

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE DIVISION
ORIGINAL SIDE**

**AO-COM/1/2025
WITH AP-COM/231/2024**

**DAMODAR VALLEY CORPORATION
VS
BLA PROJECTS PRIVATE LIMITED**

**BEFORE:
HON'BLE JUSTICE DEBANGSU BASAK
-A N D-
HON'BLE JUSTICE SUPRATIM BHATTACHARYA**

For the Appellant : *Mr. Jayanta Kr. Mitra, Sr. Adv.*
Mr. Konishk Kejriwal, Adv.
Mr. Amit Meharia, Adv.
Ms. Paromita Banerjee, Adv.
Mr. Sayan Dey, Adv.

For the Respondent : *Mr. Jaydip Kar, Sr. Adv.*
Mr. Suman Kumar Dutt, Sr. Adv.
Mr. Sakabda Roy, Adv.
Mr. Debdeep Sinha, Adv.

HEARD ON : 05.12.2025
DELIVERED ON : 05.12.2025

DEBANGSU BASAK, J.:-

1. This appeal under Section 37 of the Arbitration & Conciliation Act, 1996, is directed against the judgement and order dated August 13, 2024 passed in AP-COM 231 of 2024.

2. By the impugned judgement and order learned Single Judge dismissed the challenge thrown to the award dated August 14, 2021 passed in the arbitration proceedings held between the parties before us.

3. Learned Senior Advocate appearing for the appellant submits that, the parties entered into a contract for transportation of coal. He refers to the terms and conditions of the contract. He submits that the contract contains a termination clause. According to him, the respondent, not acting in terms of the contract, appellant rightfully terminated the contract.

4. Learned Senior Advocate appearing for the appellant draws the attention of the Court to the fact that the first termination of the contract was assailed before the Writ Court. The Writ Court required the appellant to hear the respondent prior to terminating the contract. Appellant heard the respondent on the issue of termination of contract and proceeded to terminate the contract.

5. Learned Senior Advocate appearing for the appellant draws the attention of the Court to the Statement of Claim of the respondent. He refers to the impugned award. He submits that, since, the termination of the contract was in terms of the contract itself the termination could not be said to be illegal. Since, the termination was wrongly held to be illegal, naturally the other heads of claim should not be allowed.

6. Learned Senior Advocate appearing for the appellant, without prejudice to the earlier contentions submits that, assuming that the termination was bad in law or that the respondent is entitled to damages due to such wrong termination then also the respondent is required to establish by cogent evidence the quantum of damages for the learned Arbitrator to award any sum. He submits that in the facts and circumstances of the present case, the respondent failed to do so.

7. Learned Senior Advocate appearing for the appellant submits that, the respondent claimed damages on account of wrongful termination and proceeded to claim loss of profit on a particular head. He submits that referring to the various clauses of the contract as also the document tendered before the learned Arbitrator that, such quantum of damages was not established.

8. Relying upon **2015(4) SCC 136 (*Kailash Nath Associates Vs. Delhi Development Authority and Anr.*)** learned Senior Advocate for the appellant submits that, the respondent cannot obtain an award for damages to make a windfall. He relies upon **2024(2) SCC 375 (*Batliboi Environmental Engineers Limited Vs. Hindustan Petroleum Corporation Limited & Another*)** what would constitute patent illegality. He submits that in the facts and circumstances of the present case the public policy violation was so unfair and unreasonable that it could shock the conscience of the Court. According to him, the learned Arbitrator acted contrary and beyond the express law and contract. Learned Arbitrator granted reliefs which fell beyond the purview of Section 34 of the Act of 1996. In this regard he relies upon 2023 SCC OnLine SC 1366 (***Unibros Vs. All India Radio***).

9. Learned Senior Advocate appearing for the appellant draws the attention of the Court to Section 73 of the Contract Act, 1872 and in particular to the explanation of such Section. He submits that in estimating the loss and damage arising from the breach of the contract, the amounts which exceeded the remedying the inconvenience caused by the non performance of the contract must be taken into account. He submits

that in the facts and circumstances of the present case respondent did not advance any evidence with regard to the quantum of loss suffered. Moreover, respondent did not establish that the respondent could not engage manpower or the vehicle of the transportation under the contract elsewhere.

