

**IN THE HIGH COURT AT CALCUTTA
COMMERCIAL CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMA/787/2021

**AIRPORTS AUTHORITY OF INDIA
Versus
TRANS BHARAT AVIATION PRIVATE LIMITED**

*For the Appellant : Mr. Prabal Kr. Mukherjee, Learned Senior Advocate
Mr. Suhrid Sur, Advocate
Mr. Swarnava Roy, Advocate*

*For the Respondent : Mr. Jishnu Chowdhury, Learned Senior Advocate
Ms. Rajshree Kajaria, Advocate
Ms. Vrinda Kedia, Advocate*

Heard & Judgment on: April 9, 2026

Debangsu Basak, J.

1. Appeal under Section 37 of the Arbitration and Conciliation Act, 1996 is directed against judgment and order dated April 5, 2021 passed in Misc. Case (Arbitration) No. 04 of 2019 by the learned Trial Judge Commercial Court at Alipore.
2. By the impugned judgment and order, learned Trial Judge dismissed an application under Section 34 of the Act of 1996.

3. Learned advocate appearing for the appellant submits that, a licence agreement was entered into between the parties on June 12, 2009 regarding granting licence to the respondent for using a plot of land in Behala Airport for constructing hanger/structure/installation for the purpose of Flying Schools on agreed terms and conditions. He submits that, the respondent was liable to pay royalty which the respondent did not pay in terms of the agreement.
4. Learned advocate appearing for the appellant submits that, in the arbitration proceedings, respondent filed a statement of counter-claim. The arbitrator proceeded to dismiss the counter-claim made by the respondent. No reason appears from the award as to why, counter-claim was disallowed.
5. Learned advocate appearing for the appellant submits that, counter-claim is on the basis of the royalties and fees payable by the appellant in terms of the agreement dated June 12, 2009. He draws the attention of the Court to various clauses and agreement. He submits that, the liability of payment of the royalties and fees are not dependent upon discharge of any duties and functions of the appellant. He submits that, the respondent utilized the plot of land for more than 4 and ½ years without paying any occupation charges or royalties or fees. Therefore, according to him, the learned Arbitrator erred in not allowing the counter-claim. Learned Trial Judge erred in rejecting the petition under Section 34 of the Act of 1996.
6. Relying upon **2026 SCC OnLine SC 125 (Saisudhir Energy Ltd. vs. NTPC Vidyut Vyapar Nigam Ltd.)**, learned advocate appearing for the appellant submits that, since the award can be severed, the counter-claim should be considered and allowed. He

submits that, there are substantial materials on record for sustaining the counter-claim.

7. The respondent is represented.
8. We find from the records that parties entered into an agreement dated June 12, 2009 by which, the respondent agreed to set up a flying Training Institute by using a plot of land at Behala Airport and by constructing a hanger/ structure/installation for such purpose.
9. Disputes and differences arose between the parties with regard to the agreement dated June 12, 2009 which were referred to arbitration.
10. It is the claim of the parties that, the agreement stood terminated by a notice dated December 2, 2013 issued by the respondent. There is also a letter dated April 8, 2014 by which, the respondent informed the appellant that they do not wish to proceed with the terms and conditions of the agreement.
11. In the arbitration proceedings, the respondent filed a statement of claim while the appellant filed a statement of defence and a counter-claim.
12. Learned Arbitrator passed an award dated March 18, 2019 by which, learned Arbitrator allowed substantial portion of the claim made by the respondent while dismissing the counter-claim of the appellant in its entirety.
13. The award dated March 18, 2019 was assailed by the appellant under Section 34 of the Act of 1996. By the impugned judgment and order dated April 5, 2021, such petition was dismissed.
14. Powers in a Court exercising jurisdiction under Section 37 of the Act of 1996 are limited and circumscribed by Statute. The Court exercising jurisdiction under Section 37 of the Act of 1996 is required to evaluate as to whether, the Court exercising powers

under Section 34 of the Act of 1996 did so within the prescribed parameters or not.

15. In the facts and circumstances of the present case, the learned Trial Judge, noted the respective case of the parties and their respective submissions. Learned Trial Judge also noted, the authorities cited before it with regard to the scope and ambit of Section 34 of the Act of 1996. Learned Trial Judge, found that there was no material to interfere with the finding returned by the learned Arbitrator as recorded in the award dated March 18, 2019.
16. **Saisudhir Energy Ltd. (Supra)** held that, the Section 34 of the Act of 1996 would not exercise powers envisaged under Order XLI of the Code of Civil Procedure, 1908. Enquiry under Section 34 of the Act of 1996 is limited to the guardrails of the powers provided thereunder. It also held that, a Section 34 Court in applying the doctrine of severability can modify a portion of the award while retaining the rest.
17. Contention of the appellant before us is that, the counter-claim is a severable portion of the award and should be allowed. It was required to be allowed by the Section 34 Court. Section 34 Court not doing so, Division Bench under Section 37 of the Act of 1996 can do so.
18. The foundational basis of the power to modify under Section 34 of the Act of 1996 is the severability of the award. In the facts and circumstances of the present case, claims and counter-claims emanate out of a licence agreement dated June 12, 2009. Award dated March 18, 2019 discloses in details the respective case of the parties. It returns a finding that, the respondent was not at fault at all. It, in fact, returns a finding that, it is due to the faults and breaches on the part of the appellant that, the respondent was not

in a position to set up, establish and run the Flying Club on the land concerned. In such perspective, the Arbitrator in the award dated March 18, 2019 rejected the counter-claims. Counter-claims of the appellant which are canvassed before us is for the payment of the royalties and fees. Learned Arbitrator took a view with regard to such counter-claims. Such view of the learned Arbitrator is not established to be perverse or a view which not is plausible on the basis of the materials on record.

19.As noted in **Saisudhir Energy Ltd. (supra)**, a Section 34 Court is not required to exercise powers of an Appeal Court under Order 41 of the Code of Civil Procedure, 1908 and, therefore, the Section 34 Court was not required to reappraise the evidence and come to an independent finding.

20.In view of the discussions above, we do not find that by the impugned judgment and order, learned Trial Judge, exceeded the parameters prescribed under Section 34 of the Act of 1996 or applied wrong parameters not provided thereunder.

21.We find no merits in the present appeal.

22.**FMA/787/2021 is dismissed** without any order as to costs.

23. Court is informed that, by virtue of order dated August 19, 2021, passed in CAN 2 of 2021 in this appeal, the appellant furnished a bank guarantee of Rs.4.5 crores with the learned Registrar General.

24. Since the appeal stands dismissed by us, learned Registrar General will encash the bank guarantee so furnished by the appellant and make over the proceeds of such bank guarantee in protanto satisfaction of the claims of the respondent in terms of the award dated March 18, 2019. Learned Registrar General may

not do so within a period of four weeks from date in the event the bank guarantee is alive for such period of time.

(Debangsu Basak, J.)

25. I agree

(Md. Shabbar Rashidi, J.)

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