



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Miscellaneous Appeal No. 2450/2026

URN: CMA / 4241U / 2026

Rajsthan State Warehousing Corporation, (A Government Undertaking Established Under The Warehousing Corporation Act, 1962) Office Bhawani Singh Road, Jaipur Rajasthan 302015 Through Its Officer In-Charge

----Appellant

Versus

Origo Commodities India Private Limited, Registered Office At Fk-06, Somdatt Chamber- 1, 5, Bhikaji Cama Place, New Delhi 110066, Corporate Office At Plot No. 37, 1St Floor, Sector-18, Institutional Area, Gurgaon, Haryana- 122002

----Respondent

For Appellant(s)	:	Mr. Ripu Daman Singh Naruka
For Respondent(s)	:	Mr. Suhail Sehgal (through VC) with Mr. Raghvendra Singh for Mr. Susshil Daga

**HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE MANEESH SHARMA**

Order

Reportable

17/07/2026

Per: Arun Monga, J.

1. Appeal herein is directed against an order dated 18.4.2026 passed by the learned Commercial Court No.2, Jaipur, whereby it stayed the operation and enforcement of the Award dated 03.06.2025 during the pendency of the proceedings under Section 34, subject to the condition that the appellant shall deposit 100% of the awarded amount of Rs. 6,80,35,258/- within one month.
2. Brief facts, as stated in the appeal, are that a Contract Agreement dated 25.06.2020 was executed between the appellant and the respon-



dent for the joint operation and management of warehouses on a revenue-sharing basis under the Public-Private Partnership (PPP) model. The Agreement contained an arbitration clause governing resolution of disputes between the parties.

2.1 Disputes subsequently arose in relation to the Agreement and were referred to arbitration in terms of the arbitration clause. On conclusion of the arbitral proceedings, the learned Arbitrator passed an Award dated 03.06.2025.

2.2 Aggrieved by the Award, the appellant instituted proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 before the learned Commercial Court, Jaipur Metropolitan-II, seeking to set it aside. Along with the objections, the appellant filed an application under Section 36 of the Act seeking stay of the enforcement and operation of the Award pending adjudication of the objections.

2.3 The application under Section 36 came up for hearing on 18.04.2026. By order of the same date, the learned Commercial Court stayed the operation and enforcement of the Award during the pendency of the Section 34 proceedings, subject to the condition that the appellant deposit 100% of the awarded amount within one month. The Court further directed that 50% of the deposited amount be kept in a fixed deposit receipt in the name of the Court with automatic renewal, and that the remaining 50% be released to the respondent on furnishing an undertaking to redeposit the amount with applicable interest should the objections under Section 34 be allowed.

2.4 Hence this appeal.

3. Learned counsel for the appellant, *inter alia*, submits that the Commercial Court committed a gross illegality in exercising its discretion under Section 36(3) of the Act by failing to consider the prima facie merits of the Section 34 challenge and the substantial financial burden



imposed on the appellant. The Court, he contends, erroneously treated the Arbitral Award as an ordinary money decree and mechanically directed deposit of 100% of the awarded amount, though no statutory requirement or settled principle mandates such a deposit in every case. The condition of full deposit was imposed without assigning any reasons, particularly incongruous, he urges, given that the appellant is a Government undertaking, rendering the exercise of discretion arbitrary and unsustainable.

3.1 He further argues that the Award being ex facie patently illegal, the Commercial Court ought to have granted an unconditional stay; instead, the direction to deposit the entire award amount imposed so onerous a burden as effectively to defeat the statutory right of challenge under Section 34. The condition, he submits, is contrary to the principle of balancing equities and inconsistent with the law laid down by the Supreme Court on Section 36(3), which confers a discretion to impose such conditions as the Court deems fit. Less burdensome alternatives securing the award by bank guarantee or appropriate undertakings would have adequately protected the respondent's interests, yet were not considered. He accordingly urges that the order dated 18.04.2026 be set aside to the extent it requires deposit of the entire award amount, or alternatively that the condition be suitably modified in accordance with equity and settled law.

4. We have heard learned counsel for the parties and perused the case file.

5. Before advertng to the merits, a threshold question arises, i.e., whether the appeal is maintainable at all. We are unable to accept the submission of learned counsel for the appellant that the appeal lies by virtue of Section 13 of the Commercial Courts Act, 2015.



6. On a Court query, learned counsel candidly admits that Section 37 of the Arbitration and Conciliation Act, 1996 does not include, within the categories of appealable orders, an interim order passed by the Commercial Court under Section 36(3); the remedy of appeal under Section 37 is confined, in this context, to the final order under Section 34 either setting aside or refusing to set aside the award. He, however, places heavy reliance on the non-obstante clause in Section 13 (2) of the Commercial Courts Act, 2015. For ready reference Section 37 of the Arbitration and Conciliation Act, 1996 and Sections 13(1A) and 13(2) of the Commercial Courts Act, 2015 are reproduced hereunder reference:

Section 37 of the Arbitration and Conciliation Act, 1996

"37. Appealable orders. (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

- (a) refusing to refer the parties to arbitration under section 8;*
- (b) granting or refusing to grant any measure under section 9;*
- (c) setting aside or refusing to set aside an arbitral award under section 34.*

(2) Appeal shall also lie to a court from an order of the arbitral tribunal-

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*
- (b) granting or refusing to grant an interim measure under section 17.*

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court."

Sections 13(1A) and 13(2) of the Commercial Courts Act, 2015

"13(1A) Any person aggrieved by the judgment or order of a Commercial Court at the level of District Judge exercising original civil jurisdiction or, as the case may be, Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of the judgment or order: Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).]

13(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commer-



cial Court otherwise than in accordance with the provisions of this Act."

6. A bare reading of provisions, as above, shows that the appellant's reliance on the non-obstante clause is misplaced. Far from enlarging the right of appeal, Section 13(2) operates restrictively, i.e., notwithstanding anything in any other law or Letters Patent, no appeal lies from any order of a Commercial Court otherwise than in accordance with the Act. And the proviso to Section 13(1A) confines appealable orders to two categories alone viz (a) those enumerated under Order XLIII of the Code of Civil Procedure, 1908, and (b) those specified in Section 37 of the Arbitration and Conciliation Act, 1996. The main body of Section 13(1A) cannot be read in isolation from its proviso so as to create a general right of appeal against every order of a Commercial Court.

7. Section 37 opens with the words "an appeal shall lie from the following orders (and from no others)", language that is not merely enumerative but deliberately exclusionary. Parliament has thus not simply listed appealable orders; it has affirmatively barred appeals from everything else. An order under Section 36(3), staying (conditionally or otherwise) the enforcement of an award pending Section 34 proceedings, finds no place in that enumeration. Section 37(1) permits appeals only against orders under Section 8 (refusing reference), Section 9 (interim measures), and Section 34 (setting aside or refusing to set aside an award). A Section 36(3) order is a creature distinct from all three: it neither adjudicates the validity of the award nor grants interim measures under Section 9; it merely regulates enforcement pendente lite. To treat it as appealable would be to add a category to Section 37 by judicial construction, precisely what the phrase "and from no others" forbids.

8. In **Kandla Export Corporation & Anr. v. OCI Corporation & Anr.**¹, the Hon'ble Supreme Court squarely addressed the interplay be-



tween Section 13 of the Commercial Courts Act and the appeal provisions of the Arbitration Act, in the following terms:

"14. The proviso goes on to state that an appeal shall lie from such orders passed by the Commercial Division of the High Court that are specifically enumerated under Order 43 of the Code of Civil Procedure Code, 1908, and Section 37 of the Arbitration Act. It will at once be noticed that orders that are not specifically enumerated under Order 43 CPC would, therefore, not be appealable, and appeals that are mentioned in Section 37 of the Arbitration Act alone are appeals that can be made to the Commercial Appellate Division of a High Court.