10. Learned Senior Advocate appearing for the appellant submits that, since the contract was for transportation. The question of payment for loading and unloading and for liason does not arise after termination. Such quantum should be deducted in the loss of profit. Learned Arbitrator failed to take such facts into accounts.

11. Learned Senior Advocate appearing for the respondent relies upon 2024 SCC OnLine SC 2632 (***Punjab State Civil Supplies Corporation Ltd. & Another Vs. Sanman Rice Mills & Ors.***) in support of the proposition that, the appellate power of Section 37 of the Act of 1996 is limited within the domain of Section 34 thereof. According to him, in the facts and circumstances of the present case, both the award as well as the impugned judgement and order contain reasons. Therefore, no interference is called for.

12. Appellant floated a tender for transportation of coal. Respondent participated therein. The respondent being the successful bidder was awarded the contract.

13. The contract contained an arbitration clause. Disputes and differences arose between the parties in the execution of the contract. During the execution of the contract, the appellant thought it prudent to terminate the contract. The first termination was assailed before the Writ

Court. Such writ petition was allowed by directing the appellant to give a hearing to the respondent on the issue of termination. The appellant did so. Appellant terminated the contract on September 5, 2018 primarily on the ground of the respondent indulging in fraudulent and corrupt practices while executing the contract.

14. Arbitration proceedings ensued by reason of the disputes and differences arising between the parties in terms of the contract entered into by them.

15. Learned Arbitrator published an award dated August 14, 2021. Learned Arbitrator, in the award, considered the rival contentions of the parties. Learned Arbitrator, allowed four heads of claims made by the respondent, out of seven heads of claims. The two counter claims of the appellant were disallowed by the learned Arbitrator.

16. Award dated August 14, 2021 was assailed by the appellant under Section 34 of the Act of 1998, being AP-COM 231 of 2024 resulting in the impugned judgement and order.

17. As noted above, appellant is before us under Section 37 of the Act of 1997.

18. The scope and ambit of an appeal under Section 37 of the Act of 1996 was considered in **Punjab State Civil supplies Corporation Limited & Another (Supra)** which held as follows:

“21.It must also be remembered that proceedings under Section 34 of the Act are summary in nature and are not like a full-fledged regular civil suit. Therefore, the scope of Section 37 of the Act is much more summary in nature and not like an ordinary civil appeal. The award as such cannot be

touched unless it is contrary to the substantive provision of law; any provision of the Act or the terms of the agreement.”

19. Therefore, while exercising powers under Section 37 of the Act of 1996 we are required to find out whether the Court exercising powers under Section 34 of the Act 1996 acted within its limits as prescribed there under or exceeded or failed to exercise the power so conferred.

20. Contention of the appellant that, the finding of the learned Arbitrator that the termination of the contract was bad and is perverse, cannot be accepted. Learned Arbitrator considered the materials placed before it. The clause of termination in the contract was taken into consideration. Material evidence was also considered. Termination was done primarily on the ground of the respondent indulging in fraudulent activities. Learned Arbitrator found that, there was no material to establish that, the respondent engaged in any corrupt or fraudulent activities. In fact, in paragraph 28 of the award, learned Arbitrator held that, there was absence of cogent evidence to support the case of corrupt or fraudulent activities on the part of the respondent.

21. Learned Arbitrator found the case of corrupt and fraudulent practice as sought to be made out by the appellant, not to be creditworthy. Learned Arbitrator gave reasons for the same. Reasons appear inter alia in paragraph 25 to 32 of the award.

22. After finding that, the termination of the contract was not in accordance with the terms of the contract, learned Arbitrator proceeded to assess the rival money claims of the parties before it.

23. So far as, as claims no. 1 and 2 of the appellant is concerned, learned Arbitrator found that, claim no. 1 was inclusive of claim no. 2 and that it relates to unpaid balance of aggregate amount of running account bills aggregating to Rs.5,33,32,424. Learned Arbitrator found that portion of the running account bills were paid. Learned Arbitrator did not find any valid ground for withholding the balance amount concerned. Therefore, learned Arbitrator proceeded to award claim no. 1 on account of unpaid balance of the aggregate four running account bills.

