

Money Execution Case No. 12 of 2018

CNR No. WBJP01-000526-2018

Order No. 53, dated – 26.06.2025,

Award-holder is present by filing hazira through learned advocate.

Learned Government Pleader, Jalpaiguri is representing the State of West Bengal being the Award-debtor.

Today is fixed for hearing of the execution petition concerning the arbitral award dated 04.11.2015 passed by the sole Arbitrator, Niren Guha Thakurata.

The execution petition has been filed seeking enforcement and realization of the arbitral award amounting to Rs.3,88,595/-, along with interest accrued thereon amounting to Rs.5,51,791/-, aggregating to a total of Rs.9,40,386/-.

At this juncture, learned Govt. Pleader, on behalf of the State of West Bengal being the Award-debtor, has filed a petition stating *inter-alia* that the instant proceeding for execution of the award of the sole Arbitrator dated 04.11.2015 has put into execution under Order 21, Rule 11 (2) of the CPC for enforcement of the arbitral award passed by the sole Arbitrator in a dispute arising out of a contract/agreement no. 55 of 2001-02 of the Executive Engineer, PWD, Jalpaiguri Construction Division and Authorized Executive Engineer, Jalpaiguri Zilla Parishad, for the work construction of RCC wall foundation Bridge over river karatowa under RIDF-VI at 4th Km Fatapukur Garda Road in the District Jalpaiguri.

It has further been stated that the sole Arbitrator though pronounced the award but he failed to deliver the signed copy of the award by complying the provisions laid down under section 31(5) of the Arbitration and Conciliation Act, 1996 (the Act, 1996). It is also stated that the arbitral award dated 04.11.2015 passed and published by Niren Guha Thakurata is against the public policy of India by reason of it being inimical to the administration of justice, public interest and have rendered in contravention of statutory provision and thus, the legislative policy of India has been violated. That being the position, it is thus, submitted by the learned Govt. Pleader that it becomes incumbent on the part of the Award-debtor to challenge the said award seeking for setting aside of the same.

Learned Govt. Pleader has submitted that the impugned award, sought to be enforced, is not absolute and the Award-debtors reserve their right to take recourse for setting aside the same only after getting the original signed copy of the award. It is thus, submitted that it becomes necessary to proceed with the instant proceeding for execution of award dated 04.11.2015 passed by the sole Arbitrator only after going through the complete minutes and records of the arbitral proceeding, otherwise, the Award-debtors will be deprived from natural and fair justice. In the circumstances, it is prayed that the complete minutes and records of the arbitral proceeding in connection with Arbitral Award dated 04.11.2015 passed and published by Niren Guha Thakurata may be called for before proceeding further in this case.

It is further submitted by the learned Govt. Pleader that the intention of the legislature to provide protection u/s.31(5) of the Act, 1996 is to enable the parties to the arbitral proceedings to get the signed copy of the arbitral award from the Arbitrator and in case, the arbitral award is not made available to either of the parties it creates a hardship to the party aggrieved by not giving an opportunity to challenge the award by invoking section 34 of the Act, 1996. He has further submitted that section 34 (3) of the Act, 1996 *inter-alia* provides that an application for setting aside, may not be made after three months have elapsed from the date on which party making the application, on

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receiving the arbitral award but in case the party aggrieved is not provided with the signed copy of the arbitral award, it becomes difficult to file an application u/s.34 of the Act, 1996 seeking set aside arbitral award. It is contended that the signed copy is different from the true copy. The copy relied upon in the instant execution proceeding is said to be a true copy of the arbitral award, according to the learned Govt. Pleader. In such circumstances, he has pointed out at the time of hearing that there are certain infirmities in drawing up of the proceeding of the arbitral award, which needs to be clarified by this executing Court by physically looking into the records and minutes of the arbitral proceedings. He has further submitted that the Award-debtor, admittedly, has not challenged the arbitral award u/s.34 of the Act, 1996. The reason of not challenging award may not be relevant for the executing proceeding but so far as enforcement of the award is concerned, the executing court is statutorily duty bound to look into the complete minutes and records of arbitral proceeding to ensure complete justice to the contesting parties.

He has also pointed out that the Award-debtor is not praying for granting any stay over the execution proceeding of the arbitral award in terms of Section 36(2) of the Act, 1996. In the absence of any order of stay granted by the competent Court of the operation of the arbitral award in the absence of any application seeking setting aside of the arbitral award u/s.34 of the Act, 1996. It has been submitted that before enforcing the arbitral award, the executing court must ensure that arbitral award is ready to be enforced. In the circumstances, it is submitted that there is no harm for the executing court to call for the original and complete minutes of the arbitral proceeding in connection with the arbitral award dated 04.11.2015 before passing the order for execution of the said award.

