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Case Comment: Welspun Specialty Solutions Ltd v Oil Natural Gas Corporation Ltd: Significance of Time in the Contract: Unlocking Time Sensitivity in the Indian Contract Law

Himanshu Agarwal^a

^aVivekanand Law College, Vastral, Ahmedabad, India

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INTRODUCTION

Welspun Speciality Solutions Ltd. (Hereafter referred to as Welspun) v Oil Natural Gas Corporation Limited (Hereafter referred to as ONGC)¹ is based upon the very fundamental principle of the Indian Contract Act 1872, which is usually incorporated in any contract. It was a point of deliberation in the case, the ambit of the time essence clause in the contract. What makes time to be the essence of a contract? Moreover, this judgment by the court initiated the debate on the working of the liquidated clause in any contract. The article examines points of deliberation in the Court and the reasons for upholding the arbitral award in this case. The case dives deep into comprehending Section 55 of the Indian Contract Act 1872. It will also set the precedence for future cases and impact the mindset of the drafters. The article also observes some of the related cases and the court observation for a better overview of the clauses.

¹ *Welspun Specialty Solutions Limited v ONGC* (2021) ALL SCR 650

FACTS OF THE CASE

1. The ONGC (Respondent) floated a global tender for the purchase of seamless steel casing pipes, inviting the competent party to bid for it. Welspun (appellant) won the bid and the contract between ONGC and Welspun was signed and four purchase orders were issued.
2. The purchase order specifically mentioned the time and date of delivery as the essence of the supply order. Delivery must be completed in a time-bound manner. Moreover, it was mentioned in the contract that liquidated damages would be applicable if obligations are not fulfilled in a time-bound manner.
3. Several delays from the Welspun side were observed during the execution of the purchase order and they received an extension for the delivery from the ONGC. While processing Welspun's invoice, ONGC deducted USD 8,07,804.03 and INR 1,05,367 as liquidated damages from various Welspun invoices.
4. A dispute on damage deduction was raised before an arbitral tribunal.

THE DECISIONS

The Decisions of Arbitral Court: The tribunal held that merely mentioning a time essence clause does not make time an essential factor. The entire agreement along with terms and conditions should be comprehended before considering time as an essential factor.

The tribunal observed the clauses about the extension of the delivery time, levy of penalties as compensations and liquidated damages in case of the delay. Moreover, the tribunal cited that time is generally not of the essence in construction contracts.

The tribunal concluded that by observing the aforesaid clauses claim for liquidated damage was wrong. The tribunal awarded unliquidated damage to the respondent for the delay in the obligation. The unliquidated amount was less than the amount deduced in the final invoices.

The decision of the District Court and High Court: The aforesaid decision was challenged in the district court wherein the District Court upheld the conclusion of the tribunal. It was further challenged in the High Court wherein the order of the District Court and Tribunal was overruled. The High Court observed that the tribunal and the District Court made an error while examining the time factor in the contract.

The decision of the Supreme Court: The Supreme Court upheld the decision of the tribunal and the District Court. Moreover, the Supreme Court cited that the observation of the tribunal court was correct and that the inclusion of an extension of the timeline dilutes the time essence clause.

Other factors which were observed by the Supreme Court while imparting the judgment were:

- In common parlance, in any contract promisor is bound by the deadlines mentioned in the contract.
- The inclusion of the extension of deadlines dilutes the position of the promisee to claim liquidated damages. Moreover, an extension of the deadlines prevents the promisor from completing the obligations in a time-bound manner.
- The Supreme Court held that just including time essence does not make time an essence in the contract. The circumstances, the position of the promisor & promisee at the time of the contract and other terms & conditions of the contract should be construed while imparting the decision.

Hence the Supreme Court set the High Court decision aside and gave the order in line with the tribunal and District Court.

Section 55 of the Indian Contract Act 1872: *‘When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee if the intention of the parties was that time should be of the essence of the contract.’²*

Under the aforesaid definition there can be two situations which are as follows:

If Time is not essential - If time is not essential and obligations are not fulfilled in the stipulated time, then the contract does not become voidable. However, the promisor needs to pay compensation for the loss incurred due to the delay.

² Indian Contract Act 1872, s 55

If Time is essential - If the promisor agreed to do something in a time-bound manner, however, failed to perform in a time-bound manner, the promisee can choose to accept the late performance. If the promisee accepts the late performance, thereafter they can't claim for the late performance or loss due to delay, unless it was apprised to the promisor that the promisee seeks compensation at the time, they accept the late performance.

