

In The Commercial Court at Alipore
Present: Smt. Suparna Ray (JO Code:WB00711)

Misc Arb (Com) 107 of 2024
CNR No. WBSP18-000094-2024

Union of India Executive Engineer Kolkata Central Division-II
CPWD.

.....Petitioner

vs.

M/S. Gora Chand Bose

.....Respondent

Order No. 11

Date: 29.01.2026

Order

Today is fixed for passing order of the application being I.A. No. 01 of 2024.

Both sides file their respective haziras.

Now, the instant matter is taken up for passing necessary order.

I.A. No. 01 of 2024

The instant application has been filed by the petitioner under Section 36(2) of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 1996 Act) seeking for stay of the arbitral award dated 20.03.2024 (subsequently corrected on 18.04.2024) hereinafter referred to as the "impugned award" whereby the Ld. Arbitral Tribunal awarded a sum of 87,59,113/- in favour of the respondent.

The *per se* arbitration case has been filed by the petitioner for setting aside of the impugned award under Section 34 of the 1996 Act based on grounds as enumerated therein.

The cynosure of the contention of the petitioner is that the petitioner will prove their prima facie case in respect of the per se Section 34 application and therefore, they pray for an order of stay on the impugned award otherwise as they apprehend, the award may be executed by the respondent, which will create gross prejudice upon the petitioner.

Ld. Counsel for the petitioner in the instant application further reiterates the grounds as taken by them in their original Section 34 application for setting aside the award impugned. However, it is stated that the seminal cases on the contours of sustaining the challenge under Section 34 of the award were detailed in the said Section 34 application.

The contention of the Ld. Counsel for the petitioner/Union of India is mould into two folds. First one is the Ld. Arbitral Tribunal erred in passing the award impugned without considering the facts as submitted and/or produced before the learned Arbitral Tribunal. Second one is that the award impugned is in contravention of the fundamental policies of the Indian law and grossly hit the basic notion and morality of the justice. Therefore, he prays for an order of stay on operation of the impugned award.

On the other hand, respondent files its opposition to the instant application.

The contention of the respondent is that petitioner's plea to stay the award lacks merit as the balance of convenience does not favour the petitioner and would result in undue hardship to the respondent. That, the petitioner has not shown sufficient justification for why the award should be stayed, failing to demonstrate that the conditions for such relief are satisfied. The balance of convenience, a critical factor in considering a stay, clearly leans granting the petitioner's request.

Learned Advocate appearing for the respondent has submitted that under Section 36(3) of the 1996 Act, a stay of operation of an arbitral award is not automatic on filing an application under Section 34. the petitioner must establish a strong prima facie case, demonstrate that the balance of convenience is in its favour, and show that irreparable loss will be caused if the award is not stayed. In commercial matters, it is now well settled that stay, if at all granted, is ordinarily to be made conditional upon securing the awarded amount. The petitioner has failed to satisfy any of these parameters.

On perusal of the materials on record and further hearing of both sides, it appears that the impugned award is a money award passed in favour of the respondent.

Now, the issue which is to be decided herein whether the award impugned will be stayed conditionally and/or unconditionally.

For proper appreciation of the facts of this case, the relevant provisions of the Arbitration and Conciliation Act,1996 are reproduced hereunder:

The arbitration and conciliation act,1996

Section.36 Enforcement. - (1). Where 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 shall be enforced in accordance with the provisions of The Code of Civil Procedure,.1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2). Where an application to set aside the arbitral award has been filed in the court under Section 34, the filing of such an application shall not by itself rendered an award unenforceable, unless the court grants an order of stay of the operation of the said arbitral award in accordance with

the provisions of Sub-section (3), on a separate application made for that purpose.

(3). Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

On perusal of the aforesaid provision, it is stated that the discretion on the court to impose conditions on the award debtor for grant for stay of the operation of the award under Section 36(3) is hemmed in by the first proviso to Section 36(3) where the Court loses its discretionary space where the award is for payment of money. In such cases, the Court has no option but to direct the award debtor to furnish security for stay of the award. Although, Section 36(3) of the said Act read with first proviso simply mentions “imposition of conditions” for stay of the award, the requirement of furnishing of “security” under the provisions of the Code under the first proviso to Section 36(3) of the said Act unerringly points to a clean and unblemished security being offered by the award debtor.

As regards, this Court relies on the decision of the Hon’ble High Court at Calcutta in the case of *Sarat Chatterjee & Co. (VSP) Private Limited vs. Sri Munisubrata Agri International Limited* arising out of A.P. No. 265 of 2023, whereby the Hon’ble High Court has been pleased to hold that the security must be such as to inspire the Court’s confidence that the award debtor will stand by the security and make good the award if the application for setting aside of the award is ultimately rejected. The security, simply put, must command good exchange value and cannot be such as to undermine the object of Section 36(3) read with first proviso of the said Act of 1996 and Order XLI

Rule 5(3) and (5) of the Code and the case of *Siliguri Jalpaiguri Development Authority vs. Bengal Unitech Universal Siliguri Projects Limited* reported in 2022 SCC Online Cal 1754.