15. Thus, an order which refers parties to arbitration under Section 8, not being appealable under Section 37(1)(a) would not be appealable under Section 13(1) of the Commercial Courts Act. Similarly, an appeal rejecting a plea referred to in sub-sections (2) and (3) of Section 16 of the Arbitration Act would equally not be appealable under Section 37(2)(a) and, therefore, under Section 13(1) of the Commercial Courts Act.

16. So far, so good. However, it is Shri Giri's main argument that Section 50 of the Arbitration Act does not find any mention in the proviso to Section 13(1) of the Commercial Courts Act and, therefore, notwithstanding that an appeal would not lie under Section 50 of the Arbitration Act, it would lie under Section 13(1) of the Commercial Courts Act.

17. To answer this question, it is necessary to advert to the judgment in Fuerst Day Lawsons. The common question that arose for consideration in the batch of cases before the Court was whether an order, though not appealable under Section 50 of the Arbitration Act would, nevertheless be subject to appeal under the Letters Patent of the High Court. In answering this question, this Court exhaustively reviewed the authorities and then stated, in para 36, that the decisions noticed so far lay down certain broad principles. We are directly concerned with the principle laid down in sub-section (vii), which reads as under: (SCC p. 350, para 36)

"36. ... (vii) The exception to the aforementioned rule is where the special Act sets out a self-contained code and in that event the applicability of the general law procedure would be impliedly excluded. The express provision need not refer to or use the words "letters patent" but if on a reading of the provision it is clear that all further appeals are barred then even a letters patent appeal would be barred.

x-x-x-x-x

21. However, the question still arises as to why Section 37 of the Arbitration Act was expressly included in the proviso to Section 13(1) of the Commercial Courts Act, which is equally a special provision of appeal contained in a self-contained code, which in any case would be outside Section 13(1) of the Commercial Courts Act. One answer is that this was done ex abundanti cautela. Another answer may be that as Section 37 itself was amended by the Arbitration Amendment Act, 2015, which came into force on the same day as the Commercial Courts Act, Parliament thought, in its wisdom, that it was necessary to emphasise that the amended Section 37 would have precedence over the general provision contained in Section 13(1) of the Commercial Courts Act. Incidentally, the amendment of 2015 introduced one more category into the category of appealable orders in the Arbitration Act, namely, a category where an order is made under Section 8 refusing to refer parties to arbitration. Parliament may have found it necessary to emphasise the fact



that an order referring parties to arbitration under Section 8 is not appealable under Section 37(1)(a) and would, therefore, not be appealable under Section 13(1) of the Commercial Courts Act. Whatever may be the ultimate reason for including Section 37 of the Arbitration Act in the proviso to Section 13(1), the ratio decidendi of the judgment in Fuerst Day Lawsons would apply, and this being so, appeals filed under Section 50 of the Arbitration Act would have to follow the drill of Section 50 alone.

22. This, in fact, follows from the language of Section 50 itself. In all arbitration cases of enforcement of foreign awards, it is Section 50 alone that provides an appeal. Having provided for an appeal, the forum of appeal is left "to the Court authorised by law to hear appeals from such orders". Section 50 properly read would, therefore, mean that if an appeal lies under the said provision, then alone would Section 13(1) of the Commercial Courts Act be attracted as laying down the forum which will hear and decide such an appeal."

9. Reverting to the debate in hand, the position which emerges thus is that the Arbitration and Conciliation Act, 1996 is a self-contained code on matters of arbitration, including appeals; Section 37 exhaustively enumerates the orders from which an appeal lies and, by necessary implication, bars appeals from all others. Section 13(1A) of the Commercial Courts Act creates no independent or additional right of appeal in arbitration matters, its proviso expressly tethers the right of appeal back to Section 37. Hon'ble the Supreme Court in **Kandla Export Corporation & Anr. v. OCI Corporation & Anr. (supra)**, *ibid*, rejected the very argument advanced before us: that the general appellate provision of the Commercial Courts Act could be invoked to sustain an appeal which the Arbitration Act itself does not provide. If an order refusing to refer parties to arbitration under Section 8, or rejecting a jurisdictional plea under Section 16, is not appealable because Section 37 does not so provide, an interim order imposing conditions of stay under Section 36(3) can stand on no better footing.