Section 74 of the Indian Contract Act 1872: Section 74 of the Indian Contract Act 1872 explains the concept of awarding compensation for the non-performance or breach under the terms and conditions of the contract, where the penalty amount has been defined. It can be referred to as a penalty clause in the contract, it is a structured contract to ensure that the innocent party should not suffer in the event of breach of contract.³

The section explains the position of the Court while imparting the decision in case of dispute on the estimation of the loss or penalty amount. If the Court observes that the loss is negligible or less compared to the penalty amount then the penalty amount can be reduced. The penalty clause aims to make sure that parties refrain from delay or breach of the contract. The penalty amount should be Just and Reasonable.

CASE LAWS

1. Comprehending the Time Essence Clause: The focal point of the case was the interpretation of the time essence clause in the contract. The arbitral court and apex court correctly observed that mentioning a time essence clause doesn't signify that time is an essential factor in the contract. The court stand signifies that the entire contract must be construed before considering time as an essential factor.

2. Permission for deadline extension and its effect: The court signified that the contract should be construed as a whole and the presence of the deadline extension dilutes the importance of the time essence clause. Hence, it is prudent to note the significance of each and every clause and its effect on the entire contract.

³ Indian Contract Act 1872, s 74

3. General common contractual practice and practical understanding: It is pertinent to understand that infrastructure projects are complex and extension is possible, hence, the time essence clause cannot be an important factor. The court emphasized that the practicality of the contract should be considered on an individual or corporation, then after the impact of the liquidated damage should be considered. The court emphasized that damages should be just and reasonable.

4. Sections 55 and 74 of the Indian Contract Act: The concept laid down in sections 55⁴ and 74⁵ of the Indian Contract Act have been discussed in the case. Section 55 specified the conditions in which time should be considered an essential factor, which is related to both parties' intentions. Section 74 specifies the compensation in case of a breach and targets deliver a balance between the protection of the aggrieved party and preventing excessive penalties.

OTHER CASE LAWS

Kailash Nath Associates v Delhi Development Authority: The Supreme Court observed that the inclusion of the liquidated damages clause doesn't permit a claim for the unliquidated damages in every case. If there is no loss or damage or if it is not proved then there will be no compensation. In this case, Tribunal the Court and Supreme Court set Section 74 aside and ordered that actual loss would be awarded in the contract to unliquidated damages deducted from the final invoices.⁶

Hind Construction Contractors v State of Maharashtra: In this case, construction work was assigned to Hind Construction and the contract was signed between the parties. The contract signed between the parties includes the clauses wherein it was outlined that in the event of a delay, an extension of the timeline is possible, however, penalties and liquidated damages would be levied from the construction company. The Court held that the inclusion of liquidated damages and penalties is not justified with the extension of the timeline. It diluted the purpose

⁴ Indian Contract Act 1872, s 55

⁵ Indian Contract Act 1872, s 74

⁶ *Kailash Nath Associates v Delhi Development Authority & Anr* (2015) ALL SCR 1357

of the penalty clause and awarded actual damage in the judgment, instead of liquidated damages.⁷

Arosan Enterprises Ltd. v Union of India: When the word extinction of time has been incorporated in the contract, it dilutes the time essence position. Hence, the contract cannot become void due to the time essence factor.⁸

Gomathinayagam Pillai v Palaniswami Nadar: In this case, the court observed that the contract about immovable property or sale of land, should not consider time as the essence factor.⁹

CONCLUSION

The aforesaid cases changed the way Section 55¹⁰ and Section 74¹¹ are perceived & used. The court held that just including the time essence clause or penalty clause does not mean that it can be levied from the defaulting party. The penalty or compensation should be Just and Reasonable. The resolute stand of the court in these cases denotes that the court observes the circumstances, facts and position of the parties before imparting judgment.

The aforesaid court cases have set the precedence for future cases. Moreover, the contract drafter will also ponder upon the court observations. The court explained the use of Section 55¹² and made sure it was not misused by the parties. This case will be used as the precedence by the contract drafter in the future.

⁷ *Hind Construction Contractors v The State of Maharashtra* (1979) SCR (2)1147

⁸ *Arosan Enterprises Ltd. v Union of India* AIR 1999 SC 3804

⁹ *Gomathinayagam Pillai v Palaniswami Nadar* (1967) AIR 1967 SC 868

¹⁰ Indian Contract Act 1872, s 55

¹¹ Indian Contract Act 1872, s 74

¹² Indian Contract Act 1872, s 55