This Court further relies on the cases: *SREI Infrastructure Finance Limited vs. Candor Gurgaon Two Developers & Private Ltd.*, *Manish V. Godawari Marathawada Irrigation Development Corporation*; *Toyo Engineering Corporation & Anr. vs. Indian Oil Corporation Limited*; *Power Mech Project Limited vs. Sepco Electric Power Corporation*; and *Fair Deal Supplies Limited vs. R. Piyarelall Iron & Stell Private Limited*.

The Hon'ble Supreme Court of India in the case of *Manish v. Godawari Marathawada Irrigation Development Corporation (supra)* set aside the order of 60% deposit given by the Hon'ble Bombay High Court and ordered as: "We have passed orders stating that since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court. Accordingly, we set aside the impugned orders dated 19.03.2018 and mandate a 100% deposit be made within a period of eight weeks from today". The said proposition of the Hon'ble Apex Court has been recognized in the decision of the Hon'ble Delhi High Court in the case of *Power Mech Projects Ltd. v. SEPCO Electric Power Construction Corporation (supra)* whereby the Hon'ble High Court held as: "While it is true that in some of the orders shown by the learned senior counsel for the petitioner, co-ordinate Benches of this Court have been directing a deposit of 50%, but going by the recent judgments of the Supreme Court as well as the facts of the present case, I am of the opinion that the petitioner must deposit 100% of the awarded

amount of Rs. 142 crores (principal amount) to secure the respondent”.

In *CC Construction and Ors case (supra)* the Hon’ble Court directed J.Dr. to make 60% cash deposit and furnish bank guarantee in respect of the residual 40% amount, with liberty to the D.Hr. to withdraw the 60% cash deposit upon furnishing appropriate security.

In the case of *State of Maharashtra through the Executive Engineer (supra)* the Hon’ble Court directed to 100% deposit in case of money decree.

In the case of *Damodar Valley Corporation vs. Reliance Infrastructure Ltd. (supra)* the Hon’ble Court held that it was emphasized that ordinarily money decrees are best secured by way of cash deposit as this entitles the award holder to withdraw the same upon furnishing appropriate security. Further, the Hon’ble Court in the above matter directed the award debtor to deposit a sum of Rs. 595 Cr. as cash security out of Rs. 898 cr i.e. 66% of the total awarded amount.

In the case of *Siliguri Jalpaiguri Development Authoirty (supra)* the Hon’ble Court relying on the Pam Development to the extent that in terms of Section 36 of the Act of 1996 stay of award was granted upon reasons being recorded and being satisfied prima facie that there is no illegality, perversity or violation of any law on the face of the award. Lastly, holds that the J. Dr. is to deposit 100% of the awarded sum 50% cash deposit and 50% upon furnishing of security.

In the case of *Pam Development (P) Ltd. vs. State of West Bengal* reported in *(2019) 8 SCC 112* the Hon’ble Supreme Court held as “22. Even otherwise a plain reading of Order 27 Rule 8A CPC would make it clear that the same is only regarding security as mentioned in Rules 5 and 6 of

Order 41 CPC, which is not to be demanded from the Government while considering the stay application filed by the Government. It, however, does not provide that the decretal amount cannot be required to be deposited in the appeal against a money decree”.

It is to state that any finding or observation pertaining to the merits of challenge under section 34 of the Act, which is still pending before this Court, is premature at this stage. Therefore, whether the award is perverse and/or against the public policy of this country, is not plausible before this Court to ascertain at this inchoate stage.

On perusal of the instant application and also going through the Judgments as mentioned above, it is transpired to this Court that since the award is a money award, there shall be a stay of the operation of the impugned award during the pendency of the application under Section 34 of the said 1996 Act, subject to deposit of the awarded sum by the petitioner.

It appears from the award impugned that Ld. Tribunal awarded a total sum of Rs. 87,59,113/-.

Therefore, there shall be a stay on operation of the impugned award dated 20.03.2024 (subsequently corrected on 18.04.2024), subject to deposit of the awarded sum being Rs. 87,59,113/-, by the petitioner in the form of renewable Bank Guarantee in favour of the respondent within four (04) weeks of passing this Order before the Ld. Registrar, District Judge’s Court at Alipore, South 24 Parganas.

This order shall automatically stand vacated in the event of default on the part of the petitioner in respect of the aforesaid direction.

The instant I.A. No. 01 of 2024 is, thus, accordingly **disposed of.**

Let a copy of this Order be sent to the Ld. Registrar, District Judge's Court, Alipore, South 24- Parganas forthwith.

D.A. to do needful.

Fix the matter on **05.03.2026 at 11:00 a.m.** for filing compliance in respect of the direction passed in this Order.

To date also for filing written objection to the *per se* section 34 application by the respondent.

Parties to act on the basis of downloaded copy of this Order from the Website/E-courts App.

Dictated and corrected by me

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
For South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram