbitration Act by reinterpreting the Contract and reappreciating the evidence on record, in circumstances where the arbitral tribunal had returned a plausible interpretation.

The scope of review of the Principal Judge Court is well-settled and has been laid down in multiple judgments of the Supreme Court including *Dyna Technologies Private Limited vs. Crompton Greaves Limited*⁴, *Associate Builders vs. Delhi Development Authority*⁵, *Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India*⁶, *Konkan Railway vs. Chenab Bridge Project Undertaking*⁷, and *OPG Power vs. Enoxio*⁸. The Bombay HC reiterated that the jurisdiction of a court under Section 34 of the Arbitration Act is narrowly circumscribed and does not permit a re-appreciation of evidence or a fresh interpretation of contractual terms merely because another view may appear more appropriate. An arbitral award may be set aside only within the strict statutory parameters prescribed therein

⁴ (2019) 20 SCC 1 (decided on December 18, 2019)

⁵ (2015) 3 SCC 49; (2015) 2 SCC (Civ) 204 (decided on November 25, 2014)

⁶ (2019) 15 SCC 131; (2020) 2 SCC (Civ) 213 (decided on May 08, 2019)

⁷ 2023 INSC 742 (decided on August 17, 2023)

⁸ (2025) 2 SCC 417 (decided on September 20, 2024)

and where the arbitrator's view is reasonable, the court must refrain from substituting its own interpretation for that of the arbitral tribunal. Interference is warranted only where the award suffers from perversity going to the root of the matter or otherwise attracts the grounds contemplated under the said provision. As stated in the case of *Dyna Technologies Private Limited vs. Crompton Greaves Limited*, Section 34 of the Arbitration Act cannot be equated with a normal appellate jurisdiction, and instead the mandate is to respect the finality of the arbitral award and party autonomy. This understanding has been consistently extended to proceedings under Section 37 of the Arbitration Act as well. The decisions relied upon by the Bombay HC form part of a consistent line of authority confirming that review under Sections 34 and 37 of the Arbitration Act is limited and supervisory in nature, and no subsequent judgment has taken a different approach.

The Bombay HC held unequivocally that the Principal Judge Court had exceeded the permissible scope of review. NMMC's defence was entirely based on interpretation of evidence and finding fault with the Arbitral Tribunal's interpretation, which is precisely what Section 34 does not permit. The Principal Judge Court, having recognised the ambiguity and conflict between the FIDIC conditions and the tender terms, proceeded to delve deep into the merits to determine the more appropriate interpretation. In doing so, the Principal Judge Court reinterpreted the order of precedence clauses and accorded primacy to the tender terms over the FIDIC conditions. The Bombay HC held that such an exercise amounted to replacing one plausible contractual interpretation with another, a course of action that falls outside the limited supervisory jurisdiction contemplated under Section 34 of the Arbitration Act.

The Bombay HC also referred to Section 28(3)⁹ of the Arbitration Act, which requires that arbitral tribunals decide disputes in accordance with the terms of a contract while taking into account trade usages applicable to the transaction. The Arbitral Tribunal considered the manner in which right of way is facilitated in such projects and the financial consequences of delay under a deferred payment structure. The Bombay HC held that such consideration did not amount to rewriting the Contract and could not be termed perverse.

Whether the arbitral tribunal erred in its interpretation of the interplay between the FIDIC conditions having been adopted through pre-bid process, and GCC (which formed part of the tender terms) and the priority of documents in case of a conflict.

Pratibha Industries submitted that the arbitral tribunal had correctly construed the contractual framework as a composite arrangement comprising both the tender terms and the FIDIC conditions, with the FIDIC conditions prevailing in the event of any inconsistency. According to Pratibha Industries, this interpretation was not only plausible but commercially sound, particularly since NMMC had, at the pre-bid stage, expressly agreed to adopt the FIDIC framework with a view to enhancing the bankability of the Project. NMMC countered that the arbitral tribunal had ignored the priority and relevance of the constituent documents, applying incorrect parameters of assigning priorities to multiple documents constituting the contract. NMMC specifically relied upon the GCC, which stipulated that no compensation could be granted for delay in obtaining sanctions, and contended that the obligation to secure right of way lay entirely with Pratibha Industries.

