

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

FMAT (ARBAWARD)/44/2025

***BLUE FLAME HP GAS AGENCY
VS***

HINDUSTAN PETROLEUM CORPORATION LIMITED

IA NO: CAN/1/2025, CAN/2/2025

For the Appellant : *Mr. Uday Sankar Bhattacharya, Advocate
Ms. Sudeshna Basu Thakur, Advocate
Mr. Saptarshi Roy, Advocate*

For the Respondent : *Mr. Prasun Mukherjee, Advocate
Mr. Deepak Agarwal, Advocate*

Heard & Judgment on: June 17, 2026

Debangsu Basak, J.

1. CAN/1/2025 is an application for condonation of delay. For the ends of justice causes shown in the application for condonation of delay are accepted as sufficient. CAN 1 of 2025 is allowed.
2. Appeal is directed against the judgment and order dated March 24, 2025 passed by the learned City Civil Court, Calcutta in Misc. Case No. 2222 of 2023.
3. By the impugned judgment and order, learned Judge allowed an application under Section 34 of the Arbitration and Conciliation Act,

1996 filed at the behest of the respondent and set aside the award dated February 25, 2023.

4. Learned advocate appearing for the appellant submits that, the disputes involved a commercial dispute within the meaning of Section 2(1)(c)(ix) of the Commercial Courts Act, 2015. He submits that, the appellant was engaged as a dealer for Liquefied Petroleum Gas for both domestic and commercial supplies. He submits that, the petition under Section 34 of the Act of 1996 filed by the respondent was before a wrong forum. The Court at which, such proceeding was filed, was not a Commercial Court, within the meaning of Act of 2015.
5. Adverting to the merits of the matter, learned advocate appearing for the appellant submits that, the appellant was not given a right of hearing before the issuance of notice of termination. He submits that, the notice of termination of the agreement was issued on February 21, 2022 without any hearing being granted to the appellant. He submits that, therefore, the termination of the dealership agreement dated August 30, 2018 entered into between the parties was bad in law. The Arbitratal Tribunal was correct in holding it to be so. Impugned judgment and order reversed such finding unnecessarily.
6. Learned advocate appearing for the appellant submits that, there is no finding by the learned Judge in the impugned judgment and order that, any public policy of India stood violated by the award dated February 25, 2023. Consequently, learned Judge erred in setting aside the award.
7. Learned advocate appearing for the appellant submits that, learned Judge in passing the impugned judgment and order exceeded jurisdiction under Section 34 of the Act of 1996.

8. Learned advocate appearing for the respondent submits that a dealership agreement was entered into on August 30, 2018. Disputes and differences arose between the parties with regard to such dealership agreement which was referred to arbitration. He submits that award dated February 25, 2023 was passed. According to him, learned Arbitrator failed to grant the counter-claim raised by the respondent. Consequently, the respondent filed the petition under Section 35 of the Act of 1996.
9. Learned advocate appearing for the respondent submits that, question of pre-decision hearing for issuance of a notice of termination does not arise. An Article 12 authority is entitled to decide to terminate a contract. In the facts and circumstances of the present case, before issuance of notice of termination various letters were issued from time to time requiring the appellant to rectify the wrong doing under the contract. The appellant did not rectify such wrong doings under the contract. Consequently, the respondent was constrained to issue the notice of termination. He submits that, the appellant was issued a showcause notice prior to issuance of notice of termination. The show cause notice is dated August 27, 2021.
10. Learned advocate relies upon **2024 SCC OnLine SC 2632 [Punjab State Civil Supplies Corporation Limited and Anr. Vs. Sanman Rice Mills and Ors.]** in support of the proposition that the remit of Section 37 of the Act of 1996 is limited.
11. So far as commercial dispute is concerned, learned advocate appearing for the respondent submits that, the commercial Court with regard to relevant territorial jurisdiction was inaugurated on August 21, 2025. The impugned order is dated March 24, 2025. Consequently, the date on which, the Section 34 petition was filed

including the date on which the impugned judgment and order was passed, there was no designated commercial Court for the respondent to approach under the Act of 2015.

