In the High Court At Calcutta
CIVIL APPELLATE JURISDICTION
COMMERCIAL DIVISION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

AO-COM/54/2025
SHRI BENOYENDRA ROY
VS
UNION OF INDIA EASTERN RAILWAY
THROUGH THE DEPUTY CHIEF
ELECTRICAL ENGINEER (G), EASTERN RAILWAY
IA NO: CAN/1/2025, CAN/2/2025

For the Appellant : Mr. Arik Banerjee, Advocate
Mr. Allamurh Alim, Advocate
Mr. Sourav Mondal, Advocate

For the Respondents : Mr. Sanajit Kumar Ghosh, Advocate

Heard & Judgment on: December 3, 2025

Debangsu Basak, J.

1. CAN 2 of 2025 is an application for condonation of delay.
2. Considering the averments made in the application for condonation of delay, we deem it appropriate to condone the delay in making and filing the appeal under Section 37 of the Arbitration and Conciliation Act, 1996.

3. CAN 2 of 2025 is allowed.
4. Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is at the behest of the award holder.
5. Respondent floated a tender on November 3, 2010 with regard to execution of work for rewiring of 1317 staff quarters at Kanchrapara and Halisahar Railway Complex.
6. Appellant before us participated in such tender process. The value of the work was Rs.1,24,71,625/-. Appellant was declared the successful tenderer on January 28, 2011. Letter of acceptance required completion of the work within six months. Agreement was executed on July 18, 2011, after six months from the date of the letter of acceptance. A supplementary agreement dated October 10, 2014 was entered into between the parties where, the value of the work stood reduced.
7. Admittedly, there was delay in completion of the work, in terms of the tender. Appellant sought to explain such delay on various heads. According to the appellant, it applied for and obtained extension of time for completion of the contract from time to time. Appellant issued several letters from July 27, 2011 to December 26, 2017 for such purpose.
8. Respondent granted a number of extensions to the appellant without imposing liquidated damages. The last of the extension was granted on June 30, 2017. Despite such extension, work remained incomplete.

9. Appellant from time to time raised running account bills. Appellants raised 18 running account bills constituting about 80% of the work. Quantum of the 18 running Account bill is Rs.84,50,597/-. Respondent in terms of the contract withheld 20% of the running account bills and paid a sum of Rs.67,60,475/- to the appellant.

10. Disputes and differences arose between the parties with regard to the extension of time, completion of the balance work and the tax incidence by virtue of the introduction of the Goods and Services Act, 2017.

11. Respondent proceeded to terminate the contract on September 22, 2018 after threatening to do the same on September 12, 2018.

12. Disputes between the parties were referred to arbitration. In the arbitration, the appellant raised 8 heads of claim aggregating to a sum of Rs.92,64,433/-. Respondent filed statement of defence containing a counter claim. Respondent claimed a sum of Rs.27,70,090/- as compensation for loss and damages.

13. Learned Arbitrator passed an award dated March 25, 2022. By such award, the Arbitrator, allowed Claim Nos. 2, 3 and 4, out of 8 heads of claim of the appellant. Arbitrator allowed counter claim to a certain portion as made by the respondent.

14. Award dated March 25, 2022 was assailed by the appellant under Section 34 of the Act of 1996. Challenge to the award under Section 34 of the Act of 1996 was rejected by the impugned order.

15. Learned advocate appearing for the appellant contends that, the learned arbitrator mis-conducted the arbitration proceedings by not permitting evidence on affidavit to be filed, not allowing documents to be introduced in evidence, not giving reasons for disallowing the heads of claim, not giving reasons for allowing the counter claim after holding that there was no evidence for the counter claim and erred in not granting post award interest.

16. In support of the contentions that, no reasons in the award is to be construed as patent illegality within the meaning of Section 34(2-A) of the Act of 1996, learned advocate appearing for the appellant relies upon ***(2019) 15 SCC 131 [Ssangyong Engineering and Construction Company Vs. National Highways Authority of India].***

17. In support of the contention that loss and damages are to be proved before the Arbitrator, learned advocate appearing for the appellant relies upon **76 CWN 338 [Karam Chand Thapar vs. H.H. Jethanandani], (2016) 11 SCC 720 [Gangotri Enterprises Limited vs. Union of India & Ors.], (2015) 4 SCC 136 [Kailash Nath Associates vs. Delhi Development Authority], (2019) 5**

SCC 341 [Mahanagar Telephone Nigam Limited vs. TATA Communications Limited], (2015) 3 SCC 49 [Associate Builders vs. Delhi Development] and **2021 SCC Online Cal 2477 [Satellite Electric Company vs. Board of Trustees]**

18. We are considering an appeal under Section 37 of the Act of 1996. It is now trite law that while adjudicating a proceeding under Section 37 of the Act of 1996, we are to adjudicate as to whether or not, the Court exercising powers under Section 34 of the Act of 1996 acted within the parameters of Section 34. In other words, we are to inquire as to whether the Court exercising jurisdiction under Section 34 of the Act of 1996 applied the correct principles under Section 34 of the Act of 1996 or failed to do so.