Addressing this issue, the Bombay HC examined the contractual matrix considering the pre-bid developments. The record reflects that during the pre-bid stage, bidders raised concerns regarding financial uncertainty under the deferred payment model as well as potential delays in the provision of right of way. In response to these concerns, NMMC agreed to adopt the FIDIC conditions and to introduce an escrow mechanism prior to execution of the Contract, which formed an integral part of the contract-forming process. The arbitral tribunal accordingly treated the Contract as comprising the tender documentation, GCC, special conditions, FIDIC conditions and the escrow arrangement, as a composite whole. On the order of precedence, the GCC placed the tender notice and bidder instructions at item 3 of Clause 3(e), special conditions at item 4, and the GCC itself at item 5. Since the decision to adopt the FIDIC conditions was taken prior to award and in modification of the tender terms themselves, the Bombay HC held it was entirely

⁹ In terms of Section 28(3) of the Arbitration Act, an arbitral tribunal is required to decide in accordance with the terms of the contract while taking into account trade usages applicable to the transaction.

plausible for the arbitral tribunal to treat the FIDIC conditions as forming part of the tender notice and instructions, placing them higher in the order of precedence than both the special conditions and the GCC.

Relying on *Nabha Power Limited vs. Punjab SPCL*¹⁰, the Bombay HC reiterated that where multiple instruments constitute a composite contractual framework, they must be construed harmoniously so as to give workable effect to the transaction. The principle of business efficacy does not permit rewriting express terms but requires that the instruments be read together. The interpretation adopted by the Arbitral Tribunal, which read the tender terms, FIDIC conditions and escrow arrangement as part of a single framework, was consistent with this principle.

This approach is consistent with established FIDIC jurisprudence. In *Arabian Jacking Enterprises for Contracting and Trading Company vs. Municipal Corporation of Greater Mumbai*¹¹, the Bombay HC noted that the contract was drawn from a FIDIC template with Conditions of Particular Application (“COPA”) and held that a Section 34 court cannot displace an arbitral interpretation merely because another view is possible, nor permit a ‘wholesale rewriting of the contract’ through post-dispute reinterpretation. Similarly, in *National Highways Authority of India vs. JSC Centrodorstroy*¹², the Supreme Court recorded that the parties had adopted the FIDIC form with COPA and reaffirmed that construction of such contractual terms lies primarily within the arbitral domain. The reasoning in the present case therefore accords with this established position that once FIDIC conditions form part of the contractual structure, their interpretation by the arbitral tribunal is entitled to judicial deference.

The Bombay HC accordingly concluded that the arbitral tribunal's interpretation was a reasoned and harmonious reading of the contractual record, that interference under Section 34 was unsustainable, and that the Arbitral Award was restored.

Conclusion

The Bombay HC's ruling decisively affirms that where FIDIC conditions are consciously adopted at the pre-bid stage, particularly to address financial uncertainty and ensure project bankability, they become an integral and governing part of the contractual framework. In such circumstances, if a conflict arises between the original tender conditions and the FIDIC provisions, it is plausible for an arbitral tribunal to hold that the FIDIC framework prevails in the field of inconsistency.

The judgment further clarifies that where infrastructure contracts are structured through a composite framework comprising tender documentation, pre-bid clarifications, and the consensual adoption of FIDIC conditions, the resulting arrangement must be interpreted as an integrated whole.

Equally, the judgment reinforces the narrow and supervisory scope of interference under Sections 34 and 37 of the Arbitration Act. Where an arbitral tribunal adopts a commercially coherent and plausible interpretation of a composite infrastructure contract, courts cannot substitute their own reading merely because another view appears preferable. By restoring the arbitral award, the Court reaffirms both the sanctity of FIDIC-based risk allocation in Indian infrastructure contracts and the principle that judicial review in arbitration is supervisory in character, and not appellate.

From a practical standpoint, the judgment carries important implications. Contractors operating under deferred payment infrastructure models may take comfort that where FIDIC has been consciously incorporated to address funding risk and right-of-way uncertainty, arbitral recognition of FIDIC-based entitlements is likely to receive judicial deference. Employers, conversely, must appreciate that pre-bid concessions, especially those aimed at enhancing bankability, carry binding consequences and may recalibrate contractual priority in the event of conflict. Where FIDIC conditions are adopted to stabilise risk and ensure viability, they are not ornamental; they may legitimately govern in the field of conflict when so interpreted by the arbitral tribunal.

¹⁰ (2018) 11 SCC 508; (2018) 5 SCC (Civ) 1 (decided on October 9, 2023)

¹¹ 2022 SCC OnLine Bom 1728 (decided August 3, 2022)

¹² (2016) 12 SCC 592 (decided on April 18, 2016)

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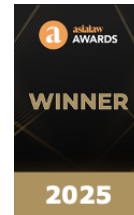
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