10. The reliance on Section 13 of the Commercial Courts Act by the learned counsel for the appellant rests, in our view, on a



misinterpretation of the provision. Let us see how. Three features of Section 13 itself defeat the argument.

10.1. First, the main body of Section 13(1A) confers a right of appeal in general terms, but the proviso immediately channels that right: appeals shall lie only from orders enumerated in Order XLIII CPC and Section 37 of the Arbitration Act. It is settled that where a proviso qualifies the generality of the main enactment, the two must be read together, the proviso carving the true scope of the right. The main body cannot be pressed into service shorn of its proviso; otherwise the proviso becomes surplusage.

10.2. Second, Section 13(2) is restrictive, not expansive. Its non-obstante clause operates to shut out appeals available under other laws or Letters Patent unless they conform to the Act, it does not manufacture a right of appeal where none exists. A non-obstante clause gives overriding effect to the provision it introduces; here the provision it introduces is a prohibition.

10.3. Third, and more fundamentally, an appeal is a creature of statute; there is no inherent or equitable right to appeal. Where two statutes intersect, the special and self-contained code governs. The Arbitration Act, is a self-contained code on all matters of arbitration, including appeals; the exhaustive enumeration in Section 37 impliedly excludes recourse to general appellate provisions elsewhere. The Commercial Courts Act, far from displacing this scheme, expressly defers to it by incorporating Section 37 into its own proviso. The two statutes thus speak with one voice.

11. Aside above, at the cost of repetition, the above conclusion is fortified by parity of reasoning in *Kandla Export*, *ibid*, wherein the Supreme Court held that an order not appealable under Section 50 of



the Arbitration Act cannot be rescued by Section 13(1) of the Commercial Courts Act. Equally, orders under Section 8 refusing reference (pre-2015 position) and orders rejecting jurisdictional pleas under Section 16(2) and (3) are non-appealable for the sole reason that Section 37 omits them, notwithstanding that such orders may cause real prejudice. If prejudice alone cannot found an appeal in those cases, it cannot do so here. An interim order under Section 36(3), however onerous its conditions, stands on no higher footing.

12. Furthermore, the 2015 amendments to Section 36 of the Arbitration and Conciliation Act, 1996 were designed to remove the automatic-stay regime and expedite enforcement of awards. The impugned order dated 18.04.2026 is an interim conditional order passed in exercise of the discretion conferred by Section 36(3); it neither sets aside nor refuses to set aside the Award under Section 34, and it falls within none of the categories enumerated in Section 37 of the Arbitration Act or Order XLIII of the Code. If every conditional-stay order were appealable, a fresh tier of interlocutory litigation would be grafted onto Section 34 proceedings, defeating the twin objects of speedy enforcement and minimal court interference. The legislative omission of Section 36(3) from Section 37 is therefore not casual but deliberate.

13. As an upshot, we hold that an order passed under Section 36(3), whether granting stay unconditionally, conditionally, or refusing it, is not appealable under Section 37 of the Arbitration Act, and Section 13 of the Commercial Courts Act, 2015 confers no independent right of appeal against it.

14. In the parting we may hasten to observe that an aggrieved party is not remediless qua an order passed under Section 36(3), *ibid*. Its



correctness and/or the conditions imposed etc. may be tested in appropriate proceedings under Article 227 of the Constitution (within the narrow supervisory limits), or the order may be assailed along with the final Section 34 order (since the interim order merges into final, on conclusion of proceedings), if and when an appeal under Section 37 is ultimately carried. But the present appeal, being outside the compass of Section 37, must fail on maintainability alone.

15. Thus the instant appeal, being beyond the compass of Section 37 of the Arbitration and Conciliation Act, 1996 is held not maintainable. It is accordingly disposed of, with liberty to the appellant to seek such other remedy as may otherwise be available in accordance with law. We express no opinion on the merits of the challenge to the condition of deposit.

16. All pending application(s), also stand disposed of.

(MANEESH SHARMA),J

(ARUN MONGA),J