

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

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Md. Shabbar Rashidi

AO-COM/60/2025

***GOUTAM PAUL
VS
UNION OF INDIA***

For the Appellant :Mr. Rajeev Kumar Jain, Advocate
Mr. Kunal Shaw, Advocate
Ms. Yamini Mahawar, Advocate

For the Respondent :Mr. Indrajeet Dasgupta, Advocate
Ms. Farnaz Nasim, Advocate

Heard on: February 5, 2026 & February 12, 2026

Judgment on: February 12, 2026

Debangsu Basak, J.

1. Appeal is directed against Order No. 10 dated September 16, 2025 passed in Title Execution (Commercial) No. 01 of 2025.
2. By the impugned judgment and order, learned Executing Court found the execution of the award to be barred by limitation.
3. Learned advocate appearing for the appellant submits that, award was passed on October 12, 2009. The respondent herein filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 on February 10, 2010. In view of Section 36 of the Act of

1996, as standing at that point of time, the appellant was prevented from putting the award into execution.

4. Learned advocate appearing for the appellant submits that, the petition under Section 34 of the Act of 1996 was disposed of on July 18, 2022. However, it was subsequently restored. The same is pending. The appellant filed the execution petition on February 7, 2025.
5. Referring to Section 36 of the Act of 1996, learned advocate appearing for the appellant submits that, Section 36 of the Act of 1996 was amended with effect from October 23, 2015. He refers to both the unamended as well as the amended Section 36 of the Act of 1996. He submits that the appellant was working under the automatic stay regime in view of the amended Section 36 of the Act of 1996.
6. Relying upon **(2004) 1 SCC 540 (National Aluminum Co. Ltd. vs. Pressteel & Fabrications (P) Ltd. & Anr., (2005) 2 SCC 367 [National Buildings Construction Corporation Ltd. vs. Lloyds Insulation India Ltd.], (2009) 17 SCC 796 [Fiza Developers and Inter-Trade Private Limited vs. AMCI (India) Pvt. Ltd. & Anr. , (2018) 6 SCC 287 [Board of Control For Cricket in India vs. Kochi Cricket Private Limited], (2019) 8 SCC 112 [Pam Developments Private Limited vs. State of West Bengal], 2017 SCC Online Delhi 6402 [Ardee Infrastructure Pvt. Ltd. vs. Ms. Anuradha Bhatia] and AIR 2017 Cal 268 [Citicorp Finance (India) Ltd. vs. Manoj Ray & Anr.,** learned advocate appearing for the appellant submits that the doctrine of automatic stay was acknowledged and implemented both by the Supreme Court and by various High Courts.

7. Learned advocate appearing for the appellant draws the attention of the Court to Article 136 of the Limitation Act, 1963. He submits that, the period of limitation prescribed thereunder, commences from the date when, the award becomes executable. In the facts of the present case, he submits that, Section 34 petition was disposed of on July 18, 2022 though subsequently restored. Therefore, in view of earlier regime under Section 36 of the Act of 1996, that is, automatic stay, during the pendency of a petition under Section 34 of the Act of 1996, the period of limitation prescribed under Article 136 of the Act of 1963 did not expire.
8. Learned advocate appearing for the respondent relies upon **(2020) 17 SCC 324 [Hindustan Construction Co. Ltd. vs. Union of India]** and submits that, the doctrine of automatic stay was considered by the Hon'ble Supreme Court. Hon'ble Supreme Court negated such view holding that, the decisions on such score are per incurium. In this regard, he refers to paragraph 38 of **National Building Construction Corp. Ltd. (supra)**.
9. In response, learned advocate appearing for the appellant submits that, the report of **Hindustan Construction Company Ltd. (supra)**, should be read as a whole. He draws the attention of the Court including paragraphs 37, 38, 50, 59, 63 and 98 thereof. He submits that, such report also recognizes that, earlier, there was an issue of automatic stay.
10. Learned advocate appearing for the appellant refers to the report of the Law Commission which resulted in the amendment to Section 36 of the Act of 1996. He submits that, even the Law Commission recognizes that there was a regime of automatic stay. Consequently, he submits that, appellant should not be faulted for acting in terms of the law then prevailing.

11. Appellant put an award on October 12, 2009 in execution on February 7, 2025. By the impugned order, learned Single Judge found such execution petition to be barred by limitation.
12. The issue as to whether there was an automatic stay in view of Section 36 of the Act of 1996, as prevailing at the time when the award and the application under Section 34 of the Act of 1996, obtaining, was considered by the Hon'ble Supreme Court in **Hindustan Construction Company Ltd. (supra)**. Hon'ble Supreme Court after considering various authorities including that of **National Aluminum Co. Ltd. (supra)** with regard to automatic stay under Section 36 of the Act of 1996, is of the following view:-

"**38.** Thus, the reasoning of the judgments in NALCOS, and Fiza Developers & Inter-Trade (P) Ltd. being per incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly. The fact that NALCO has been followed in National Buildings Construction Corpn. Ltd. v. Lloyds Insulation (India) Ltd. does not take us any further, as National Buildings Construction Corpn. Ltd. in following NALCO, a per incuriam judgment, also does not state the law correctly. Thus, it is clear that the automatic stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36 even as originally enacted is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award,

when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court.

41. Given the fact that we have declared that the judgments in NALCO, National Buildings Construction Corpn. Ltd. and Fiza Developers have laid down the law incorrectly, it is also clear that the amended Section 36, being clarificatory in nature, merely restates the position that the unamended Section 36 does not stand in the way of the law as to grant of stay of a money decree under the provisions of the CPC.”

13. **Hindustan Construction Company Ltd. (supra)** is categorical that, automatic stay of the award, as laid down in previous decisions including those cited before us, on behalf of the appellant, were incorrect. It clarifies that Section 36 even as originally enacted was not meant to do away with Article 36 (2) of the UNCITRAL Model Law. It was really meant to do away with the two bites at the cherry doctrine in the context of awards made in India.
14. **Hindustan Construction Company Ltd. (supra)** specifically held in paragraph-41 thereof that, **National Aluminium Co. Ltd. (supra), National Buildings Construction Corporation Ltd (supra), and Fiza Developers (supra)** laid down the law incorrectly. It is also of the view that, amended Section 36 of the Act of 1996 being classificatory in nature merely restated the position that unamended Section 36 did not stand in the way of the law to grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.
15. In the facts of the present case, as noted above, the award was made and published on October 12, 2009. The respondent herein

filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 on February 10, 2010. Such application was disposed of on July 18, 2022. Appellant filed the execution proceeding resulting in the impugned order, on February 7, 2025. The execution petition was filed after 12 years from the date of the award dated October 12, 2009.

16. We are unable to accept the contention of the appellant with regard to the automatic stay as advanced before us. First by the ground on which we cannot accept such contention is obviously binding precedent of **Hindustan Construction Co. Ltd. (supra)**. Other ground is that, the conduct of the appellant itself. **Hindustan Construction Co. Ltd. (supra)** was rendered in 2020. There is no reason why, the appellant chose to file the execution petition only on February 7, 2025.
17. In view of the authoritative pronouncement in **Hindustan Construction Co. Ltd. (supra)** we do not find any ground to interfere with the order impugned.
18. AO-COM No.60 of 2025 is **dismissed** without any order as to costs.

(Debangsu Basak, J.)

19. I agree

(Md. Shabbar Rashidi, J.)