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SC backs govt stand, upholds curbs on arbitrators' fees

INDU BHAN
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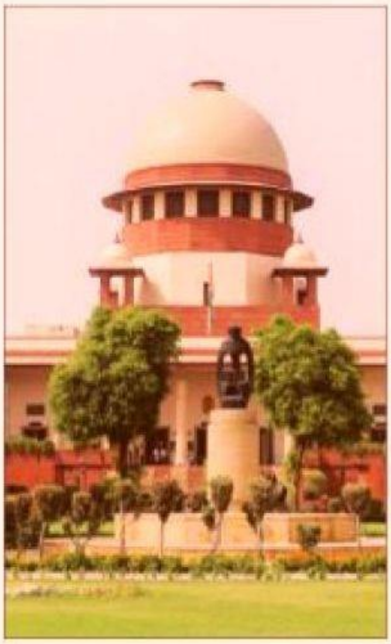
THE SUPREME COURT on Tuesday held that arbitrators do not have the power to unilaterally determine their own fees, as it violates the principles of party autonomy. The ruling will tantamount to putting a cap on fees paid to arbitrators.

The ceiling of ₹30 lakh is applicable to each individual arbitrator, and not the arbitral tribunal as a whole, where it consists of three or more arbitrators, the apex court said, adding that a sole arbitrator shall be paid 25% over and above this amount, in accordance with the Fourth Schedule of the Arbitration and Conciliation Act, 1996.

Upholding the government's stand that under the Act, the upper limit of what an arbitrator can charge is ₹30 lakh per individual if the quantum of dispute is more than ₹20 crore, a three-judge bench led by Justice DY Chandrachud said that a unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition of in rem suam decisions, i.e., the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration.



The Supreme Court said that arbitrators do not have the power to unilaterally determine their own fees

However, it said that the arbitral tribunal has the discretion to apportion the costs (including arbitrators' fee and expenses) between the parties in terms of Section 31(8) and Section 31A of the Act, and also demand a deposit (advance on costs) in accordance with Section 38. If, while fixing costs or deposits, the arbitral tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators.

The apex court further ruled that arbitrators in a case, unless it is an international arbitration case, cannot determine their fee without consent of the parties involved. The apex court bench, also comprising Justice Sanjiv Khanna and Justice Surya Kant, was hearing a petition by Oil and Natural Gas Corp (ONGC) seeking relief against an arbitration panel which had raised its fee midway.

The state-owned oil exploration company had hired infrastructure company Afcons Gunanusa to construct an ICP-R platform in Arabian Sea, in Mumbai High, in 2009. An arbitration panel was formed after a dispute arose between the parties in 2015. Even though Afcons had agreed to the revised fee, ONGC had declined to pay above the limit set in the 1996 Act.

The SC, however, allowed ONGC and Afcons to reconstitute a fresh arbitral tribunal.

Arbitrators don't have power to unilaterally issue binding orders determining their own fees: SC

OUR CORRESPONDENT

NEW DELHI: The Supreme Court on Tuesday ruled arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees for adjudicating disputes.

The top court said the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration and unilateral determination of fees violates the principles of party autonomy and the doctrine of prohibition. Exercising plenary powers under Article 142 of the Constitution, the court directed adoption of a slew of guidelines for the conduct of ad hoc arbitrations in India.

A bench of Justices DY Chandrachud, Surya Kant and Sanjiv Khanna passed a verdict on a batch of pleas including that of the Oil and Natural Gas Corporation Ltd on the issue of fixation of fees by the arbitrators for themselves while adjudicating a dispute. The bench said, "Arbitrators do not have the power to unilaterally issue binding and enforceable orders determining their own fees. A unilateral determination of fees violates the principles of party autonomy and the doctrine of the prohibition in rem suam decisions, i.e., the arbitrators cannot be a judge of their own private claim against the parties regarding their remuneration".

It, however, said an arbitral tribunal has the discretion to apportion the costs (including arbitrators' fee and expenses) between the parties in terms of Section 31(8) and Section 31A of the Arbitration Act and also demand a deposit (advance on costs) in accordance with Section 38 of the Arbitration Act.

"If while fixing costs or deposits, the arbitral tribunal makes any finding relating to arbitrators' fees (in the absence of an agreement between the parties and arbitrators), it cannot be enforced in favour of the arbitrators," the bench said.

