

Misc. Arbitration (Commercial) 26 of 2024

Order No.26

Date:-10-04-2026

Today is fixed for hearing of stay petition dated 11.09.2024.

Both parties take steps and are further duly represented by their respective Ld. Counsels.

No formal, written objection is filed by the respondent. Ld. Counsel for the respondent prays that he shall submit orally against the stay petition.

Record is taken up for hearing.

Ld. Counsel for the petitioner having concluded his part of the hearing on 21.02.2026 & 13.03.2026 does not add anything new. No new citation referred.

Ld. Counsel for the respondent objects against the prayer for unconditional stay of the execution proceeding on couple of grounds:

1. That the stay petition dated 11.09.2024 preferred by the present petitioner states nothing about unconditional stay of the execution proceeding.
2. To pray for an order of unconditional stay of the execution proceeding the petitioner must plead the grounds of corruption & fraud both of which must be proved by adducing evidence; a stage that has not been reached in the present proceeding.

Heard Ld. Counsels for both sides.

Perused the separate stay petition under consideration dated 11.09.2024 preferred by the present petitioner under section 36(2) of the ACA, 1996. Perused the citations relied upon by the petitioner.

Perusal of the stay petition dated 11.09.2024 reveals with utter clarity that the petitioner herein **“has not prayed for unconditional stay of the execution proceeding”** nor has alleged either of the two grounds of fraud or corruption as mentioned in section 36(3) second proviso of the ACA, 1996 necessary to be pleaded for securing unconditional stay. On the contrary, the petitioner has prayed for stay on the following three grounds:

1. That the petitioner shall be “highly prejudiced”;
2. That the very purpose of filing the said application would become infructuous; and
3. For ends of justice.

Above being the state of affair, this court finds **no justification of contemplating the relief of unconditional stay of the execution proceeding.** In tune therewith no relevance is detected with regards to the precedents relied upon by the petitioner in course of hearing both being related to unconditional stay of execution proceeding. In fact, the citations referred by the Ld. Counsel for the petitioner in support of his stay petition are found not aligned with the contention of the stay petition itself. On the contrary, they are variance with each other.

Let us now consider the aspect of stay of execution proceeding simpliciter.

The fact stood in admission that an execution proceeding under section 36 of the ACA, 1996 arising out of the self-same award dated 14.06.2024 has been initiated by the instant respondent in this court. Now, proceeding with the instant petition under section 34 of the ACA, 1996 and the execution proceeding under section 36 of the ACA, 1996 at tandem and/or simultaneously, both arising out of the same award, had no meaning in the eye of law. In fact, the two were mutually contradictory & destructive. It was only when the execution proceeding had been stayed that the challenge to the award might be heard & disposed of.

Let us now consider the aspect of furnishing of security. It is the settled law of the realm that any decree or deemed decree for money can be appealed against only after securing the amount of the decree to the fullest extent. In the instant case the award is a money award granted in favour of the union of India. Hence, the **amount involved is part of the public exchequer.**

Accordingly, this court finds every reason to allow the stay simpliciter only after passing a direction to the petitioner to furnish security for the awarded amount to the fullest extent.

Hence, it is

ORDERED

that the prayer for stay simpliciter dated 11.09.2024 made by the petitioner in this case is considered and allowed on contest and without cost.

Execution proceeding arising out of impugned award dated 14.06.2024 pending before this court is hereby stayed till disposal of the petition under section 34 of the ACA, 1996 subject to the pre-condition of furnishing security to the full extent (100%) by the instant petitioner at the earliest failing which instant stay order shall stand vacated.

Petitioner must furnish the security on or before the next date of hearing either by way of: (1) freezing the amount of the award in his bank account followed by filing of the relevant documents in court **or** (2) by furnishing title deeds of immovable property of value sufficient to satisfy the award located within the territorial jurisdiction of this court **or** (3) by way of separate deposit in any Nationalized Bank providing the highest rate of interest **or** (4) by way of furnishing bank guarantee of value sufficient to satisfy the award.

Let it be clarified herein that aforesaid direction is passed by the court in absence of any Cash & Accounts Section in this court.

Fix **29.04.2026** for further hearing & passing order.

Sd/-

(Subhadeep Ray)

Judge, Commercial Court, Siliguri

J.O. Code WB00949