

18.03.2026.
Item No. 9.
Court No. 13
ap

F.M.A.T. (ARBAWARD) 9 of 2026
With
IA NO: CAN/1/2026
And
IA NO: CAN/2/2026

Balmer Lawrie & Company Limited
Versus
Macarav Infrastructures India Limited

Mr. Bodhisatta Biswas,
Mr. Sahadat Ali.

...For the appellant.

Mr. Subhankar Nag,
Mr. Snehashis Sen.

...For the respondent.

Re: CAN 1 of 2026 (Condonation)

1. This is an application filed under Section 5 of the Limitation Act, 1963 for condonation of delay of about 3 days in filing the instant appeal.

2. Having heard the learned Advocate appearing on behalf of the appellant as also considering the statements made in the said application, this Court is satisfied with the grounds indicated therein, as sufficiently explaining delay of 3 days in preferring the instant appeal.

3. In view of the above, the application for condonation of delay being CAN 1 of 2026 is allowed and disposed of.

4. There will be no order as to costs.

Re: F.M.A.T. (ARBAWARD) 9 of 2026

5. The subject appeal is against an ad interim order dated 16th January, 2026 passed by the learned

3rd Judge, City Civil Court at Calcutta in Misc. Case No. 484 of 2026. The said order was passed ex parte in an application filed by a person claiming to be the Contractor, under Section 9 of the Arbitration and Conciliation Act, 1996.

6. It appears that the appellant, a Government Company, had awarded a contract for construction of “Civil, structural and allied work for temperature controlled warehouse at Delhi Road, Serampore, West Bengal”, to one Macarav Infrastructures India Private Limited. The contract was awarded on 12th August, 2024.

7. Disputes and differences arose between the appellant and the Contractor with regard to execution of the contract and the appellant has terminated the contract on 2nd January, 2026.

8. In terms of the contract, the respondent claiming to be a Contractor, had furnished a performance Bank Guarantee i.e. valid till 31st August, 2026 and the claim period being valid till February, 2027.

9. Citing several grounds, the respondent prayed before the Trial Court for an injunction on the appellant from giving effect to the notice of termination dated 2nd January, 2026. An ex parte ad interim order was passed by the Trial Court, which is impugned herein.

10. This Court firstly notes that there are serious questions as to whether the respondent Company, namely, Macarav Infrastructures India Limited was at all a Contractor since the contract was awarded to Macarav Infrastructures India Private Limited. The application under Section 9 in the Trial Court, was affirmed by one Macarav Industries Limited. There appears to be a serious question on the locus of the applicant/respondent before the Trial Court in filing the application under Section 9 of the Act of 1996 in the first place.

11. Apart from the above, the value of the contract exceeds Rupees ten crores. There is also serious doubt as to whether the City Civil Court at Calcutta had pecuniary jurisdiction to receive, entertain or try the application under Section 9 of the Act of 1996.

12. In any event, once an order of termination of contract is passed, it comes into effect from the date of receipt thereof by the Contractor. An order which has already come into force cannot be restrained from being given further effect to.

13. Be that as it may, even assuming for the sake of argument that the respondent was able to make out a prima facie case of wrongful termination, its remedy lies in suing for damages and for any unpaid admitted sums. Specific performance of a contract for construction and/or services, cannot be enforced,

especially when a claim for damages can be made by the Contractor.

14. The Forum chosen by the parties is the Arbitral Tribunal under the Act of 1996. The parties may seek appropriate remedies before the Arbitral Tribunal under Section 17 of the Act of 1996. The impugned order, albeit without reasons and in the backdrop of the discussions made hereinabove, cannot be sustained in law. However, in the peculiar facts and circumstances of the case, this Court directs that the appellant/employer shall not invoke the performance Bank Guarantee submitted by the Contractor, for a period of 45 days from date.

15. With the aforesaid observations, the impugned order dated 16th January, 2026 passed in Misc. Case No. 484 of 2026 shall stand set aside.

16. FMAT (ARBAWARD) 9 of 2026 is hereby allowed and disposed of.

17. In view of disposal of the appeal itself, the connected application being CAN 2 of 2026 shall also stand disposed of.

18. There will be no order as to costs.

19. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Rai Chattopadhyay, J.)