

Items 7. 12-12-2024

sg Ct. 37

**In The High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side
Commercial Division**

FMAT (ARBAWARD) 18 of 2024

Asansol Durgapur Development Authority
Versus
BLA Projects Private Limited

Mr. Anirban Ray, Ld. G.P.
Mr. Sayantan Bose
Mr. Shounak Mukhopadhyay
Ms. Priyanka Gope
...for the appellant

Mr. Jaydip Kar, Sr. Adv.
Mr. Suman Kumar Dutt, Sr. Adv.
Mr. Sakabda Roy
Mr. Debdeep Sinha
...for the respondent

1. The appeal is arising out of an order dated 27th March, 2024 passed by the learned Judge, Commercial Court at Alipore in an application for setting aside of the award. The respondent is the award-holder.

2. It appears from the impugned judgment that on and from paragraph 16 till paragraph 20, the learned Judge, Commercial Court has recorded the submission of the parties and reproduced sections and few decisions of the Hon’ble Supreme Court and thereafter, arrived at a cryptic conclusion in paragraph 21 without even discussing the objections raised by the appellant in relation to the merits of the award. The learned Judge, Commercial Court although has referred to the decisions of the Hon’ble Supreme Court which, inter alia, records that an Arbitrator if he wanders outside the contract and deals with

matter not allotted to him, he commits an error of jurisdiction did not even respond to the argument of the appellant that the Arbitrator cannot go into the question covered by excepted matters as would appear from the contract. There are other jurisdictional issues raised by the appellant which require consideration while deciding the application for setting aside of the award.

3. The learned Judge, Commercial Court although reminded himself of the limited jurisdiction that the Court exercises in deciding such an application has failed to even indicate briefly with reasons for not accepting the objections raised by the appellant. The appellant has raised jurisdictional issue which requires consideration.

4. Reasons introduce clarity in an order. In deciding the said application the learned Judge Commercial Court is expected and required to indicate its reasons, howsoever brief, in its order so as to disclose its mind. It is all the mere necessary when its order is amenable to further avenue of challenge. Failure to give reasons amounts to denial of justice. In the celebrated case of *Alexander Machinery (Dudley) Ltd. v. Crabtree* reported at **1974 LCR 120** it was observed: “Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at”. Reasons substitute subjectivity by objectivity. In a recent judgment *State Project Director, UP Education for All Project Board & Ors. v. Saroj Maurya & Ors.* reported at **2024(8) SCR 733** the Hon’ble Supreme Court observing that no decision could be

legally sustainable in the absence of reasoning set aside the decision of the Division Bench of the High Court as the said decision failed to disclose and furnish any reason.

5. In view of the fact that the impugned order is unreasoned, we set aside the order under appeal and request the learned Judge, Commercial Court at Alipore to rehear the application for setting aside of the award and decide the matter afresh and dispose of the said application for setting aside of the award by a reasoned order without being influenced by any observations made in this order.

6. We have been informed that the written notes of argument has been filed by the parties.

7. In view of the fact that the respondent is the award holder and the matter is pending since 2023, we request the learned Judge, Commercial Court, Alipore to dispose of the application within a reasonable time without granting any adjournment to either of the parties unless it is unavoidable.

8. The bank guarantee furnished by the order dated 16th April, 2024 shall stand discharged. However, we record that the entire claim under the award, namely, Rs.11,83,83,262/-, shall be secured by the appellant at the time of filing of the application for setting aside of the award.

9. The learned Registrar General shall take step for discharge of the bank guarantee in terms of the order.

10. With the aforesaid direction, the appeal is, accordingly, disposed of.

11. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Soumen Sen, J.)

(Biswaroop Chowdhury, J.)