Per contra, learned counsel appearing for the Award-holder has contested the said petition by submitting that section 36(1) of the Act, 1996 makes it ample clear when the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, in the same manner as if it is a decree of the court.

Learned counsel for the Award-holder has further submitted that non-delivery of the signed copy of the arbitral award is a misnomer in a proceeding for execution since it is nobody's case that an application for setting aside arbitral award u/s.34 of the Act, 1996 has been filed by the party aggrieved and when no application for setting aside arbitral award has either been filed or is pending, there is no question of staying the operation of the arbitral award. He has further submitted that section 36(2) of the Act, 1996, makes it ample clear that mere filing of application u/s.34 of the Act, 1996 to set aside the arbitral award is not sufficient to make the award unenforceable unless the Court grants an order by staying the operation of the arbitral award in accordance with sub-section (3) of Section 36 of the said Act. He has further submitted that the instant petition filed by the Award-debtor, is nothing but seeking stay over enforcement of arbitral award without preferring any application u/s.34 of the Act, 1996 and in the absence of any order of stay of operation of the said arbitral award. It is also submitted that the executing Court cannot go beyond the decree. Similarly in respect of the executing of arbitral award, the same principle is equally applicable and thus, the question of delivery of signed copy to the Award-debtor being the State of West Bengal herein is not at all germane in so far as the arbitral award is concerned. In the circumstances, it is submitted that

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there is no merit in the instant application filed by the Award-debtor today and the same is liable to be rejected.

From the record it appears that the instant proceeding for execution has been filed on 05.08.2018. The grievance of the State is that since the learned Arbitrator though pronounced the award but he failed to deliver the signed copy of the award in view of the section 31(5) of the Act. So, the State could not be proceeded with by filing an application u/s.34 of the Act, 1996, nevertheless, there are certain infirmities and irregularities, which are going against the public interest and in contravention of statutory provision and various other legislative policies of the Government. The provision u/s.31(5) of the Act, makes it ample clear that after the arbitral award is made, a signed copy shall be delivered to each party. Now, it is a question of fact as to whether after passing of the arbitral award, the signed copy of has been delivered to each of the parties who contested before the arbitral tribunal. Said fact can only be ascertained from the materials on record of the arbitral tribunal. Admittedly, for the execution proceeding, the record of the arbitral tribunal has not been produced by either of the parties. Claim of the State regarding not receiving the signed copy of the arbitral award, has been confronted by the Executor being the Award-holder by submitting that since the Award-holder has obtained the signed copy from the arbitral tribunal, the Award-debtor being the State herein must have received the same too.

Assertion of the State and denial of the same can only be ascertained if the record of arbitral proceeding in connection with the arbitral award dated 04.11.2015 passed by the sole Arbitrator be called for. It is fact that unless and until the party aggrieved obtains signed copy of the arbitral award, he cannot prefer an application seeking setting aside of the arbitral award in view of mandatory provision of limitation mentioned in section 34(3) of the Act, 1996. Nevertheless, the executing Court cannot go beyond the decree being the arbitral award but it is duty-bound to ensure that both parties are afforded a fair opportunity to challenge the arbitral award in accordance with the provisions of the statute. In case, the signed award was indeed not delivered to the State, it may have prejudiced the State in pursuing statutory remedies to prefer an application u/s.34 of the Act, 1996.

Having said that, I am of the view that in order to assess the claim of non-delivery of the signed copy of the arbitral award to the State, it is imperative to call for the original and complete minutes and records of arbitral proceeding in connection with arbitral award dated 04.11.2015 passed by the sole Arbitrator, Niren Guha Thakurata.

Hence, the instant petition dated 26.06.2025 filed by the Award-debtor being the State, stands allowed on contest.

Let the original and complete minutes and records of arbitral proceeding in connection with arbitral award dated 04.11.2015 passed and published by the sole Arbitrator, Niren Guha Thakurata, be called for from the office of the Arbitrator. Office of the Arbitrator is directed to send all the original records including complete minutes of the arbitral proceeding in connection with arbitral award dated 04.11.2015 passed and published by the sole Arbitrator, Niren Guha Thakurata, **within a period of two weeks from the date of this order.**

Fix **31.07.2025** for hearing of the case.

Let a copy of this order be sent to the Arbitral Tribunal for compliance.

Dictated & corrected

District Judge, Jalpaiguri
(WB00709)

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