

30.01.2025
SI No.2
Court No.37
(gc)

**In the High Court at Calcutta
Civil Appellate Jurisdiction
(Commercial Division)**

**FMAT (ARBAWARD) 39 of 2024
CAN 1 of 2024**

**Garden Reach Shipbuilders and Engineers Ltd.
Vs.
Marinecraft Engineers Pvt. Ltd.**

Mr. Debnath Ghosh, Sr. Adv.,
Mr. Biswarup Mukherjee,
Mr. B.K. Sen

... For the Appellant.

Mr. Sabyasachi Choudhury, Sr. Adv.,
Mr. S.E. Huda,
Mr. Shounak Mukhopadhyay,
Mr. Shreyaan Bhattacharya,
Ms. A. Guha Ray,
Mr. Abhijit Guha Ray

... For the Respondent.

1. The appeal is arising out of an order dated 18th July, 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 17 till paragraph 21, 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 22 without even discussing the objections raised by the appellant in relation to the merits 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. The learned Judge, Commercial Court although has referred to the decisions of the Hon'ble Supreme Court in ***Project Director, National Highway Authority of India v. M. Hakeen & Anr.*** reported at **2021 SCC Online SC 473** and ***MMTC Ltd. V. Vedanta Ltd.*** reported at **(2019) 4 SCC 163** which, inter alia, record that "the Court cannot undertake an independent assessment of the merits of the award and must only ascertain that the exercise of power by the Court under Section 34 has not exceeded the scope of the provision". However, the learned Judge has

failed to indicate even briefly the objection raised by the appellant with regard to the jurisdiction of the MSME Council to refer the dispute to arbitration and that the award impugned has been passed contrary to the terms and conditions of the contract. The nature of the contract referable to arbitration through MSME Council was a matter appeared to have been elaborately argued. It would not be proper for us to decide the said issues at this stage. We feel that the learned Judge, Commercial Court in deciding the matter ought to have considered the objection and given reason for not accepting the said objection. The jurisdictional issue raised was required to have been decided in the said proceeding. We refrain from making any comment with regard to the quality of such objection, although, Mr. Sabyasachi Choudhury, learned Senior Counsel appearing on behalf of the award-holder has referred to few decisions to show that the jurisdiction issue is no more *res integra*. However, we feel that these issues are required to be decided in the pending proceeding.

5. 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 more 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.

6. 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.
7. We have been informed that the written notes of argument have been filed by the parties.
8. In view of the fact that the respondent is the award holder and the matter is pending since 2018 and the award holder is registered under MSME, 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 preferably within four months from the date of communication of this order subject to the convenience of the Court.
9. The security furnished on behalf of the appellant shall, however, continue till the disposal of the said application.
10. With the aforesaid direction, the appeal and the application are, accordingly, disposed of.

11. However, there shall be no order as to costs.
12. 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.)