19. The award, by itself, contains reasons. It deals with each heads of claim in details. It refers to the documents and the evidence on record with regard to such heads of claim and decides either to grant some or disallow the others. In doing so, out of 8 heads of claims of the appellant, Arbitrator by the award allowed three of the heads.

20. It is not the claim of the appellant that, the Arbitrator did not provide reasons for the heads of claim that the Arbitrator awarded under the award. The same award disallowed some of the heads of claim. In our view, the award contains reasons for both allowing the heads of claim as well as heads of claim which were not allowed. The claims of the

appellant revolves around one contract for rewiring of staff quarters. The heads of claims of the appellant is not established to be severable.

21. Procedural irregularity in the conduct of the arbitration is one of the grounds canvassed before us. In support of such contention out attention was drawn to the first minutes of the arbitration meeting where, the Arbitrator allowed documents exchanged between the parties to be admitted in evidence. The request of the appellant to the file evidence in chief was rejected.

22. We requested the learned advocate for the appellant to draw our attention to any complaint being made to the Arbitrator subsequent to the receipt of the minutes of the first meeting as production of documents other than those allowed by the Arbitrator. Our attention was drawn to a letter of the appellant. By such letter, the appellant did not claim that it wanted to introduce documents other than those exchanged between the parties before the Arbitrator.

23. An Arbitrator is entitled to establish the procedure to be followed in the arbitration. Arbitrator formulated the procedure that it wanted to follow at the first sitting of the arbitration. It is not established nor argued that the procedure as established was not uniformly applied between the parties. Complaint sought to be raised then, does not address the issue now sought to be contended on behalf of the

appellant. The conduct of the arbitration, therefore, cannot be tested on the basis of the contention presently made before us. Appellant did not ask the Arbitrator to allow the appellant to introduce documents which were not exchanged intra parties at the relevant point of time.

24. As noted above, we already held that, the award contains reasons with regard to each and every head. So far as the counter claim is concerned, it is the contention of the appellant that, the same was allowed without any evidence and that the award does not contain any reason in this regard.

25. We are unable to agree with such contention of the appellant in the facts and circumstances of the present case. Learned Arbitrator in the award, found that the respondent was entitled to damages for the reasons of non-execution of the contract within the time specified. As noted above, the initial contract was granted on July 18, 2011 with the prescribed time for completion being six months from such date. It was dragged on several years with the work not being completed till the date of its termination on September 22, 2018. The finding of the Arbitrator that, the respondent suffered loss and damages on such a factual matrix cannot be faulted.

26. Learned arbitrator, however, took pains to limit the quantum of damages suffered to the extent of security deposit and performance

guarantee. Both security deposit and performance guarantee are kept by a tenderer, in order to mitigate damages, if any, that may occur in the course of execution of the contract. Therefore, limiting the counter claim of damages of the respondent to such security deposit and the performance bank guarantee cannot be faulted.

27. Quantum of damages is not required to be decided on an exactitude. What is required to be found is whether or not any loss and damages were suffered and the possible quantum thereof. As noted above, there is no escape from the fact that the delay in execution of contract caused loss and damages. The quantum, therefore, was limited to the security deposit and the performance guarantee.

28. ***Ssangyong Engineering and Construction Company*** (supra) is of the view that, when the award is non-speaking, the same will be a patent illegality within the meaning of Section 34(2-A) of the Act of 1995. Factual matrix of the present case is not so. Award cannot be said to be not containing any reasons.

29. **Karam Chand Thapar (supra), Gangotri Enterprises Limited (supra), Kailash Nath Associates (supra), Mahanagar Telephone Nigam Limited (supra), Associate Builders (supra)** and **Satellite Electric Company (supra)** are of the view that, loss and damages suffered is required to be established. In the facts and circumstances of the present, there are adequate materials and the

respondent successfully established that, loss and damages were occasioned by the delay in execution of the contract till its termination. The contract was awarded on July 18, 2011 to be executed within six months from that date, while the contract was terminated on September 22, 2018 without the entirety of the same being executed.

30. The impugned order passed under Section 34 of the Act of 1996 deals with every contentions raised by the appellant before such Court. Such order is not established to be perverse or not complying the principles of evaluation of a challenge to an award under Section 34(2-A) of the Act of 1996.

31. In such circumstances, we find no merit in the present appeal.

32. AO-COM/54/2025 along with the connected application are **dismissed** without any order as to costs.

(Debangsu Basak, J.)

32. I agree

(Md. Shabbar Rashidi, J.)

Dd