ORDER OCD-69

IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

AP-COM/309/2025
UNION OF INDIA
VS
M/S A B ENTERPRISES

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 30th July 2025.

Appearance:

Mr. Mohit Gupta, Adv.
Mr. Sarda Sha, Adv.
...for the petitioner.

Mr. Debdutta Raha, Adv.
Mr. Dyutiman Banerjee, Adv.
...for the respondent

1. The affidavit in opposition is taken on record.

2. This Court is proceeding on the basis of the award and not the contents of the affidavit in opposition.

3. This is an application for unconditional stay of the award. The grounds for unconditional stay are that the arbitral tribunal failed to consider the internal procedure and workings of the Railways. The learned tribunal passed the award without understanding the procedure followed in Railway contracts. Such procedure was known to the contractor. The contractor agreed to abide by such procedure. Moreover, the price variation of more than 25% was allowed, although such price variation could be enabled only if the higher authority had allowed the same.

Further contention is that Claim No.3 could not have been decided without any evidence.

4. Mr. Raha, learned advocate for the respondent submits that the argument of Mr. Gupta, is on merits and the same cannot be taken into consideration while considering the prayer for unconditional stay of the award.

5. This Court agrees with the submissions of Mr. Raha. At this stage, the challengeof Mr. Gupta are on the merits and findings of the arbitral tribunal. Whether Claim No.3 was proved adequately without calling for evidence, is again a matter to be decided in the application for setting aside of the award. The same can be a ground for setting aside the award on patent illegality and can be urged at the appropriate stage, but the same cannot be a ground for unconditional stay of the award. Unconditional stay of an award can only be granted if the award is perpetuated by fraud and corruption. The petitioner has not been able to prove either. The standard of proof of fraud and corruption is very high.

6. The second proviso to Section 36(3) requires a primary satisfaction on the part of the court that the making of the award as alleged by the petitioner was induced or affected by fraud or corruption. The award-debtor can seek stay of operation of the award upon discharging the burden of at least, prima facie, showing that the award was induced by fraud or corruption. Fraud and corruption have not been defined in the said Act.

7. The Oxford dictionary defines fraud as here under :-

> "/n. 1.Criminal deception; the use of the false misrepresentations to gain an unjust advantage. 2. A dishonest article or trick. 3. A person or thing not fulfilling what is claimed or expected of him, her, or it."

8. From the legal standpoint Black's law dictionary (9th Edition) defines fraud as here under:-

> "fraud, n. 1. A Knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (es.p when the conduct is willful) it may be a crime. – Also termed intentional fraud."

9. In the decision of ***SP Chengalvaraya Naidu (Dead) By LRs. Vs. Jagannath (Dead) by LRs and other*** reported in ***(1994) 1 SCC 1,*** fraud was defined as here under:-

> "an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage."

10. In ***Venture Global Engineering LLP vs. Tech Mahindra Limited*** reported in ***(2018) 1 SCC 656*** deliberation on the meaning of fraud was as follows:-

> "**76.** The expression "fraud", what it means and once proved to have been committed by the party to the lis against his adversary then its effect on the judicial proceedings was succinctly explained by this Court in Ram Chandra Singh v. Savitri Devi [Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319] in the following words : (SCC p. 322b-d)
> "Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against

fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by wilfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

77. Similarly, how the leading authors have dealt with the expressions "fraud", "misrepresentation", "suppression of material facts" with reference to various English cases also need to be taken note of. This is what the learned author Kerr in his book Fraud and Mistake has said on these expressions.

78. While dealing with the question as to what constitutes fraud, the learned author said, "What amounts to fraud has been settled by the decision of House of Lords in Derry v. Peek [Derry v. Peek, (1889) LR 14 AC 337 (HL)]

'… fraud is proved when it is shown that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false."

79. The author has said that, Courts of Equity have from a very early period had jurisdiction to set aside awards on the ground of fraud, except where it is excluded by the statute. So also, if the award was obtained by fraud or concealment of material circumstances on the part of one of the parties so as to mislead the arbitrator or if either party be guilty of fraudulent concealment of matters which he ought to have declared, or if he wilfully mislead or deceive the arbitrator, such award may be set aside.

80. The author said that, if a man makes a representation in point of fact, whether by suppressing the truth or suggesting what is false, however innocent his motive may have been, he is equally responsible in a civil proceeding as if he had while committing these acts done so with a view to injure others or to benefit

> himself. It matters not that there was no intention to cheat or injure the person to whom the statement was made."

11. The prayer for unconditional stay of the award dated October 16, 2024 by the arbitral tribunal is refused. There shall be an unconditional stay of the award for a period of six weeks from date, within which time the petitioner will deposit a sum of Rs.1.60 crore with the Learned Registrar, Original Side, by demand draft. Such amount shall be deposited in an auto renewable fixed deposit. If the said deposit is made within the aforementioned period as directed, the stay shall continue till disposal of the application under Section 34 of the Arbitration and Conciliation Act, 1996. In case of default, this order shall stand automatically vacated and the award-holder may proceed with the execution.

12. The observations hereinabove are for the purpose of disposal of this application. The same are tentative and shall not influence the proceedings under Section 34 of the said Act.

13. AP-COM/309/2025 is disposed of.

(SHAMPA SARKAR, J.)

S. Kumar/R. D. Barua