24. Learned Arbitrator, considered claim no. 5 on account of loss of profit. Respondent claimed part of damages for loss of profit @20% of the value of the contract. Learned Arbitrator found that the total value of the contract was Rs.43,34,14,800/- and that the contract was terminated on September 5, 2018. On the date of termination of the contract the total value of the work executed was Rs.5,33,32,432/- leaving unexecuted balance of work of Rs.38,00,82,376/-. Learned Arbitrator, took into consideration annexure A to the annual rate contract showing the basis on which the agreed price of Rs.361.179 per metric ton was calculated. Learned Arbitrator found that such rate contained 20% on account of profit. Learned Arbitrator gave reasons why he found so in paragraph 46 to 49 of the impugned award. Significantly, in paragraph 45 of the impugned award learned Arbitrator found that the testimony of the witness of the respondent establishing such rate of profit although being cross-examined, not to be meaningfully challenged.

25. On account of loss of reputation and goodwill, learned Arbitrator awarded a sum of Re. 1. Learned Arbitrator awarded Rs.10 lakhs as costs for the arbitration.

26. Essentially, the loss of profit head which was allowed by the arbitrator requires consideration.

27. Damages are required to be established by cogent evidence is the view of ***Kailash Nath Associates (supra)***. In the facts and circumstances of the present case it cannot be said, that loss of profit was not established by the respondent before learned Arbitrator.

28. ***Uniibros (Supra)*** is of the view that there must be some evidence to support the claim for loss of profit arising from the delayed contract or missed opportunities from other available contracts. In the facts and circumstances, of the present case, in our view the respondent was able to establish by cogent evidence before the learned Arbitrator that there was a loss of profit. It was also able to establish the quantum of the profit under the contract. Therefore, it was rightly compensated by the impugned award to the extent of the loss of profit it suffered as damages.

29. ***Batliboi Environmental Engineers Ltd. (Supra)*** requires a challenge to an award under Section 34 of the Act of 1996 to be assessed on the principles of fairness, reasonableness and objectivity. Anything arbitrary and whimsical is stated not to satisfy such requirements. In the facts and circumstances of the present case it cannot be said that that the award is based on evidence or that the Arbitral Tribunal took into account anything irrelevant or ignored vital evidence in arriving at his decision.

30. Under Section 73 of the Contract Act, 1872, a party claiming damages has to establish loss or damages caused by the breach of the contract, naturally arising in the usual course of business from the breach and that the parties to the contract knew that it would be the likely result of the breach, at the time of entering into the contract. A party claiming damages due to breach of contract has to provide evidence of actual loss or damages and that the party took steps to mitigate the loss or damages.

31. In the facts and circumstances of the present case, the respondent has established that the contract was wrongfully terminated, the quantum of profit that the respondent would have made if the contract was not wrongfully terminated. Learned Arbitrator has interpreted the contract documents so as to disclose the quantum of profit that the respondent would be making if the contract ran its full course. Learned Arbitrator has deducted the value of the work executed from the total value of the contract and awarded damages of a specified percentage of the value of the unexecuted portion of the contract treating it as profit capable of being earned, as damages. Learned Arbitrator has taken a view which is plausible. Court exercising powers under Section 34 of the Act of 1996 has not interfered with such view.

32. The impugned judgement and order contains reasons and it deals with the respective contentions of the parties in details. We are not in a position to return a finding that the impugned judgment and order suffers from perversity. Similar is our view with regard to the award.

33. On the principles enunciated in ***Punjab State Civil Supplies Corporation Ltd. & Another (supra)*** we are not in a position to hold that

the Court exercising powers under Section 34 of the Act of 1996 did not act within its limits or exceeded or failed to exercise powers conferred to it.

34. In view of the discussions above, we find no merit in the appeal. AO-COM 1 of 2025 is dismissed without any order as to costs. All subsisting interim orders stand vacated.

(DEBANGSU BASAK, J.)

35. I agree.

(SUPRATIM BHATTACHARYA, J.)

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