It added that the arbitral tribunal can only exercise a lien over the delivery of arbitral award if the payment to it remains outstanding under Section 39(1) and the party can approach the court to review the fees demanded by the arbitrators if it believes the fees are unreasonable under Section 39(2) of Act. The bench said this judgment holds that the fees of the arbitrators must be fixed at the inception to avoid unnecessary litigation and conflicts between the parties and the arbitrators at a later stage.

It clarified that the term "sum in dispute" in the Fourth Schedule of the Arbitration Act refers to the sum in dispute in a claim and counterclaim separately, and not cumulatively.

"Consequently, arbitrators shall be entitled to charge a separate fee for the claim and the counterclaim in an ad hoc arbitration proceeding, and the fee ceiling contained in the Fourth Schedule will separately apply to both, when the fee structure of the Fourth schedule has been made applicable to the ad hoc arbitration", it said.

HPCL holds 70 AGM meet: The 70th Annual General Meeting of Hindustan Petroleum Corporation Limited held virtually on 30 August. During financial year 2021-22, HPCL recorded its highest ever gross sales of Rs 3,72,642 crore which is 38.4% higher than the previous year. In spite of the challenging environment. The company achieved standalone Profit After Tax (PAT) of Rs 6,383 crore.

Centre ends E.S. Ranganathan's term as GAIL director

New Delhi: The government has terminated E.S. Ranganathan as director (marketing) of GAIL (India) Ltd and repatriated him as executive director of the company, the state-owned firm said Tuesday. Ranganathan was in January arrested by the Central Bureau of Investigation (CBI) for allegedly taking bribes to give discounts to some private companies on the petrochemicals products that GAIL sold to them. **PTI**

Govt removes Ranganathan as GAIL director

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Govt removes Ranganathan as GAIL director

THE GOVERNMENT has removed ES Ranganathan as director (marketing) of GAIL (India), the firm said on Tuesday. Ranganathan was in January arrested by the CBI for allegedly taking bribes.

Govt terminates Ranganathan as GAIL director, repatriates him

The government has terminated ES Ranganathan as director (marketing) of GAIL (India) and repatriated him as executive director of the company, the state-owned firm said on Tuesday. Ranganathan was in January arrested by the Central Bureau of Investigation (CBI) for allegedly taking bribes to give discounts to some private companies on the petrochemicals products that GAIL sold to them. Following this, he was placed under suspension. He got bail in March. Ranganathan will be paid three months' salary in lieu of a similar notice period. **PTI**

Oil retreats from biggest gain in six weeks amid supply angst

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Oil moved below $96 a barrel, retreating from its biggest gain in more than a month as traders weighed potential supply disruptions, including the possibility of an OPEC+ output cut.

West Texas Intermediate pared a little less than half of Monday's price jump -- the biggest one-day rise in six weeks -- as Iraq's state oil marketing company said exports would continue uninterrupted despite recent violence. Striking a more bullish note, Goldman Sachs Group Inc. urged investors in a note Monday to "Buy commodities now, worry about the recession later."

Iraq's state oil marketing company said exports would continue uninterrupted. HT

Iraq, the second-biggest OPEC producer, has the capacity to boost oil exports to all destinations and won't refuse any requests for more oil, Alaa Al-Yassiri, the director general of state-run oil marketing company SOMO, said in an interview. Violence has been reported in Baghdad, far from the main production-and-export hub of Basra in the south and other important areas north of the capital. Meanwhile, Libya's state oil company posted output of about 1.2 million barrels a day Monday, despite recent militia clashes.

The Organization of Petroleum Exporting Countries and its allies convene September 5 after a warning from leading member Saudi Arabia that a pact to reduce production was possible as, in Riyadh's view, oil futures didn't reflect fundamentals. Other states in the alliance signaled their support.

CRUDE OIL FUTURES DECLINE ON LOW DEMAND

New Delhi: Crude oil futures on Tuesday declined by 0.31 per cent to ₹7,713 per barrel as participants trimmed their positions on low demand. On the Multi Commodity Exchange, crude oil for September delivery fell by ₹24 or 0.31 per cent to ₹ 7,713 per barrel with a business volume of 7,232 lots. Globally, West Texas Intermediate crude oil was trading 0.05 per cent higher at USD 97.06 per barrel, while Brent crude was down by 0.22 per cent to USD 104.86 per barrel in New York.

The Hindu

Brent slides 5% on fears of a recession

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Brent slides 5% on fears of a recession

AGENCE FRANCE-PRESSE
LONDON

The price of Brent crude, the main international oil contract, fell more than 5% on Tuesday as new Chinese pandemic lockdowns revived recession concerns.