12. In reply, learned advocate appearing for the respondent submits that, the appellant was not served with the showcause notice. Therefore, the notice of termination is bad.

13. **Punjab State Civil Supplies Corporation Limited (supra)** is of the following view on the scope and ambit of Section 37 of the Act of 1996:-

"20. In view of the above position in law on the subject, the scope of the intervention of the court in arbitral matters is virtually prohibited, if not absolutely barred and that the interference is confined only to the extent envisaged under Section 34 of the Act. The appellate power of Section 37 of the Act is limited within the domain of Section 34 of the Act. It is exercisable only to find out if the court, exercising power under Section 34 of the Act, has acted within its limits as prescribed thereunder or has exceeded or failed to exercise the power so conferred. The Appellate Court has no authority of law to consider the matter in dispute before the arbitral tribunal on merits so as to find out as to whether the decision of the arbitral tribunal is right or wrong upon reappraisal of evidence as if it is sitting in an ordinary court of appeal. It is only where the court exercising power under Section 34 has failed to exercise its jurisdiction vested in it by Section 34 or has travelled beyond its jurisdiction that the appellate court can step in and set aside the order passed under Section 34 of the Act. Its power is more akin to that superintendence as is vested in civil courts while exercising revisionary powers. The arbitral award is not liable to be interfered unless a case for interference as set out in the earlier part of the decision, is made out. It cannot be disturbed only for the reason that Instead of the view taken by the arbitral tribunal, the other view which is also a possible view is a better view according to the appellate court.

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."*

14. Therefore, we are required to confine our findings as to whether the learned Judge passing the impugned judgment and order exercised the correct parameters under Section 34 of the Act of 1996 or not.
15. The fact that the parties entered into the dealership agreement dated August 30, 2018, is undisputed. The appellant challenged the notice of termination dated February 21, 2022. Notice of termination is preceded by several correspondences where, the respondent is sought to highlight the shortcomings or the failure of the appellant in discharging obligations under the dealership agreement. There is also a showcause notice dated August 27, 2021 issued by the respondent prior to the notice of termination dated February 21, 2022.
16. Learned Arbitrator considered the issues raised before it. Learned Arbitrator in the impugned award dated February 25, 2023 tabulated various issues which required the consideration of the learned Arbitrator. Learned Arbitrator proceeded to evaluate the evidence and the respective contentions before him. Learned Arbitrator issued directions as contained in the impugned award.
17. Impugned award is not established to be perverse. Impugned award did not consider the counter claim raised by the respondent. However, the respondent did not carry any challenge to the

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impugned judgment and order which set aside the impugned award. Therefore, we are not minded to enter into the contentions of the respondent that, its counter claim stood rejected by the learned Arbitrator wrongfully.

18. On the parameters under Section 37 of the Act of 1996 as laid down in **Punjab State Civil Supplies Corporation Limited (supra)**, we do not find that, the award needs to be interfered with as done by the impugned judgment and order. The award is not established to be against public policy. It is not established to be perverse. It contains reasoning for arrival at its decision. We are not required to reevaluate the award or the evidence led in the arbitration, as a Second Appeal Court or as an appeal Court.
19. In such circumstances, we set aside the impugned judgment and order on the ground that the learned Judge exceeded jurisdiction under Section 34 of the Act of 1996. Learned Judge, proceeded to reevaluate the evidence led before the learned Arbitrator and arrived at a finding by substituting the finding by the learned Arbitrator. Such jurisdiction is not vested with the Court under Section 34 of the Act of 1996.
20. In such circumstances, the impugned judgment and order is set aside. Award dated February 25, 2023 is restored.
21. **FMAT(ARBAWARD)/44/2025** along with the connected application are **disposed of**.

(Debangsu Basak, J.)

22. I agree

(Md. Shabbar Rashidi, J.)