Brent slumped 5.1% to $99.78 per barrel at 1410 GMT, while the price of the main U.S. crude contract, WTI, was down 4.8% at $92.31 per barrel.

New energy conundrum

As countries reconcile their energy supply options with climate change, will they reinvent the fossil fuel-based system or reinvest in it?

SUNITA NARAIN

Advanced countries have promised to move away from fossil fuels to cleaner renewable energy sources, and reinvent their energy systems. But the question is will they do it today, when the rubber has hit the road?

Our energy-guzzling world is on the cusp. It could find a way to leverage the current crisis of energy scarcity and rising prices to reinvent the fossil fuel-based system. Or, it could reinvest in the same carbon-intensive energy system, as people in the already rich countries get increasingly desperate for reliable and affordable power to light and heat their homes this coming winter season. It is an important moment in time; one which makes the actions to combat climate change even more contested and urgent.

Let's be clear that at this moment, the developed countries — I point to them, because these countries have already burnt massive amounts of carbon dioxide for energy to build their economies — are faced with a real energy conundrum.

They have already used up their share of carbon space; emissions from the burning of fossil fuels by these countries, first coal and then natural gas and oil, have brought the world to the edge of the precipice. They have said in their many pronouncements that they would move away from fossil fuels to cleaner renewable energy systems, that they would reinvent their energy systems.

But the question is will they today, when the rubber has hit the road?

Advanced countries have already used their share of carbon space, and shouldn't be allowed further

It is a double-punch moment as well. On the one hand, these countries — from Europe to the United States — are battered because of a fast-heating planet; temperatures have gone through the roof; droughts and extreme weather events are hitting them as well. They know that climate change is a great equaliser and that as emissions stock up in the atmosphere, temperatures will increase and make for an untenable future.

On the other hand, ordinary people across Europe are worried, not just because of climate change but because of the lack of energy to heat their homes this coming winter. In the UK, energy prices have spiralled — some say also because of the lack of regulatory control on the domestic gas production — and it is making for a tense polity.

In the US, gas prices went up in summer, so much so that people travelled less and consumption of fuel dropped for one climate-friendly moment. But now that prices are down and it is business as usual, the question is if the Joe Biden administration will be able to meet its ambitious climate change goals for 2030.

The fact is that this energy disruption has provided the much-needed vault to the beleaguered fossil fuel industry and has given it a new lease of life. Today, governments have changed their tune; they are asking this industry to dig more; to drill more; to supply more. Europe has baptised natural gas, a fossil fuel less polluting than coal but still a major emitter of carbon dioxide, as "clean".

Norway and the UK have rebooted their oil and gas drilling; Germany and others in Europe are looking for new suppliers of liquefied natural gas (LNG) from every distant shore and are building infrastructure to pipe and pump it. The US has passed a climate bill (the Inflation Reduction Act), which will invest in renewable energy but conditional on spending on oil and gas in Alaska, Gulf of Mexico and the opening up of millions of hectares of federal land for drilling.

It is no doubt that this legislation is a momentous development — one that would have seemed impossible just a few years ago. The US will, through this, do more than ever before to build a manufacturing base for renewable energy, particularly solar, and will incentivise its use and generously pay households to switch to electric vehicles or cleaner and more insulated houses to cut energy bills.

Europe, even in this desperate scramble for gas, is working to ramp up its investment in renewable power. This spend on everything from nuclear to solar, wind and biomass power is also about its energy independence, as it cuts the umbilical cord with foreign energy suppliers.

So, it is the worst of times. It could be the best of times, but there are some caveats. One, this renewed interest in fossil fuels must remain temporary and transient. Given the nature of economies, once the investment has been made in this new infrastructure for LNG terminals or the supply of fossil fuel has increased from new oil and gas discoveries, it will be difficult to wean off.

Two, and this is linked to my first caveat, these countries should not be entitled to more use of fossil fuels in our world of shrunk carbon budgets. They need to reduce emissions drastically and leave whatever little carbon budget space that is remaining to poorer countries to use—this, in real terms, means not using fossil fuels but letting the continent of Africa or countries like India use the available cleaner fossil fuels to drive economies and reduce local air pollution.

It is not just a moral imperative, but a prerequisite to a world which has a chance to keep the spiralling temperatures under check. This is what we need to keep in mind as countries reconcile their energy supply options with climate change. DTE

The writer is the Director-General of CSE and editor of DownToEarth. Views expressed are personal